Planning Inspectorate

The Planning Act 2008

H2Teesside

Examining Authority's Report

of Findings and Conclusions

and

Recommendation to the Secretary of State for

Energy Security and Net Zero

Examining Authority

Christopher Butler BA (Hons), PG Dip (Town Planning), MRTPI, Lead Member of the Examining Authority

Matthew Sims B.Eng (Hons), C.Eng, MICE

Sharon Bennett-Matthews LLB Law Solicitor

28 May 2025

[This page is intentionally blank]

OVERVIEW

File Ref: EN070009

The application, dated 25 March 2024, was made under section 37 of the Planning Act 2008 and was received by The Planning Inspectorate on 25 March 2024.

The applicant is H2 Teesside Limited.

The application was accepted for examination on 22 April 2024.

The examination of the application began on 28 August 2024 and was completed on 28 February 2025.

The proposed development comprises the construction, operation (including maintenance where relevant) and decommissioning of up to 1.2-Gigawatt Thermal (GWth) Lower Heating Value Carbon Capture enabled Hydrogen (H_2) Production Facility, including two carbon capture enabled H_2 units each of 600 megawatts thermal (MWth), including a water and effluent treatment plant; above ground H_2 storage; administration, control room and stores; gas and power connections, above ground installations and ancillary works located in Teesside, along with the pipeline infrastructure required to supply H_2 to off-takers and the necessary utility connections as identified as work numbers 1 to 11 (Inclusive).

In addition to the above work numbers, the proposed development also includes associated development comprising of 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:

- surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, and works to existing drainage systems;
- 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;
- hardstanding and hard landscaping;
- soft landscaping, including embankments and planting;
- biodiversity enhancement measures;
- security fencing, gates, boundary treatment and other means of enclosure;
- external lighting, including lighting columns;
- gatehouses;
- closed circuit television cameras and columns and other security measures;
- site establishment and preparation works including site clearance, comprising vegetation removal, demolition of existing buildings and structures;
- temporary construction compounds;
- vehicle parking and cycle storage facilities;
- accesses, roads and pedestrian and cycle routes; and
- tunnelling, boring, piling and drilling works and management of arisings.

Summary of Recommendation:

Based on the evidence before it, the Examining Authority recommends the applicant's preferred version of the draft DCO, attached at Annex E to this report, not be made. However, for the reasons set out in the report the Examining Authority recommends the Secretary of State should make the Order in the form attached at Annex D to this report.

REPORT TABLE OF CONTENTS

List of Figures

List of tables

1. INTRODUCTION

1.1. BACKGROUND TO THE EXAMINATION

1.1.1. An application (the application) for the H2Teesside Development Consent Order (the proposed development), Planning Inspectorate (the Inspectorate) reference EN070009, was submitted by H2 Teesside Limited (the applicant) to the Inspectorate on 25 March 2024 under section (s) 37 of the Planning Act 2008 (PA2008) and accepted for examination under s55 of the PA2008 on 22 April 2024 [PD-001]. This report sets out the Examining Authority's (ExA) findings, conclusions and recommendations to the Secretary of State (SoS) for the Department of Energy Security and Net Zero (DESNZ).

1.1.2. The legislative tests for whether the proposed development is a Nationally Significant Infrastructure Project (NSIP) were considered by the SoS for the Department of Levelling Up, Housing and Communities (DLUHC) in its decision to accept the application for examination in accordance with s55 of the PA2008 [PD-001].

1.1.3. The proposed development required Development Consent by virtue of a s35 Direction issued by the SoS for the then Department of Business Energy and Industrial Strategy (BEIS) on 22 December 2022 (See appendix A of the applicant's Planning Statement [APP-031] and appendix 1 of the applicant's Explanatory Memorandum [REP7a-008]). The application form [APP-003] sets out the various element of the proposed development, with the authorised development comprising:

- A Hydrogen (H_2) Production Facility (H_2 Production Facility) of up to approximately 1.2 Gigawatt (GWth) Lower Heating Value (LHV), including two carbon capture enabled H_2 units each of 600 Megawatt (MWth) (each forming one phase of the proposed development), including a water and effluent treatment plant; above ground H_2 storage; administration, control room and stores; gas and power connections, Above Ground Installations (AGI) and ancillary works (Work Number ('No.') 1).
- A H_2 distribution network (the 'H_2 Pipeline Corridor'), for the transport of H_2 gas from Work No. 1, comprising underground and overground pipelines to supply H_2 to the above ground storage and off-takers across Teesside. The H_2 pipelines will run up to tie-in points with the relevant off-taker (likely to be, but not necessarily having to be) at the off-takers' site boundaries, with any works beyond the tie-in point being progressed separately by the relevant off-taker (Work No. 6). (Note: In terms of H_2 an 'Off-taker' is defined by the applicant in ES chapter 1 [APP-053] at footnote 2).

1.1.4. The remaining element of the proposed development, as set out on the application form [APP-003] comprises associated development, under section 115(1)(a) and (b) of the PA2008, consisting of:

- A natural gas supply connection for the transport of natural gas to Work No. 1 (Work No. 2).
- Electrical connection works for the import of electricity from the electricity transmission network to Work No. 1 (Work No. 3).
- Water supply connection works to provide cooling and make-up water to Work No. 1 (Work No. 4).
- Waste water disposal works in connection with Work No. 1 (Work No. 5).
- A high pressure carbon dioxide (CO_2) export pipeline for the export of the captured CO_2 from Work No. 1 to the adjacent Northern Endurance Partnership

(NEP) infrastructure (on the adjacent Net Zero Teesside (NZT) Project site) (Work No. 7).
- Gas connections, including works for the transport of oxygen (O_2) and nitrogen (N) to Work No.1 (Work No. 8).
- Temporary construction and laydown areas and contractor compounds Work No. 9).
- Access and highways improvement works (Work No. 10).
- Replacement land relating to Work No. 6. (Work No. 11).

1.1.5. In addition to the above, the application form [APP-003] also sets out other elements of associated development, advising it includes 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 (ES). The elements of the authorised development and the associated development are listed in the application form [APP-003].

1.1.6. The application form [APP-003] also states the *"…description of the proposed development is provided in chapter 4 'proposed development' of the ES…* (Current version [PDA-005]) *and at Schedule 1 of the draft Development Consent Order"* (DCO) (Current version [REP7a-003]), with *"The ancillary development… required in connection with and subsidiary to the… proposed development… also detailed at Schedule 1 of the draft DCO.".* (Current version [REP7a-003]). The authorised development and associated development are explained in more detail in sections 2.1 to 2.3 of the Explanatory Memorandum [REP7a-008].

1.1.7. The s35 Direction issued on behalf of the SoS required the proposed Project to be treated as development for which development consent is required. The SoS further directed, in accordance with sections 35ZA(3)(b) and (5) of the PA2008, that an application for a consent or authorisation mentioned in s33(1) or s33(2) of the PA2008 or similar to that described in the Direction for the proposed Project is to be treated as a proposed application for which development consent is required. As such, the proposed development requires development consent in accordance with the Direction issued by the SoS.

1.1.8. The Examination Library (EL) provides a record of all application documents and submissions to the examination, each of which is given a unique reference number eg [APP-001]. The reference numbers are used throughout this report and hyperlinks are included to allow the reader to access them directly.

1.1.9. This report does not contain extensive summaries of the documents and representations received. Readers are referred to relevant material using linked EL references. Full regard has been had to all such material and to all important and relevant matters arising from it in all conclusions drawn by the ExA and the recommendation made in this report.

1.2. APPOINTMENT OF THE EXAMINING AUTHORITY

1.2.1. On 22 May 2024, Christopher Butler, Matthew Sims and Sharon Bennett-Matthews were appointed as the ExA for the application under s61 and s65 of the PA2008, with Christopher Butler being appointed as the Lead Member [PD-004]. From that point onwards the ExA has operated as a panel of three Members.

1.3. THE APPLICATION

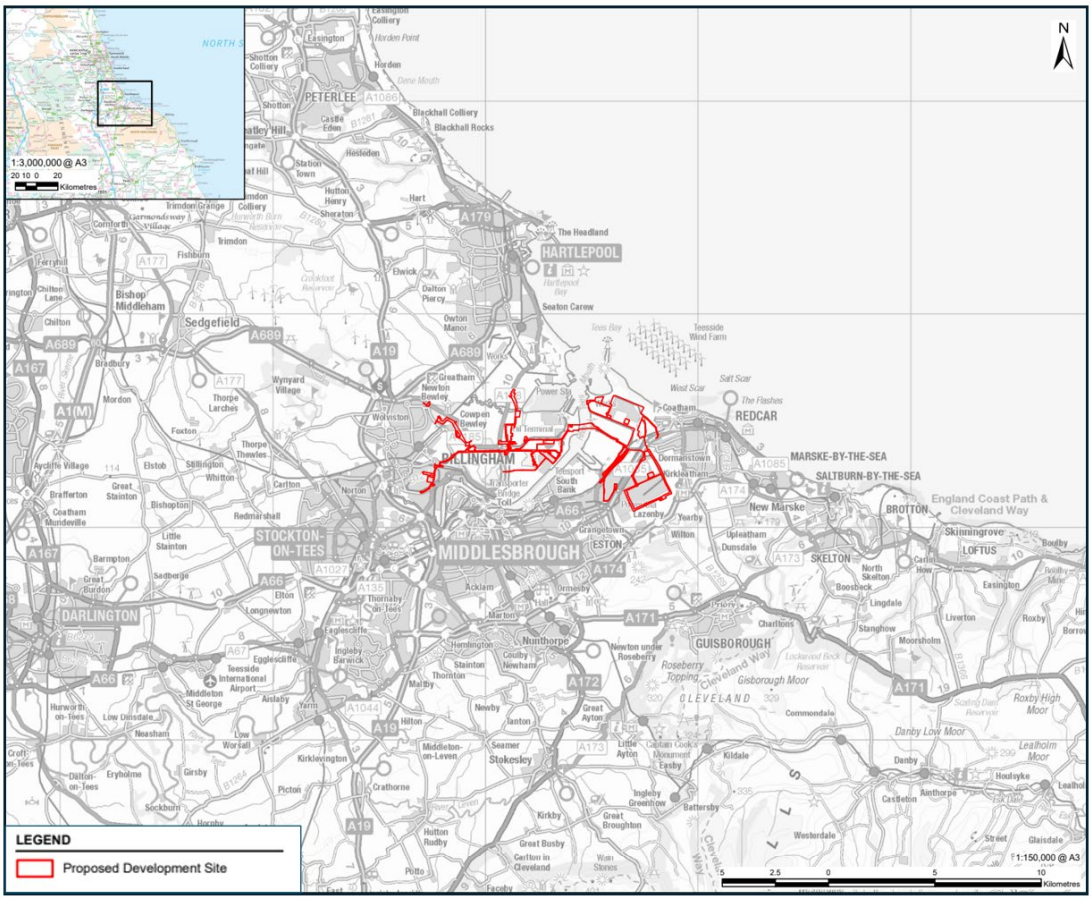
LOCATION OF THE PROPOSED DEVELOPMENT

1.3.1. The location of the proposed development lies wholly within England, within the administrative boundaries of the boroughs of Redcar and Cleveland Borough Council (south of the River Tees), Stockton on Tees Borough Council (north of the River Tees) and Hartlepool Borough Council in County Durham (north of the River Tees).

1.3.2. The Site is located to the north and east of Middlesbrough, east of Billingham and west of Dormanstown, Redcar and Grangetown and encompasses land on either side of the River Tees. The entire site, as originally submitted, extended to approximately 507 hectares (ha), albeit this has reduced following the acceptance of Change Requests (CR) during the examination.

1.3.3. The location of the proposed development site, relative to the surrounding area, is shown in the applicant's Location Plan (figure 3.1 of the Design and Access Statement [APP-034]), provided at figure 1 below:

Figure 1: Location Plan (ES figure 1-1 [APP-079])



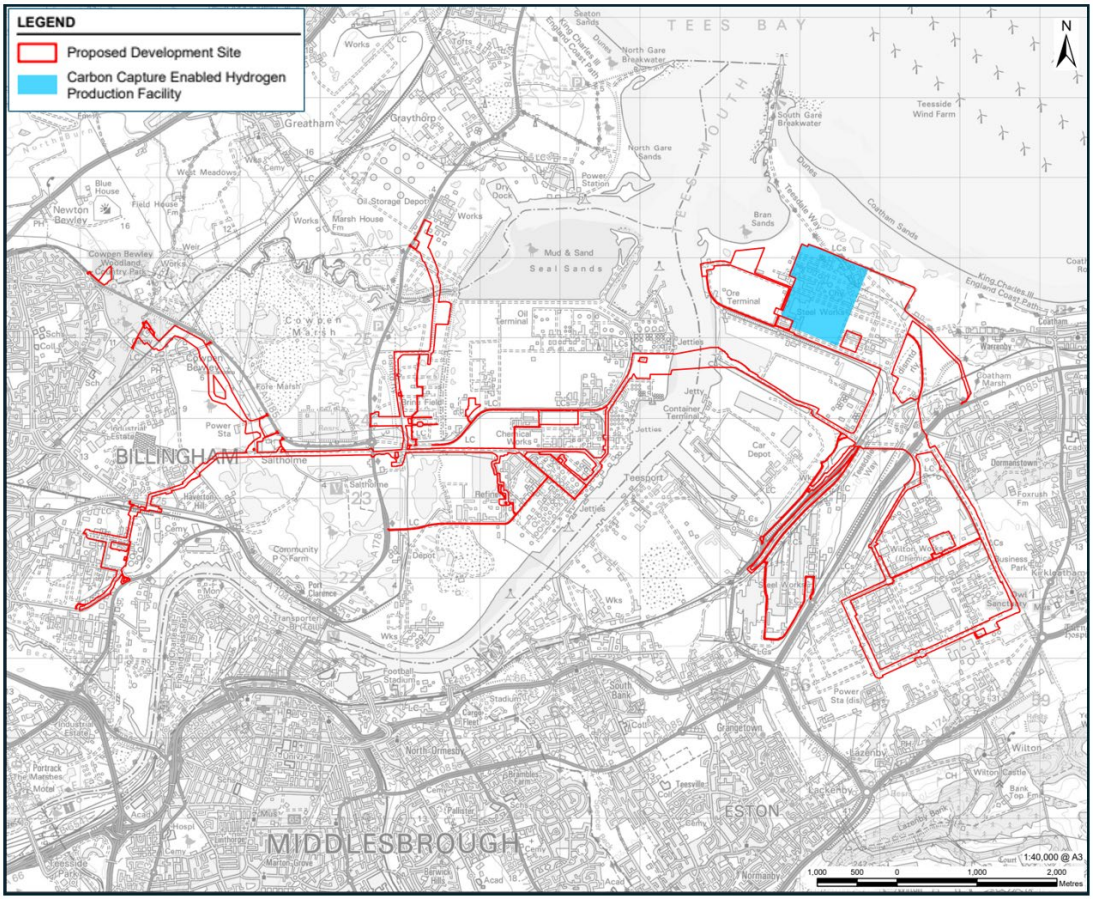
1.3.4. The H_2 Production Facility together with the associated carbon capture and compression facilities, connections, and ancillary infrastructure forms the main site, located within the South Tees Development Corporation (STDC) site. However, in addition to the H_2 Production Facility, the proposed development also includes:

- a H_2 Pipeline Corridor (See figure 4-4 in the ES Volume II [APP-087]);
- an Air Separation Unit (ASU) (located on the main site);

- O_2 and N supply pipelines (as an alternative to use of the proposed ASU) (Other Gases Connection Corridor) (See figure 4-8 in ES Volume II [APP-091]);
- a CO_2 Export Corridor (See figure 4-3 in ES Volume II [APP-086]);
- a Natural Gas Connection Corridor (See figure 4-5 in ES Volume II [APP-088]),
- an Electrical Connection Corridor (See figure 4-6 in ES Volume II [APP-089]);
- a Water Connections Corridor (including waste water treatment and disposal infrastructure) (See figure 4-7 in ES Volume II [APP-090]); and
- Replacement land at Cowpen Bewley Woodland Park.

1.3.5. As such the proposed development radiates out from the main site, a clearer understanding of which can be seen in the more detailed plan provided at figure 2 below:

Figure 2: Proposed development site, including the main site (ES figure 4-1 [APP-084])



1.3.6. A detailed description of the areas surrounding the proposed development is provided in chapter 3 (Description of the Existing Area) of the ES [APP-055].

DESCRIPTION OF THE PROPOSED DEVELOPMENT

1.3.7. The proposed development comprises the construction, operation (including maintenance where relevant) and decommissioning of up to 1.2 GWth LHV Carbon Capture enabled H_2 Production Facility located in Teesside, along with the pipeline infrastructure required to supply H_2 to off-takers and the necessary utility connections. The H_2 Production Facility will be built in two phases, with Phase 1 being a 600 MWth LHV Carbon Capture development and Phase 2 being a second 600 MWth LHV Carbon Capture development (Work Nos. 1A.1 and 1A.2

respectively). The CO_2 captured by the proposed development will be transported by pipeline to the separately consented NEP infrastructure on the adjacent NZT site for high-pressure compression and offshore transport and underground storage.

1.3.8. At the start of the examination, the proposed development works comprised:

- Work No. 1 – a Carbon Capture enabled H_2 Production Facility of up to approximately 1.2 GWth LHV comprising:
  - Work No 1A.1 – One Carbon Capture Enabled H_2 Unit of 600 MWth.
  - Work No 1A.2 – A second Carbon Capture Enabled H_2 Unit of 600 MWth.
  - Work No 1B.1 – Water Connections and Water and Effluent Treatment Plant for Work Nos. 1A.1 and 1A.2.
  - Work No 1B.2 – Water Connections and Water and Effluent Treatment Plant for Work No. 1A.2.
  - Work No 1C - Above Ground Pressurised H_2 Storage including High Pressure Compression and Let Down Facilities.
  - Work No 1D - Administration, Control Room, Gatehouse and Stores.
  - Work No 1E.1 - Connections and Ancillary Works in Connection with Work Nos. 1A.1, 1A.2, 1B.1, 1B.2, 1C and 1D.
  - Work No 1E.2 - Connections and Ancillary Works in Connection with Work No. 1A.2 and 1B.2.
- Work No. 2 – a Gas Connection, being Works for the Transport of Natural Gas to Work Nos. 1E.1 and 1E.2, comprising:
  - Work No 2A - High Pressure Gas Pipelines connecting Work No. 2B to the AGI at Work Nos. 1E.1 and 1E.2.
  - Work No 2B - AGIs relating to Work No. 2A.
- Work No. 3 – Electrical Connection Works for the Import of Electricity from Electricity Transmission Networks to Work Nos. 1E.1 and 1E.2, including:
  - Work No 3A - Electrical Connection Works comprising Underground Electrical Cables running from Work Nos. 1E.1 and 1E.2 to Work Nos. 3B.1, 3B.2 and 3B.3.
  - Work No 3B.1 - AGI connecting Work No. 3A to Pellet-Sinter Substation, including Above Ground Works within the Substation.
  - Work No 3B.2 - Electrical Connection - AGIs connecting Work No. 3A to Tod Point substation, including above ground works within the substation.
  - Work No. 3B.3 – AGI connecting Work No. 3A to a new substation.
- Work No. 4 – Water supply connection works to provide cooling and make-up water to Work Nos. 1B.1 and 1B.2, comprising up to two water pipelines of up to 1100mm nominal bore diameter from the existing raw water main.
- Work No. 5 – Waste water disposal works in connection with Work Nos. 1B.1 and 1B.2 comprising pipelines connecting to existing waste water infrastructure.
- Work No. 6 – H_2 Distribution Network, being works for the transport of H_2 gas from Work Nos. 1A.1 and 1A.2, comprising:
  - Work No 6A.1 – Overground and Underground Pipelines of up to 600mm nominal bore diameter for the transport of H_2 gas connecting to Work No. 6B.1.

- Work No 6A.2 – Overground and Underground Pipelines of up to 600mm nominal bore diameter for the transport of H_2 gas connecting to Work No. 6B.2.
- Work No 6A.3 – Overground and Underground Pipelines of up to 600mm nominal bore diameter for the transport of H_2 gas connecting to Work No. 6B.3 (Note Work No. 6A.3 has been removed as a result of the applicant's first CR).
- Work No 6B.1 - AGIs connecting Work No. 6A.1 to existing gas transmission system and gas distribution networks including tunnel head.
- Work No 6B.2 - AGI connecting Work No. 6A.2 to Cowpen Bewley Natural Gas AGI.
- Work No 6B.3 - AGI connecting Work No. 6A.3 to Northern Gas Networks AGI at Saltholme Brinefields. (Note Work No. 6B.3 was removed as a result of the applicant's first CR).

- Work No. 7 - CO_2 Export Pipeline, comprising:
  - Work No 7A - An overground or underground pipeline of up to 600 millimetres nominal bore diameter and associated power and fibre-optic cables connecting the AGI at Work Nos. 1E.1 and 1E.2 to Work No. 7B.
  - Work No 7B - AGI connection between Work No. 7A and a CO_2 pipeline network.

- Work No. 8 – Gas connections being works for the transport of O_2 and N to Work Nos. 1E.1 and 1E.2, comprising an O_2 gas connection comprising of underground and or overground pipelines and a N gas connection comprising of underground and or overground pipelines.

- Work No. 9 – Temporary construction compounds comprising laydown and open storage areas, contractor offices and 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.

- Work No. 10 – Access and highways improvements and use, comprising works to create, improve, repair or maintain streets, roads, haul roads and access points comprising:
  - Work No 10A.1 – Access Highway Improvements and Use relating to Work Nos. 1, 2, 3, 4, 5, 6A.1, 6B.1, 6A.3, 6B.3, 7, 8 and 10; and
  - Work No 10A.2 – Access Highway Improvements and Use - relating to Work No 6A.2 & 6B.2.

  (Note Work Nos. 6A.3 and 6B.3 were removed as a result of the applicant's first CR).

- Work No. 11 – Replacement Land relating to Work Nos. 6A.2 and 6B.2, comprising works for habitat creation, reinstatement, enhancement and management including landscaping, provision for vehicle parking and access, planting, and means of enclosure.

1.3.9. The H_2 Production Facility would be located on the 'main site', as shown in blue in figure 2 above. Further details of the proposal for each work number can be found in ES chapter 4 (Proposed Development) [PDA-005], as amended by the applicant's Errata Report [PDA-021], with Schedule 1 of the recommended DCO (rDCO), as included in appendix D of this report, setting out the authorised development, should development consent be forthcoming, giving a detailed description of the works included in each of the work numbers.

1.4. THE EXAMINATION

PRE-EXAMINATION

1.4.1. Prior to the Preliminary Meeting (PM), the Relevant Representation (RR) period for this NSIP opened on the 23 May 2024 and closed on 1 July 2024. However, the applicant informed the ExA on 12 June 2024 a number of notifications it had sent had not been received by parties for various reasons. As such the applicant sent a further notification to those parties advising them of the opportunity to make RRs and extended the deadline for those parties, allowing them to make RRs, until 11 July 2024, with one party having its deadline extended until 20 July 2024. Thirty-seven RRs were received within the deadlines specified.

START OF THE EXAMINATION

1.4.2. The PM took place on 28 August 2024 [EV2-001]. The ExA's Procedural Decisions (PD) and the examination timetable took full account of matters raised at the PM. They were provided in the Rule 8 Letter dated 30 August 2024 [PD-007].

1.4.3. The examination began on 28 August 2024 and concluded on 28 February 2025. The principal components of and events around the examination can be seen in the examination timetable [PD-007] (as amended by the ExA's Rule 8(3) letters dated 24 August 2024 [PD-014], 9 December 2024 [PD-017] and 10 February 2025 [PD-020]) and are summarised below.

1.4.4. In terms of requests to join/ leave the examination, only one party, SABIC Petrochemicals BV, sought to join the examination as an Interested Party (IP). Whilst this request was initially declined, on the basis that the information submitted was not adequate to determine if SABIC Petrochemicals BV met the criteria set out in s102B of the PA2008, it made a RR in response to the applicant's consultation concerning its first CR. As such it became an IP at that point in the examination. With regard to IPs leaving the examination, only one IP left (North Sea Midstream Partners Limited) [REP2-090].

PROCEDURAL DECISIONS

1.4.5. The PDs and notifications from the ExA are recorded in the EL referenced [PD-001] to [PD-025] inclusive (inc). They detail the ExA's decisions relating to the procedure of the examination and, with the exception of the ExA's Report on the Implications for European Species [PD-018], did not bear on the ExA's consideration of the planning merits of the proposed development. All PDs, including the ExA's Report on the Implications for European Species [PD-018], were generally complied with as intended.

SITE INSPECTIONS

1.4.6. The ExA carried out the following unaccompanied site inspections (USIs):

- USI1 taking place on Monday 24 June 2024 [EV1-001].
- USI2 taking place on Tuesday 25 June 2024 [EV1-002].
- USI3 taking place on Wednesday 26 June 2024 [EV1-003].

1.4.7. The ExA carried out the following accompanied site inspections (ASI):

- ASI1 taking place on Tuesday 12 November 2024.
- ASI2 taking place on Friday 15 November 2024.
- ASI3 taking place on Tuesday 17 December 2024.

Notification of ASI1 and ASI2, along with their itineraries were provided in the ExA's Rule 8(3), 9 and 16 letter dated 24 October 2024 [PD-014]. Notification of ASI3, along with its itinerary was provided in the ExA's Rule 16 letter dated 28 November 2024 [PD-016].

HEARINGS

1.4.8. Hearings were held under: s91 of the PA2008 into specific issues (ISHs); s92 of the PA2008 into the compulsory acquisition of land and rights (CAHs); and s93 of the PA2008 providing for open floor hearings (OFHs).

1.4.9. The following ISHs were held:

- ISH1 regarding the scope of the development and its relationship to the extent of the Order limits and progress of development design [EV3-002] and [EV3_004].
- ISH2 regarding the DCO [EV6-001], [EV6-003] and [EV6-005].
- ISH3 regarding Environmental Matters [EV9-002], [EV9-004], [EV9-006] and [EV9-008].
- ISH4 regarding the DCO [EV10-001]

1.4.10. The following CAHs were held:

- CAH1 [EV5-002], [EV5-004], [EV5-006] and [EV5-008].
- CAH2 [EV8-002], [EV8-004], [EV8-006] and [EV8-008].

1.4.11. The following OFH was held:

- OFH1 [EV11-001].

WRITTEN QUESTIONS

1.4.12. The ExA asked two rounds of written questions:

- First Written Questions (ExQ1) [PD-008] were issued on 4 September 2024.
- Second Written Questions (ExQ2) [PD-015] were issued on 28 November 2024.

1.4.13. Requests for further information and/ or comments made by the ExA, under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010, were made on:

- 10 September 2024 [PD-010].
- 10 February 2025 [PD-020].
- 11 February 2025 [PD-021].
- 19 February 2025 [PD-022].
- 25 February 2025 [PD-023].
- 26 February 2025 [PD-024].

STATEMENTS OF COMMON GROUND

1.4.14. By the end of the examination, the following bodies had concluded and signed Statements of Common Ground (SoCG) with the applicant:

- Durham County Council [REP4-018].
- The Environment Agency [REP8-024].
- Hartlepool Borough Council [REP8-025].
- Health and Safety Executive [REP7a-044].
- The Marine Management Organisation [REP7-031].

- National Highways [REP7a-045].
- Natural England [REP8-026].
- Redcar and Cleveland Borough Council [REP5-057].
- Stockton on Tees Borough Council [REP8-027].
- Tees Valley Combined Authority [REP8-028].
- UK Health Security Agency [REP7-035]. Although not signed or dated the UK Health Security Agency, confirmed in an e-mail to the applicant stating *"…Please… take our response provided… as the final confirmation of our agreement with the SoCG."* A copy of this email, which is dated 6 February 2025, can be located in the applicant's answer to Question 13 in table 2-1 of the applicant's Responses to Questions in the Rule 17 Letter dated 10 February 2025 [REP7a-040].

1.4.15. The SoCGs with the following bodies remained unsigned at the end of the examination:

- South Tees Group [REP7a-047] – The applicant in its covering letter submitted at deadline (DL) 7a [REP7a-001] advised *"Although this is not signed, both parties agree that this is the final SoCG between the parties."* South Tees Group's DL7a submission [REP7a-077], in its response to the ExA's Rule 17 letter dated 10 February 2025 [PD-020], stated it was *"…content for the Applicant to submit the mutually finalised form of SoCG on behalf of both parties at DL7A, acknowledging that there are remaining points of disagreement."*.

1.4.16. The signed SoCGs have been taken fully into account by the ExA in all relevant sections of this report. The weight (if any) to be afforded to unsigned SoCGs in particular contexts is considered in the relevant sections of this report.

1.5. THE NSIP

1.5.1. Development consent is required for the proposed development by virtue of a Direction, dated 22 December 2022, made by the SoS under sections (s) 35(1) and 35ZA of the PA2008 (See paragraph 1.1.3 above).

1.5.2. The application describes the 'authorised development' as comprised of works for which development consent must be obtained, which in this case is Work No. 1 (the H_2 production facility) and Work No. 6 (the H_2 distribution network). All other elements of the proposed development (Work Nos. 2, 3, 4, 5, 7, 8, 9, 10 and 11) were described as 'associated development'. More detail of the 'authorised development' and 'associated development', as well as other ancillary development, is provided by the applicant in sections 2.1 to 2.3 of its Explanatory Memorandum [REP7a-008].

ASSOCIATED DEVELOPMENT

1.5.3. S115(1) of the PA2008 provides that, in addition to the development for which consent is required under Part 3 of the PA2008 (the principal development), consent may also be granted for associated development. PA2008: Guidance on Associated Development, defines associated development as development which is associated with the principal development and requires a direct relationship between associated development and the principal development. Associated development should therefore either support the construction or operation of the principal development or help address its impacts.

1.5.4. During the course of the examination, the applicant clarified [REP2-029] what elements of the proposed work numbers constituted the NSIP and which work

numbers constituted the associated development. Having considered the applicant's submissions, the ExA is satisfied that all of the proposed works are capable of forming either part of the NSIP or are associated development as they are associated with or have a direct relationship with and supports the NSIP.

1.6. RELEVANT PLANNING HISTORY

1.6.1. Section 3.2 of the applicant's Planning Statement [APP-031] sets out the planning history. In summary, Teesside has a long history of heavy industry, beginning with large-scale steelmaking in the 1870s. The chemical industry developed during World War I at Billingham and expanded further in the 1920s and 1930s. A major chemicals complex was later established at Wilton in the mid-1940s. Over time, land was reclaimed from the Tees Estuary to support industrial growth. The steel industry grew significantly, with the Teesside steelworks forming a continuous industrial zone along the River Tees from Middlesbrough to Redcar. By the late 1970s, most steelworks were under British Steel Corporation, with only one blast furnace remaining; the Redcar Blast Furnace, which opened in 1979.

1.6.2. Following privatisation in 1988, the Redcar Steel Works changed ownership multiple times before closing in 2015 due to poor market conditions. The STDC acquired the site, now known as Teesworks, to drive regeneration. The STDC is tasked with regenerating Teesworks and in recent years has brought forward a number of major planning applications for development, including on what is now known as the 'Foundry', upon which the H_2 production facility will be located. A number of enabling works and projects are underway at Teesworks and much of the former steel works complex, including the blast furnace, has now been demolished to make way for new developments.

1.6.3. The main planning applications and development proposals that have come forward at Teesworks and within the vicinity of the Site in the last few years includes:

- Teesworks (Long Acres and South Bank) – demolition and engineering operations associated with site remediation/ preparation.
- Teesworks (Long Acres) – erection of circa 185,000 square metres (sqm) of general industrial, storage and distribution and office accommodation and parking.
- Teesworks (South Bank) – erection of circa 420,000 sqm (gross) of general industrial, storage and distribution and office accommodation and parking.
- Teesworks (South Bank) – erection of circa 3,500 sqm of general industrial and storage space, including waste storage area, hardstanding and landscaping works.
- Teesworks (Dorman Point) – erection of circa 140,000 sqms (gross) of general industrial, storage and distribution and office accommodation and parking.
- Teesworks (Lackenby) – erection of circa 93,000 sqms (gross) of general industrial, storage and distribution and office accommodation and parking.
- Teesworks (Foundry) – construction of circa 465,000 sqm (gross) of general industrial, storage and distribution and office accommodation and parking.
- Teesworks (Steel House) – construction of circa 15,800 sqm (gross) of office accommodation and parking.
- Teesworks (Bran Sands) – engineering works for installation of hardstanding platforms and levelling improvement and extension of existing access road.
- Land between Tees Dock Road and A1085 Trunk Road, Lackenby – development of soil treatment area.
- Redcar Bulk Terminal – construction of Redcar Energy Centre and materials recovery facility.

1.6.4. There have also been numerous planning applications associated with engineering operations for site preparation and remediation, access roads and the installation of infrastructure such as electricity substations at Teesworks and within its vicinity.

1.6.5. A number of NSIPs have been granted development consent by the SoS within the vicinity of the proposed development in recent years. These include:

- The York Potash Harbour Facilities Order 2016 (TR030002).
- Tees Combined-Cycle Power Plant Order 2019 (EN010082).
- The Net Zero Teesside Order 2024 (EN010103).

1.6.6. The main site for the NZT production facility is located adjacent to the proposed development. The proposed development would export CO_2 to the NEP offshore storage facility, via NEP infrastructure on the adjacent NZT site.

1.6.7. The made York Potash Harbour Facilities Order 2016 (YPHFO) has been implemented and allows for the installation of wharf/ jetty facilities with two ship loaders capable of loading bulk dry material at a rate of 12 million tonnes per annum (dry weight). It also allows associated dredging operations to create a berth; associated storage building with conveyor to wharf/ jetty and included a materials handling facility (if not located at Wilton) served by a pipeline (the subject of a separate application) and conveyor to storage building and jetty.

1.6.8. The YPHFO development once complete will support the export of polyhalite, extracted from the Woodsmith Mine, by transporting the mineral via a 36.7 kilometre underground tunnel to Teesside, for processing and shipping internationally.

1.6.9. The proposed development and the YPHFO overlap through shared land use and infrastructure in the Teesside region, including YPHFO's overland conveyor route, the Anglo American port handling facility at Redcar Bulk Terminals, the Bran Sands future quay development and the boundary of the minerals handling facility.

1.6.10. Details of planned developments and development allocations within the 15km search area undertaken by the applicant can be found in ES appendix 23A (Planned Development and Development Allocations Within the Search Area) [REP5-024] at table 23-A1.

1.7. CHANGES TO THE APPLICATION

1.7.1. Changes to the key application documents, including the wording of the draft DCO, were submitted and updated during the examination. The changes sought to address points raised by IPs and the ExA and to update or provide additional information resulting from changes and discussions that had occurred during the examination.

1.7.2. The applicant's changes to the application documents, together with any additional information submitted, are detailed in the Application Guide submitted at DL9 [REP9-002]. This provides a guide to all documents submitted as part of the application and was updated at each deadline when new or revised documents were submitted. It provides a full record of all documentation submitted into the examination.

APPLICANT'S CHANGE REQUESTS

1.7.3. During the course of the examination, the applicant submitted two formal CRs. The first CR (CR1) was formally submitted on 17 October 2024, with the Second CR

(CR2) formally being submitted on 6 February 2025. The relevant documents related to these CRs can be found in the examination library under references:

- CR1: [CR1-001] to [CR1-026] (inc), [CR1-029] to [CR1-040] (inc) and [CR1-042] to [CR1-050] (inc).
- CR2: [REP7-003] to [REP7-013] (inc).

1.7.4. With regard to CR1, the applicant's Change Application Report [CR1-044] detailed the proposed changes. In summary the proposed changes were:

- Change 1. Addition of a second flare stack for Phase 2 of the H_2 Production Facility located at the main site (no change to Order limits) - Work No. 1A.2.
- Change 2.A. Reduction at Cowpen Bewley (2.5 ha removed from the Order limits) - Work No. 6A.2.
- Change 2.B. Reduction at Venator (2.5 ha removed from the Order limits) - Work Nos. 6A.1 and 6B.1.
- Change 2.C. Reduction to the east of the main site (50.7 ha removed from the Order limits) - Work Nos. 3A, 3B.2, 3B.3, 4, 5, 7A and 7B.
- Change 2.D. Reduction to the west of the main site and at the main site access point (27.9 ha removed from the Order limits) Work No. 6A.1.
- Change 2.E. Reduction at Lazenby (4.9 ha removed from the Order limits) - Work Nos. 6A.1 and 9.
- Change 2.F. Removal of Northern Gas Networks AGI off the A178 Seaton Carew Road (5.3 ha removed from the Order limits) - Work No. 6B.3.
- Change 3. Removal of temporary construction compound at Redcar Bulk Terminal (8.1 ha removed from the Order limits – Work No. 9.
- Change 4. Addition of a temporary construction compound on land at Navigator Terminals (no change to the Order limits) Work No. 9.
- Change 5. Removal of air separation unit from Phase 1 of the H_2 Production Facility (no change to the Order limits) - Work No. 1A.1.
- Change 6. Reduction in plant at temporary construction compounds (no change to the Order limits) - Work No. 9.
- Change 7. Updates to building dimensions at the main site (no change to the Order limits) - Work No. 1.
- Change 8. Inclusion of additional land for existing Natural Gas pipeline (1.8 ha of land added to the Order limits) and changes to rights required within the Order limits to allow for re-purposing of that existing pipeline - Work No. 2C.
- Change 9. Removal of an AGI within the Work No. 2B area (no change to the Order limits) - Work No. 2B.

1.7.5. Prior to the submission of the formal change application, the applicant undertook non-statutory consultation on the changes with interested and statutory parties between 4 September 2024 and 7 October 2024. Details of the consultation process, along with the responses received were submitted alongside the applicant's CR - Consultation Statement [CR1-046] and CR - Consultation Statement Appendices [CR1-047]. The CR was also included on the agendas for the ISHs held in the week commencing 13 January 2025. These were ISH3 regarding Environmental Matters [EV9-002], [EV9-004], [EV9-006] and [EV9-008] and ISH4 regarding the DCO [EV10-001]).

1.7.6. Having reviewed the submitted details, the ExA concluded that the proposed changes, either individually or cumulatively, were not so substantial that they would constitute a materially different project and they were not considered to lead to the project being different in nature or substance to that which was originally applied for. The ExA also agreed with the applicant that the proposed change application did

not result in any change, or any new significant effects for any topics assessed in the ES.

1.7.7. The ExA therefore issued a PD [PD-012] to accept the 14 changes detailed in CR1 into the examination, subject to the subsequent fulfilment of duties under Regulations 7, 8 and 9 of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (CA Regulations).

1.7.8. The applicant subsequently provided a Regulation 9a notice [OD-007] and Regulation 9b certificate [OD-008] to demonstrate that it fulfilled those duties.

1.7.9. Turning to CR2, the applicant's Second Change Application Report [REP7-011] detailed the proposed changes. In summary the proposed changes were:

- Reduction of overlap with proposed NatPower BESS Site (0.57 ha removed from the Order limits) – Work Nos. 3A, 6A.1 and 8.
- Reduction at INEOS Nitriles facility, North of Seal Sands Road. (0.27 ha removed from the Order limits) – Work No. 6A.1.
- Reduction in hydrogen pipeline corridor to the Cowpen Bewley AGI (5.84 ha removed from the Order limits) – Work No. 6A.2.
- Removal of an AGI within the Work No 6B.1 area and change to 6A.1 (Saltholme Substation AGI and adjacent H_2 Pipeline Corridor) - (No land removed from Order limits) – Work Nos. 6A.1 and 6B.1.
- Reduction to the west of the main site (34.02 ha removed from the Order limits). Extension of area for Work Nos 1A.1, 1E.1, 10A.1 and the reduction of areas for Work Nos 1A.2, 1B.2, 1C, 1D, 1E.2, 3A, 4, 5, 6A.1, 7A & 8 – Work Nos. 1A.1, 1A.2, 1B.2, 1C, 1D, 1E.1, 1E.2, 3A, 4, 5, 6A.1, 7A, 8 and 10A.1.
- Reductions, as a result of the review undertaken, to the Order limits pursuant to Action Point CAH2-AP3 at CAH2, which are a number of minor reductions to remove overlaps with existing buildings. (0.70 ha removed from the Order limits) – Work No. 6A.1.

1.7.10. The applicant's Second Change Application Report [REP7-011] set out its justifications, as to why its proposed changes should be accepted into the examination. In our response to the applicant's second CR [PD-020], the ExA agreed with the applicant that when taken individually or cumulatively the proposed changes were not material. Additionally, having reviewed the CR and all related documents, the ExA concluded:

- The changes would not mean the project is effectively a different one from that contained in the application.
- The application (as changed) was still of a sufficient standard for examination.
- The proposed changes were unlikely to give rise to new or materially different likely significant effects already assessed within the ES or the report to inform the Habitats Regulations Assessment (HRA). In terms of the HRA, this is due to the fact that the CR would make no difference to the outcome of the report to inform the HRA.
- No consultation on the CRs is required, as the focus of the CRs is a reduction of land requirements and rights within the Order limits. This is due to:
    - the particular interest to Affected Persons in question, would be localised affecting only those directly affected by the proposed development at the location of the change areas resulting in limited public interest; and
    - any parties who are interested in the CR will be able to participate in the examination to give any comments that they may have on the CR.

- The changes would not breach the principles of fairness and reasonableness for parties participating in the examination.
- The application can be undertaken to allow for the examination to be completed within the statutory timetable, as enough time would remain within the statutory six months examination period.

1.7.11. The ExA were also satisfied that the second CR did not require any new powers of compulsory acquisition and Regulations 5 to 19 (inc) of the CA Regulations were not triggered.

1.7.12. The ExA therefore issued a PD [PD-020] to accept the changes into the examination.

1.8. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS

1.8.1. By the end of the examination, there were a number of matters, falling outside the DCO, subject to separate undertakings and/ or agreements between IPs that remained outstanding. All of those undertakings and/ or agreements relevant are primarily related to chapter 6 (Compulsory Acquisition and Temporary Possession) are addressed within that chapter of this report.

1.8.2. No other undertakings, obligations and/ or agreements were found to be required to be secured as a result of this DCO, should it be made and all relevant considerations are addressed in this report where they would have a bearing on the DCO.

1.9. OTHER CONSENTS

1.9.1. In addition to the consents required under the PA2008, the applicant would require other consents to construct, operate and maintain the proposed development. This is set out by the applicant in the Other Consents and Licences Statement [APP-037], as subsequently updated at DL2 [REP2-007] and DL5 [REP5-009].

1.10. STRUCTURE OF THIS REPORT

1.10.1. The structure of the remainder of this report is as follows:

- Chapter 2 identifies how the application is to be determined and summaries the key legislation and policy context that applies to the recommendation.
- Chapter 3 sets out the findings and conclusions in relation to the individual planning issues that arose from the application and during the examination.
- Chapter 4 summarises considerations arising from HRA.
- Chapter 5 sets out the balance of planning considerations arising from chapters 2, 3 and 4 in the light of important and relevant factual, legal and policy considerations.
- Chapter 6 sets out the ExA's examination of compulsory acquisition/ temporary possession and related matters.
- Chapter 7 considers the implications of the matters arising from the preceding chapters for the DCO.
- Chapter 8 summarises all relevant considerations and sets out the ExA's recommendation to the SoS.

1.10.2. This report is supported by the following appendices:

- Appendix A – Examination Library.
- Appendix B – List of Abbreviations.

- Appendix C – Habitats Regulations Assessment.
- Appendix D – The Recommended DCO (excluding Cowpen Bewley Arm).
- Appendix E – The Alternative Version of the DCO, (with Cowpen Bewley Arm).

2. HOW THE APPLICATION IS DETERMINED

2.1. INTRODUCTION

2.1.1. This chapter identifies the key legislation, policy and local impact reports (LIRs), that the Examining Authority's (ExA) recommendations have taken into account. Relevant representations and written representations, as relevant to planning and compulsory acquisition/ temporary possession considerations identified during the examination are identified and considered in chapters 3, 4, 5 and 6 of this report.

2.1.2. The ExA in its Rule 6 letter [PD-005], at Annex C, set out its Initial Assessment Of Principal Issues as required under section (s) 88(1) of the Planning Act 2008 (PA2008). In making its recommendation the ExA has taken into account all written and oral submissions that have been received during the course of the examination.

2.2. LEGISLATION AND POLICY

2.2.1. This section identifies the key legislation and policies that the ExA considers to be important and relevant to its findings and recommendations to the Secretary of State (SoS) for the Department of Energy Security and Net Zero (DESNZ). All applicable legislation has been considered by the ExA as required and the findings and recommendations in this report are framed so as to identify and enable the SoS to discharge all applicable statutory considerations or duties.

PLANNING ACT 2008

2.2.2. The PA2008 provides a different basis for decision-making for Nationally Significant Infrastructure Project (NSIP) applications where a relevant National Policy Statement (NPS) s104 has effect from that where no NPS has effect (s105).

2.2.3. The SoS in issuing the s35 directions references paragraph 1.3.10 of NPS EN-1 which states:

"EN-1, in conjunction with any relevant technology specific NPS, will be the primary policy for Secretary of State decision making on projects in the field of energy for which a direction has been given under section 35."

2.2.4. Additionally, the ExA notes NPS EN-1 at paragraph 1.3.5 states that where the need for a particular type of energy infrastructure set out at paragraph 1.3.2 is established by the NPS, but that type of infrastructure is outside the scope of one of the technology specific NPSs, EN-1 alone will have effect and be the primary basis for SoS decision making. It goes on to state:

"This will be the case for, but is not limited to, unconventional hydrocarbon extraction sites, hydrogen pipeline and storage infrastructure, Carbon Capture Storage (CCS) pipeline infrastructure and other infrastructure not included in EN-2 or EN-3."

2.2.5. As NPS EN-1 was designated on 17 January 2024 and the application (the application) for the H2Teesside Development Consent Order (the proposed development) is an energy development, which also includes a Hydrogen (H_2) Pipeline, the ExA considers the application falls to be decided under s104 (Decisions in cases where NPS has effect) of the PA2008, in which circumstance the matters that the SoS must have regard to are:

- any NPS which has effect in relation to development of the description to which the application relates (a "relevant NPS");
- the appropriate marine policy documents (if any), determined in accordance with s59 of the Marine and Coastal Access Act 2009;
- any LIR (within the meaning given by s60(3) of the PA2008) submitted to the SoS before the deadline for submission, as required by s60(2) of the PA2008, and specified in the ExA's Rule 6 letter [PD-005] dated 31 July 2024;
- any matters prescribed in relation to development of the description to which the application relates; and
- any other matters which the SoS thinks are both important and relevant to the SoS's decision.

2.2.6. Section 104(3) of the PA2008 requires the SoS to decide the application in accordance with any relevant NPSs that has effect in relation to this application, subject to the exceptions in s104(4) to (8) as follows:

- where deciding the application in accordance with any relevant NPS would lead to the UK being in breach of any of its international obligations;
- where deciding the application in accordance with any relevant NPS would lead to the SoS being in breach of any duty imposed on her or him by or under any enactment;
- where deciding the application in accordance with any relevant NPS would be unlawful by virtue of any enactment;
- where the adverse impact of the proposed development would outweigh its benefits; and/ or
- where any condition prescribed for deciding an application otherwise than in accordance with a NPS is met.

2.2.7. The ExA is satisfied NPS EN-1 is in effect in relation to development of the description to which this application relates and s104 of the PA2008 is the statutory basis for examination, reporting and decision-making. This report sets out the ExA's findings, conclusions and recommendations taking these matters into account and applying s104 of the PA2008.

EQUALITY ACT 2010

2.2.8. The Equality Act 2010 established a duty (the Public Sector Equality Duty (PSED)) to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not.

HUMAN RIGHTS ACT 1998

2.2.9. The compulsory acquisition of land and rights can engage various articles under the Human Rights Act 1998. This has been considered throughout the examination and the implications of this for persons with an interest in the land are considered in chapter 6 of this report.

CLIMATE CHANGE ACT 2008

2.2.10. The Climate Change Act 2008, as amended by the Climate Change Act 2008 (2050 Target Amendment) Order 2019, established a legally binding framework to tackle the dangers of climate change. It sets statutory climate change projections and includes the setting of legally binding targets for greenhouse gas emission reductions in the United Kingdom of at least 100% by 2050 (Net Zero).

2.2.11. The Act also created the Committee on Climate Change which has responsibility for setting five-year Carbon Budgets covering successive periods of emissions reduction to 2050.

2.2.12. The PA2008 requires the SoS to have regard to the desirability of mitigating, and adapting to, climate change in designating an NPS. The ExA has had regard to these objectives throughout this report.

MARINE AND COASTAL ACCESS ACT 2009

2.2.13. As a number of elements of the proposed development involve works within the UK Marine Area within the tidal River Tees, it is subject to the Marine and Coastal Access Act 2009 (MCAA2009).

2.2.14. The appropriate marine policy documents for the purposes of s104(2)(aa) are the UK Marine Policy Statement (MPS) (March 2011) and the North East Inshore and North East Offshore Marine Plan (June 2021) (NEMP) and these are referred to in section 2.3 of this report.

2.3. NATIONAL POLICY STATEMENTS/ MARINE POLICY STATEMENT

2.3.1. NPSs set out government policy on different types of national infrastructure development. With regard to the purposes of s104(2)(a) of the PA2008, the ExA considers that the Overarching NPS for Energy (NPS EN-1) is relevant to the application. Additionally, the ExA considers the NPS for Natural Gas Supply Infrastructure and Gas and Oil Pipelines (NPS EN-4) and the NPS for Electricity Networks Infrastructure (NPS EN-5) are important and relevant considerations in regard to this application.

2.3.2. The NPSs formed the primary policy context for the examination. This report sets out the ExA's findings, conclusions and recommendations taking these matters into account and applying the approach set out in s104 of the PA2008. The purpose and broad content of these NPSs is summarised below.

Overarching National Policy Statement for Energy (NPS EN-1)

2.3.3. In January 2024, the DESNZ published NPSs in relation to energy (NPS EN-1 to NPS EN-5 (inclusive)). NPS EN-1 sets out the government's policy for the delivery of major energy infrastructure. It provides general principles and generic impacts to be taken into account in considering applications for energy NSIPs. All other energy NPSs sit under the policy framework set out in this NPS.

National Policy Statement for Natural Gas Supply Infrastructure and Gas and Oil Pipelines (NPS EN-4)

2.3.4. This NPS outlines the government's policy on the necessity for Natural Gas Supply Infrastructure and Gas and Oil Pipelines, providing general principles and generic guidance for the consideration of such applications, including the assessment of impacts and considerations of any proposed mitigation measures. It emphasises the importance of the efficient import, storage, and transmission of gas and oil products to meet energy needs during the transition to a net-zero economy.

National Policy Statement for Electricity Networks Infrastructure (NPS EN-5)

2.3.5. NPS EN-5 provides the government's policy framework for planning and consenting nationally significant electricity network infrastructure projects. It emphasises the critical role of a robust electricity network in supporting the transition to a low-carbon economy whilst maintaining security of supply. It details the need for such infrastructure, as well as providing guidance on the assessment of such proposals including the considerations for impacts and mitigation measures

2.3.6. All the above mentioned NPSs address factors influencing site selection, design considerations, and the balance between timely delivery, cost to consumers, and minimising environmental and community impacts (This list is not intended to be exhaustive). Additionally, the ExA notes that NPS EN-4 and NPS EN-5 must be read in conjunction with the NPS EN-1 (The Overarching NPS for Energy), which provides broader context on energy policy, the need for infrastructure, and general assessment principles.

MARINE POLICY STATEMENT

2.3.7. The appropriate marine policy documents for the purposes of s104(2)(aa) are the UK Marine Policy Statement (MPS) (March 2011) and the North East Inshore and North East Offshore Marine Plan (June 2021) (NEMP). Regarding the latter document the proposed development site lies partly with the North East Inshore Marine Area, which stretches from Flamborough Head, Yorkshire to the Scottish border.

2.3.8. The MPS provides the framework for preparing Marine Plans and taking decisions affecting the marine environment. The MPS sets out a series of high-level marine objectives in order to achieve clean, healthy, safe, productive and biologically diverse oceans and seas. Chapter 3 of the MPS sets out the policy objectives for the key activities that take place in the marine environment.

2.3.9. Section 3.3 of the MPS deals specifically with 'Energy production and infrastructure development', with paragraph 3.3.1 noting a secure, sustainable and affordable supply of energy is of central importance to the economic and social well-being of the UK. Paragraph 3.3.4 sets out issues that decision makers should consider when examining and determining applications for energy infrastructure. These include:

- the national level of need for new energy infrastructure, as set out in the Overarching NPS for Energy (NPS EN-1);
- the positive wider environmental, societal and economic benefits of Carbon Capture, Usage and Storage (CCUS) as a key technology for reducing Carbon Dioxide (CO_2) emissions;
- the physical resources and features that form oil and gas fields or suitable sites for CO_2 storage occur in relatively few locations and need first of all to be explored for and can then only be exploited where they are found; and
- the UK's programme to support the development and deployment of CCUS clusters and, in particular, the need for suitable locations that provide for the permanent storage of CO_2.

These are of relevance to the proposed development, which will connect to a CCUS cluster in Teesside.

2.3.10. The NEMP sets out, and is underpinned by, a number of strategic objectives and includes policies that guide the regulation, management, use and protection of the marine plan areas. Its policies cover a wide range of topics, including activities and uses, economic, social and environmental considerations and cross-cutting issues such as integration of decision-making on land and at sea.

2.3.11. Whilst there are no policies that specifically cover H_2 production or H_2 infrastructure, Policy NE-CCUS-3 supports proposals associated with the deployment of low carbon infrastructure for industrial clusters, such as that being advanced on Teesside as part of Northern Endurance Partnership (NEP). Other Policies of relevance in the NEMP include policies aimed at managing the impacts of development upon heritage assets (Policy NE-HER-1); seascape and landscape (Policy NE-SCP-1); air quality and emissions (Policy NE-AIR-1); water quality (Policy NE-WQ-1); enhancing biodiversity (Policies NE-BIO-1 to 3) and ensuring that developments demonstrate they are resilient to the impacts of climate change and coastal change (Policy NE-CC-2).

2.4. OTHER NATIONAL POLICY

2.4.1. Other relevant national policies have been taken into account by the ExA, including the following:

- Ten Point Plan for a Green Industrial Revolution (November 2020).
- Energy White Paper: Powering our Net Zero Future (December 2020).
- Industrial Decarbonisation Strategy (March 2021).
- North Sea Transition Deal (March 2021).
- UK Hydrogen Strategy (August 2021 and updates).
- Net Zero Strategy: Build Back Greener (October 2021).
- British Energy Security Strategy (October 2022).
- Powering up Britain (March 2023).
- Carbon capture, usage and storage: a vision to establish a competitive market (December 2023).
- National Planning Policy Framework (January 2025).

2.4.2. The applicant outlines these policies in more detail in its Environmental Statement (ES) chapter 7 (Planning Policy Context) [APP-057].

2.5. LOCAL IMPACT REPORTS

2.5.1. Two LIRs were submitted into the examination at deadline (DL) 1 by the following local authorities:

- Redcar and Cleveland Borough Council [REP1-043]; and
- Stockton on Tees Borough Council [REP1-045]

2.5.2. Redcar and Cleveland Borough Council's LIR did not raise any concerns and concluded the proposed development is *"…generally compliant with Development Plan policy set out in the Redcar and Cleveland Local Plan (May 2018). The Council has reviewed the scheme against the relevant development plan policies and finds no unacceptable conflict, in view of this RCBC can confirm that it supports the application and the granting of the DCO."*

2.5.3. Stockton on Tees Borough Council LIR covered the following topics:

- Planning Policy.
- Principle of the Development.
- Design, Landscape and Visual Impact.
- Cultural Heritage.
- Transport and Highways.
- Flood Risk and Drainage.
- Geology, Hydrogeology and Contaminated land.
- Ecology and Nature Conservation.

- Air Quality.
- Noise.
- Socioeconomics and Land Use.
- Major Accidents and Disasters.

2.5.4. Overall, Stockton on Tees Borough Council concluded it had *"…given consideration of the potential impacts of development at the local level… and the principle of development is supported."*.

2.5.5. Any issues raised in the LIRs are considered, where appropriate, in further detail in relation to relevant planning issues in chapter 3 of this report.

2.6. ENVIRONMENTAL IMPACT ASSESSMENT

2.6.1. The applicant provided a notification under Regulation 8(1)(b) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regulations) of its intention to provide an ES. Therefore, in accordance with Regulation 6(2)(a) of the EIA Regulations, the ExA determined that the proposed development was an Environmental Impact Assessment (EIA) development.

2.6.2. On 6 April 2023, the applicant submitted a Scoping Report to the SoS under Regulation 10 of the EIA Regulations in order to request an opinion about the scope of the ES to be prepared (a Scoping Opinion). A copy of that Scoping Report can be found in the examination library under reference [APP-184].

2.6.3. On 17 May 2023 the Planning Inspectorate provided a Scoping Opinion [APP-185].

2.6.4. The applicant submitted a Certificate of Compliance with Regulation 16 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 dated 3 July 2024 [OD-003].

2.6.5. Throughout the examination the ExA sought clarification on a number of matters, through its first and second written questions as well as during issue specific hearings, which resulted in the applicant submitting updates to its ES.

2.6.6. Overall, the ExA considers that the changes to the documentation, comprising the ES during the examination, together with the change requests (see section 1.7 of this report) did not individually or cumulatively undermine the scope and assessment of the ES. Therefore, the ExA considers the ES, as supplemented with additional information during the examination, is sufficient to enable the SoS to take a decision in compliance with the EIA Regulations.

2.7. HABITATS REGULATIONS ASSESSMENT

2.7.1. The SoS is the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats Regulations). The Habitats Regulations were amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.

2.7.2. The proposed development is one that has been identified as giving rise to the potential for Likely Significant Effects (LSE) on European sites and hence is subject to a Habitats Regulations Assessment (HRA). As is the convention, and to inform the SoS's decisions prepared under the PA2008, a separate record of considerations relevant to HRA has been set out in appendix C of this report, a summary of which can be found in chapter 5.

2.8. WATER FRAMEWORK DIRECTIVE ASSESSMENT

2.8.1. Directive 2000/60/EC - the Water Framework Directive (WFD) sets objectives to prevent and reduce pollution, improve aquatic ecosystems and mitigate the effects of floods. It provides for the production of River Basin Management Plans for the sustainable management of rivers. The directive is transposed into law in England and Wales by The Water Environment (WFD) (England and Wales) Regulations 2017.

2.8.2. The applicant submitted a WFD Assessment [APP-048]. Matters related to the WFD are considered in sections 3.7 and 3.14 and chapter 5 of this report. However, overall the proposed development has been assessed to have no significant adverse impacts to WFD relevant water bodies and it is compliant with WFD objectives, provided that the outlined mitigation measures are implemented.

2.8.3. These mitigation measures include good practice to be adopted during construction to manage all pollution risks, and which will be implemented by the Engineering, Procurement and Construction Contractor(s) using a Final Water Management Plan and Final Construction Environmental Management Plan(s). During operation, mitigation measures will include implementation of a detailed Surface Water Drainage Strategy, and appropriate measures to manage the risk of future spillages or pollution incidents occurring.

2.9. TRANSBOUNDARY EFFECTS

2.9.1. A transboundary screening under Regulation 32 of the EIA Regulations was undertaken on behalf of the SoS on 17 May 2023 following the applicant's request for an EIA Scoping Opinion. No significant effects were identified on the environment in a European Economic Area (EEA) member state.

2.9.2. A second screening was published on 15 May 2024. Again, no EEA states were identified as being likely to have significant effects on their environment in terms of extent, magnitude, probability, duration, frequency or reversibility. Both screenings can be found in the examination library under reference [OD-008].

2.9.3. The ExA is satisfied, on the basis of the information provided, that the correct sites have been considered in the HRA and that the proposed development would not have an LSE on European sites in any EEA States.

3. THE PLANNING ISSUES

3.1. INTRODUCTION

3.1.1. This chapter sets out the Examining Authority's (ExA) findings and conclusions on the planning issues. The chapter is structured to firstly examine the matters of principle, including need and alternatives, followed by generic topic headings. The order in which all these section headings are presented should not be taken to imply any order of merit.

3.1.2. In each section, the ExA will identify the policy background, followed by a summary of the application as made, then report on the main issues for each topic. Findings and conclusions will then be drawn for each topic.

3.1.3. To aid the Secretary of State (SoS) for the Department of Energy Security and Net Zero (DESNZ) in consideration of the various matters, in our conclusions, the ExA has come to a view, using professional judgement, as to whether the effect of those matters weigh for or against the making of the Development Consent Order (DCO). To ensure a consistency of approach, we have used the following terminology:

- has negative weighting against making the Order; or
- has positive weighting in favour of making the Order; or
- has neutral weighing neither for nor against making the Order.

3.1.4. Having identified whether the effect of that matter weighs in favour or against the making of the Order, the ExA have then considered what weighting should be attributed to that conclusion in the overall planning balance. To ensure a consistent approach, the ExA has adopted the following terminology:

- a little weight; or
- moderate weight; or
- great weight; or
- very great weight.

3.2. INITIAL ASSESSMENT OF PRINCIPAL ISSUES

3.2.1. As required by section (s) 88 of the Planning Act 2008 (PA2008) and Rule 5 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR), the ExA made an initial assessment of principal issues (IAPI) arising from the application in advance of the preliminary meeting (PM). This formed an initial assessment of the issues based on the application documents and submitted relevant representations (RR). The list of issues relates to all phases of the proposed development.

3.2.2. The IAPI was raised at the PM, with the applicant questioning reference to an item listed under 'Assessment of Alternatives' related to the 'The need for this type of energy infrastructure, and specifically for the proposed development.' It also questioned the inference related to the need, specifically for the proposed development' in an 'Alternatives' context.

3.2.3. In questioning both aspects the applicant highlights that *"…matters settled by national policy statements should not be revisited or re-opened in the development consent process and to that end, s106 of the PA2008 provides that the SoS may disregard representations that relate to the merits of national policy."*.

3.2.4. In its PDA response, the applicant emphasises the Overarching National Policy Statement (NPS-EN-1), especially Part 3 and Part 4 in support of its argument that there is no need to pursue examination of either:

- the need for this type of energy infrastructure; or
- consider the need for the proposed development' in an 'Alternatives' context.

3.2.5. The ExA acknowledged commentary on these matters was also provided in the applicant's Need Statement [APP-033] and its Planning Statement [APP-031] and no other interested party (IP) raised any concerns in relation to this matter.

3.2.6. In the light of the applicant's submissions in this regard, as well as the clear government guidance set out in National Policy Statements (NPS), especially NPS EN-1 (The Overarching NPS for Energy), concerning these matters, the ExA agreed during the PM there was no need to pursue them further as part of the IAPI.

3.2.7. In terms of other key topics needing inclusion in the IAPI, none were identified during the PM or the examination. The IAPI can be found in annex C of the Rule 6 letter [PD-005].

3.2.8. The application is also subject to a change that seeks additional land and rights, promoted by the applicant under the Infrastructure Planning (Compulsory Acquisition) Regulations 2010. As required by Regulation 11(1) of these Regulations, the ExA also reviewed the IAPI having regard to matters raised in RRs pertaining to the additional land and rights sought. The ExA concluded that no change to the IAPI was required as a consequence of this change request (CR). The ExA considers that the issues raised by IPs were broadly in line with the IAPI and were subject to written and oral questioning during the examination. The ExA has nevertheless had regard to all submissions from IPs and has reported on these, if required, within each topic below.

3.3. THE PRINCIPLE OF THE DEVELOPMENT

INTRODUCTION

3.3.1. The ExA notes the SoS for DESNZ issued a Direction, dated 22 December 2022, under s35(1) and s35ZA of the PA2008 that development consent is required for the proposed development. The SoS's justifications for issuing that Direction are also noted. By virtue of the SoS's s35 Direction this proposed development is therefore a Nationally Significant Infrastructure Project (NSIP) that falls to be considered under the PA2008. A copy of the SoS's s35 Direction can be located in the applicant's Planning Statement [APP-031] at appendix 1.

NEED

3.3.2. The applicant's Need Statement [APP-033] sets out its case for the need for the proposed development. It highlights the government's objectives for decarbonising the power and industrial sectors and achieving the legally binding commitment to achieve 'net zero' in terms of greenhouse gas (GHG) emissions by 2050 and refers to the UK's clear strategy for action to bring GHG emissions to net zero.

3.3.3. The applicant also references the government's published Net Zero Strategy (March 2023), including the Net Zero Growth Plan that makes the economic case for net zero, as well as the UK Hydrogen Strategy (HM Government, 2021). This latter document identifies low-carbon hydrogen (H_2) as being critical for meeting the UK's legally binding commitment to achieve net zero by 2050.

3.3.4. NPS EN-1 recognises that to produce the energy required for the UK and ensure it can be transported to where it is needed, a significant amount of infrastructure is needed at both local and national scale. It also recognises high quality infrastructure is crucial for economic growth, boosting productivity and competitiveness (paragraph 2.1.3). Overall NPS EN-1 recognises energy is vital to economic prosperity and social well-being and, as such, it is important to ensure that the UK has secure, reliable and affordable energy (paragraph 2.5.1).

3.3.5. Indeed Part 3 of NPS EN-1 confirms 'The need for new nationally significant energy infrastructure projects' and explains why the government sees a need for significant amounts of new large-scale energy infrastructure to meet its energy objectives and why it considers the need for such infrastructure is urgent. Furthermore, paragraph 3.4.12 of NPS EN-1 states "there is an urgent need for all types of low carbon H_2 infrastructure to allow H_2 to play its role in the transition to net zero.". Section 3.4 of NPS EN-1 also makes it clear where an energy infrastructure project is not covered by s15 to s21 of the PA2008 but is considered to be nationally significant and is subject to a s35 direction, then the application for development consent would need to be considered in accordance with NPS EN-1.

3.3.6. NPS EN-1 also makes clear the urgent need for new energy projects to be brought forward as soon as possible (and particularly low carbon) given the crucial role of electricity as the UK decarbonises its economy (paragraph 3.3.58). In the context of reducing carbon emissions, this NPS also makes it clear that to meet the government's target to cut GHG emissions to net zero by 2050, including through delivery of its carbon budgets and Nationally Determined Contribution, a step change in the decarbonisation of the UKs energy system is required (paragraph 2.3.3). Furthermore NPS EN-1 recognises where the application is for H_2 infrastructure "…the SoS should give substantial weight to the need established at paragraphs 3.4.12 to 3.4.22 of this NPS…" (paragraphs 3.2.11 and 3.2.12).

3.3.7. The UK Marine Policy Statement (MPS) is referred to above in section 2.3 of this report. It provides a framework for taking decisions affecting the marine environment, which includes the tidal River Tees. The applicant's Environmental Statement (ES) includes a Marine Plan Policy Assessment, in accordance with NPS EN-1 (paragraph 4.5.8) and has not identified any conflict with relevant marine policies in the MPS or the North East Inshore and North East Offshore Marine Plan (2021). Indeed, whilst there are no policies that specifically cover H_2 production or H_2 infrastructure, Policy NE-CCUS-3 supports proposals associated with the deployment of low carbon infrastructure for industrial clusters, such as that being advanced on Teesside as part of Northern Endurance Partnership (NEP).

CONSIDERATION OF ALTERNATIVES AND LOCATION OF THE PROPOSED DEVELOPMENT

3.3.8. Chapter 3 of the ES [APP-055] provides a description of the existing area, whilst chapter 4 [APP-056] sets out the details of the proposed development. The applicant has submitted its case related to need, alternatives and design evolution in chapter 6 of the ES [APP-058].

3.3.9. In terms of alternatives NPS EN-1, the NPS for Gas Supply Infrastructure and Gas and Oil Pipelines (NPS EN-4) and the NPS for Electricity Networks Infrastructure (NPS EN-5) do not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option. However, applicants are required to include within their ES information about the reasonable alternatives they have studied and include an indication of the main reasons for the

applicant's choice, taking into account the environmental, social and economic effects and including, where relevant, technical and commercial feasibility (paragraph 4.3.15). Furthermore, paragraph 4.3.10 of NPS EN-1 advises that the consideration of alternatives should be carried out in a proportionate manner.

3.3.10. The submitted Need Statement [APP-033] explains Teesside was considered the most appropriate location for the proposed development due to its:

- location within the East Coast Cluster (ECC) (an area looking to enable the decarbonisation of carbon intensive industries on Teesside by abating their GHG emissions using CCS technologies, either directly by carbon capture or indirectly using blue H_2, such as that produced by the proposed development, as a fuel or feedstock) and the number of potential industrial off-takers in Teesside to act as customers of the proposed development (Note: In terms of H_2 an 'Off-taker' is defined by the applicant in ES chapter 1 [APP-053] at footnote 2); and
- proximity to the NEP high-pressure compression facility and off-shore Carbon Dioxide (CO_2) Export Pipeline to the Endurance Store, which is to be used to transport and sequestrate the captured CO_2.

3.3.11. The applicant considers the suitability of the proposed development site is reflected by the Government supporting the ECC as a 'Track 1' CCS Cluster to receive prioritised economic support and choosing the proposed development as an anchor 'Capture project' within that Cluster.

The H_2 Production Facility

3.3.12. With regard to the main site location, the applicant advised its analysis of potential sites focused on identifying a site that supports the development of a viable blue H_2 project that facilitates industrial connectivity and the path to decarbonisation.

3.3.13. Whilst it initially identified a number of sites, as shown in figure 6-2 of the ES [APP-095], various factors influenced a reduction in the number of those potential sites for the H_2 Production Facility to a shortlist of two. The two sites shortlisted were "the Foundry" and "Redcar Bulk Terminal" sites. These were shortlisted due to:

- them being judged to be more inherently safe than the alternatives;
- them being sufficiently remote from any safety sensitive receptors;
- the large size of the sites offer flexibility to optimise the layout and reduce process safety risk;
- the proximity to existing and potential future users of low carbon H_2; and
- the access to the off-shore Endurance carbon store via the NEP's nearby proposed infrastructure, with both options easily connecting to the required infrastructure.

3.3.14. The applicant chose to progress "the Foundry" site as it is directly adjacent to the NEP onshore facilities, thereby simplifying the CO_2 export Connection Corridor routing. It also chose this site as it was large enough to accommodate both Phases 1 and 2 of the proposed development and offered greater opportunity to manage process safety risks; its larger size meaning potential process safety impacts upon adjacent sites can be reduced.

The H_2 Pipeline Corridor

3.3.15. In terms of the H_2 Pipeline Corridor (Work Number (Work No.) 6), the applicant considered a number of options to for the pipeline routing to potential off-takers. The route options were refined following the preparation of the Environmental Impact

Assessment (EIA) Scoping Report and as informed by engineering feasibility work, the outcome of environmental studies and consultation with statutory consultees.

3.3.16. A number of routeing option were removed for reasons set out in the applicant's ES chapter 6 (Needs, Alternatives and Design Evolution). These included concerns related to the proximity of the route to a passenger railway, avoiding interaction with flood defences and avoiding environmentally sensitive areas, as well as constraints on routeing and constructability issues.

3.3.17. Furthermore, the routing was informed by connections to potential industrial off-takers at Wilton, North Tees, Greatham and Billingham, as well as the potential to provide connections to the existing Gas Transmission System and Gas Distribution Networks. Such connections with the Gas Transmission System and Gas Distribution Networks would enable gas blending into the distribution network and transmission system and a connection to Project Union (A future H_2 transmission system).

3.3.18. The applicant explained it was exploring three potential connection locations, with the possibility of utilising one or more of them due to the different requirements of transmission and distribution system connections. The locations listed by the applicant were: i) the National Gas Grid Above Ground Installation (AGI) near Billingham Industrial Park; ii) National Gas Network natural gas AGI at Cowpen Bewley; and iii) Northern Gas Networks AGI off the A178 Seaton Carew Road. These locations are shown in ES figure 4-2 [APP-085].

3.3.19. Irrespective of the above, it is clear that optionality is required in terms of the pipeline route, as the applicant explains its final choice of approach and selection of options will be determined by the development of the government's policy in relation to Project Union and H_2 blending and how the Distribution and Transmission System Operators re-configure their systems to respond to this.

3.3.20. Additionally, the applicant explains the pipeline routeing to the Cowpen Bewley AGI also has a number of social, technical, and ecological constraints as such various routeing and connection options are still being explored to enable these connections. It states the final routeing decision would be made once a number of planned technical and archaeological surveys are completed.

Water Connection Corridors

3.3.21. In terms of the water connection corridors (Work Nos. 4 and 5), the applicant sets out these are informed by the:

- water supply (for process and sanitary uses) (Work No. 4), being from the existing Northumbrian Water Limited (NWL) raw water supply to the South Tees Development Corporation (STDC) Site;
- waste water - two options for process effluent management being i) minimalised liquid discharge from an effluent treatment plant (if selected); or ii) pre-treatment of the process effluent to remove nitrates and other contaminants and discharge to the Net Zero Teesside (NZT) project outfall at Tees Bay. (Note: the latter option being selected by the applicant during the examination); and
- clean surface water runoff (including stormwater) being discharged to the Tees Estuary or Tees Bay using connections within Work No. 5.

Electrical Connection Corridor

3.3.22. With regard to the electrical connection corridor (Work No. 3), the applicant advises it has been refined in the light of its Preliminary Environmental Information Report (PEIR) with the remaining options being depicted in ES figure 4.6 [APP-089]. The options within the corridor under consideration are:

- connection to STDC's private wire electricity network; or
- supply via NZT Power; or
- a direct connection to Tod Point sub-station.

Other Connection Corridors

3.3.23. In terms of other connection corridors (the CO_2 Export Corridor (Work No. 7); and the Natural Gas Connection Corridor (Work No. 2)), the applicant states studies undertaken since the submission of the PEIR enabled the removal of optionality from those corridors.

Examination Matters

3.3.24. With regard to the alternatives related to connection corridor routing and H_2 pipeline routes, during issue specific hearing (ISH) 1, the ExA asked whether alternative design options for pipelines had been considered and how this may impact the Order limits. In response the applicant explained it "had undertaken surveys as to the constructability of the pipelines and was confident that the Order limits set and powers sought through the DCO were sufficient to enable the delivery of the Project." [REP1-008].

3.3.25. In addition to the above, the ExA asked a number of questions in its first written questions (ExQ1) [PD-008], related to the assessment of alternatives. Of particular relevance were the applicant's response to question Q1.2.5, concerning the crossing of Greatham Creek, and question Q1.2.11, concerning the alternatives considered in relation to the electrical connection from the main site to the Tod Point Sub Station and why a route in a similar corridor to the indicative H_2 and natural gas connection in this area was not considered suitable.

3.3.26. The applicant responded to the ExA's ExQ1, concerning assessment of alternatives, at Deadline (DL) 2 [REP2-020]. With regard to Q1.2.5 it explained an existing bridge crossing Greatham Creek could not be used as installing a new pipeline on this bridge would have meant construction within the Teesmouth and Cleveland Coast Ramsar/ Special Protection Area (SPA) to the north of the Greatham Creek with potentially adverse effects.

3.3.27. Additionally, the applicant explained it understood the existing pipelines on the bridge are out-of-service and the Environment Agency (EA) are planning to decommission the bridge as part of a Flood Alleviation Scheme if no use of the bridge is planned by any party. In the light of this the applicant advised it selected a trenchless crossing of the Greatham Creek to avoid construction works directly within the Ramsar/ SPA.

3.3.28. In response to the ExQ1, Q1.2.11, the applicant explained the H_2 pipeline in the Bran Sands corridor is indicative as it is an area where the York Potash Harbour Facilities DCO, a development being undertaken by Anglo American (AA), is relevant and that this route is expected to be congested due to development being undertaken as a result of that made DCO.

3.3.29. The applicant further explained the electrical cables can induce AC currents in parallel steel pipelines, which can cause corrosion and therefore must be separated

from those other pipelines. As the separation distance will not be determined until the detailed design phase the routes were separated. However, the applicant decided to include both the Bran Sands route and the alternative eastern route in both the H_2 Connection (Work No. 6) and the Electrical Connection (Work No. 3) corridors to allow routing through Bran Sands if there is sufficient space for separation, or both to be routed through the alternative route if the corridor is taken entirely by AA.

3.3.30. With regard to the location of the proposed development the Local Impact Reports (LIR) submitted by Redcar and Cleveland Borough Council (RCBC) [REP1-043] and Stockton on Tees Borough Council (STBC) [REP1-045] confirm both councils are supportive of the principle of the proposed development, with neither raising concerns regarding the chosen location.

3.3.31. These LIRs both confirmed that the proposed development is broadly consistent with the Development Plans for their respective areas. For STBC this is its Local Plan (January 2019), whilst for RCBC this consists of the Redcar and Cleveland Local Plan (May 2018) (RCLP) and the Joint Minerals and Waste Development Plan (Core Strategy and Policies and Sites Development Plan Document) September 2011). Furthermore, RCBC's LIR confirmed it considers the proposed development also accords with its South Tees Area Supplementary Planning Document (SPD) (May 2018) and its Landscape Character SPD (March 2010).

3.3.32. In addition to the above, the ExA notes the applicant's completed Statements of Common Ground (SoCG) with Hartlepool Borough Council (HBC) [REP8-025], RCBC [REP5-057] and STBC [REP8-027]. These confirm, as matters agreed: an urgent need for the proposed development; the principle and need for the proposed development at this location; compliance with the Development Plan/ local planning policy relevant to the proposed development, including location; and the routing of the H_2 pipeline corridor is appropriate in terms of land use and planning designations.

3.3.33. Furthermore, the applicant's completed SoCG with RCBC [REP5-057] and STBC [REP8-027] also agreed that the approach taken to the assessment of alternatives was considered to be appropriate and proportionate.

DESIGN AND LAYOUT

3.3.34. In order to ensure a robust assessment of the likely significant environmental effects of the proposed development, the applicant has adopted a Rochdale Envelope approach and the application presents a worst-case assessment of potential environmental effects.

3.3.35. A Design and Access Statement (DAS) [APP-034] was provided as part of the application. This document explains the design principles and concepts which were applied to the proposed development and how the applicant has taken into account the context of the site and its wider setting. It sets out the design information being provided with the application, describes the approach and evolution of the design process and explains why the applicant is seeking flexibility in the design of the proposed development. In addition, it identifies the key design principles and components, access arrangements and how the detailed design of the proposed development will be in accordance with the design details and parameters upon which the EIA is based.

3.3.36. As such the maximum dimensions for the layout of the proposed development have been set and are as outlined in table 1 below:

Table 1: Maximum and Minimum Design Parameters

Component of the Proposed Development	Maximum And Minimum Dimensions			
	Length (m)	Width/ Diameter(m)	Height (m Above Ordnance Datum)	Notes
Flare Stack	N/A	4	108 (max)	Flare Stack 1.0m diameter. Platforms 4m diameter
Auxiliary Boiler	35	20	73 (min)	N/A
Auxiliary Boiler Stack	N/A	2	18	N/A
Start-Up Fired Heater	N/A	2	53 (max) 43 (min)	N/A
CO_2 Absorber Column	N/A	5.5 diameter Top Section 8.5 diameter Bottom Section	56	Bottom Section 0m to 30m above ground level. Top Section 30m to 48m above ground level
Other Production Plant	N/A	N/A	36 (max)	N/A
Flash Vessel	N/A	N/A	58	N/A
ASU	20	8	60	N/A
Electrical Substation Connections				
New electrical substation at Tod Point	N/A	N/A	22	N/A
National Grid Tod Point Substation extension (northern bay)	N/A	N/A	22	N/A
National Grid Tod Point Substation extension (southern bay)	N/A	N/A	22	N/A
Above Ground Installations (AGI)	N/A	N/A	15	Several AGIs at multiple geographical locations. Rochdale Envelope AGI height is 4m. For AOD height purposes, the AGI location with the highest ground level has been used

3.3.37. Additionally, the application was accompanied by the Works Plans [REP7-005]; the H2Teesside and NZT main site Shared Area Plan [APP-020]; and the following indications plans:

- H_2 Production Facility and AGIs Plans [AS-028].
- Natural Gas Connection and AGIs Plans [AS-007].
- Electrical Connection Plan [APP-014].
- Water Connections Plans [APP-015].
- H_2 Distribution Network Plans [AS-008].
- CO_2 Export Pipeline Plan [APP-017].
- Surface Water Drainage Plan [APP-018].
- Industrial Gases Connection Plans [AS-011].

3.3.38. It should be noted that at DL7a, following a request from the ExA for further information [PD-021], the applicant submitted an alternative version of the draft DCO (dDCO) into the examination. Therefore, two versions of the dDCO exist from that point. These were the applicant's Preferred Version (APV) of the dDCO [REP7a-003] and the without Cowpen Bewley arm version (WCBAV) of the dDCO [REP7a-006]. The reasons for this are set out in chapters 6 and 7 of this report. However, the creation of the WCBAV of the dDCO also resulted in alternative versions of a number of plans and documents, which were submitted at DL8. In terms of the plans referred to in the paragraph above, only the Works Plans have an alternative version which accompanied the WCBAV of the dDCO.

3.3.39. The maximum design parameters, as set out in table 1 above, are secured by virtue of Schedule 14 (Design Parameters) of the recommended DCO (rDCO), which is attached at appendix D of this report. Irrespective of this, there are a number of elements of the proposed development that are yet to be determined. These are secured by requirement 3 (Detailed Design) of the rDCO, which requires the submission of detailed design information for approval by the relevant Local Planning Authority prior to development commencing on the various works, after consultation with:

- The North Sea Midstream Partnership Entities in regard to Work Nos. 2A, 2B and 2C;
- Sembcorp in regard to Work Nos. 2A, 2B, 2C, 3, 6A, 6B and 8; and
- The STDC in regard to Work Nos. 1, 2A, 2B, 2C, 3, 4, 5, 6A, 6B, 7A, 7B and 8.

CONCLUSION ON THE PRINCIPLE OF DEVELOPMENT

3.3.40. The proposed development would create a low carbon H_2 facility for the production of H_2 and Oxygen (O_2), together with a H_2 distribution network, and associated development. It is proposed to capture the majority of the carbon produced during the process for onward transportation via the adjoining NZT development and the NEP for secure storage under the North Sea.

3.3.41. Throughout the examination, the applicant emphasised the location of the proposed development was informed by the close proximity of the proposed development of the ECC, and the underlying carbon pipeline that the proposed development could connect directly into.

3.3.42. The H_2 facility and the related H_2 distribution network accords with the NPS EN-1, as well as related NPSs (NPS EN-4 and NPS EN-5) and benefit from the policy support given to low carbon infrastructure that is deemed to be of Critical National Priority.

NPS EN-1 establishes the weight that can be attached to the proposed development in this context would be substantial.

3.3.43. The ExA also notes paragraph 4.1.3 of NPS EN-1, which states "…the SoS will start with a presumption in favour of granting consent to applications for energy NSIPs,…" unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused.

3.3.44. In consideration of all of the above, related to the principle of development, the ExA finds that no more specific and relevant policies set out in the relevant NPSs that clearly indicate that consent should be refused; and adequate regard has been had to alternatives and the legislative requirement under Regulation 14(2)(d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 to consider alternatives as part of the EIA process, including relevant policy requirements of strategic alternatives in the NPSs have been met. Consequently, in regard to the principle of development, the ExA attaches very great positive weight in favour of making the Order.

3.4. AIR QUALITY

INTRODUCTION

3.4.1. Chapter 8 (Air Quality) of the ES [APP-060] assesses the potential impacts and effects of emissions from the proposed development on human health and ecological receptors. The assessment includes construction emissions from vehicles, including Non-Road Mobile Machinery (NRMM), construction dust and operational emissions from the H_2 production facility. It also includes mitigation measures to minimise these emissions.

3.4.2. The IAPI, as set out in the ExA's Rule 6 letter [PD-005] at annex C, highlights several key issues related to air quality, which potentially warranted further examination. These related to:

- The methods and assumptions used to model and assess risks, particularly focusing on the approach to amines.
- The potential impacts of the proposed development on human health and ecological receptors during both the construction and operational phases of the proposed development, including from dust, and the adequacy of proposed mitigation measures.

POLICY BACKGROUND

3.4.3. NPS EN-1 paragraph 5.2.1, recognises that emissions from energy infrastructure development can adversely affect air quality during construction, operation, and decommissioning phases. Emissions can impact health, protected species and habitats, and the wider countryside. These emissions include Particulate Matter (PM_{10} and $PM_{2.5}$) and gases such as Sulphur Dioxide (SO_2), Carbon Monoxide (CO), and Nitrogen Oxides (NO_X).

3.4.4. The legal framework for air quality in the UK, which includes various national objectives, targets, and emission commitments to control pollutants in ambient air, is set out in NPS EN-1 at paragraph 5.2.2. Paragraph 5.2.3 of the NPS, makes it clear that for many air pollutants, there is no threshold below which there is no health impact. It highlights the importance for infrastructure schemes to consider not only how a scheme may impact statutory air quality limits, objectives, or targets, but also measures to mitigate all emissions in order to minimise human exposure to air

pollution, especially for those who are more susceptible to the impacts of poor air quality.

3.4.5. Where the proposed development is likely to have adverse effects on air quality, NPS EN-1, paragraph 5.2.8 requires the applicant to undertake an assessment of the impacts of the proposed development as part of the ES. Paragraph 5.2.9 of the NPS sets out what the applicant's ES should describe, including:

- Existing air quality concentrations and the relative change in air quality from existing levels.
- Any significant air quality effects, mitigation actions taken, and any residual effects, distinguishing between the project stages and taking account of any significant emissions from any road traffic generated by the project.
- The predicted absolute emissions, concentration change and absolute concentrations as a result of the proposed project, after mitigation methods have been applied.
- Any potential eutrophication impacts.

3.4.6. In addition to the above, NPS EN-1 paragraphs 5.2.10 and 5.2.11 advises that the applicant should consider the Environment Targets (Fine Particulate Matter) (England) Regulations 2022 and associated Department for Environment, Food and Rural Affairs (DEFRA) guidance. It also advises the assessment should take into account updated national air quality projections from DEFRA, including future emissions, traffic, and vehicle fleet estimates. The assessment must align with DEFRA's projections but can include more detailed local and national impact modelling.

3.4.7. NPS EN-1 paragraph 5.2.12 identifies if the proposed development is likely to lead to a breach of any relevant statutory air quality limits, objectives, or targets, or impact the ability of a non-compliant area to achieve compliance within the required timescale set out in the most recent relevant air quality plan/ strategy, the applicant should work with the relevant authorities to secure appropriate mitigation to ensure compliance. This NPS emphasises that many activities involving air emissions are subject to existing pollution control regimes and that it should be assumed that these regimes will be properly applied and controlled by the relevant regulator (NPS EN-1, paragraph 5.2.15).

3.4.8. NPS EN-4 outlines planning policies for gas supply infrastructure and pipelines. It requires assessing the effects of gas emissions, including flaring and venting, with reference to NPS EN-1, (paragraph 2.9.4) for evaluating potential impacts, but does not introduce any new assessment requirements beyond those already identified in NPS EN-1 in regard to air quality.

3.4.9. NPS EN-5 outlines the national policy position for planning relevant to electricity network infrastructure projects. It does not include any specific policies regarding air quality or emission arising from electricity network infrastructure. Instead, it refers to NPS EN1 for guidance on these matters.

3.4.10. In terms of the MPS, this is referred to above in section 2.3 of this report. It provides a framework for taking decisions affecting the marine environment, which includes the tidal River Tees. The North East Inshore and North East Offshore Marine Plan (June 2021) (NEMP) policy NE-AIR-1 (Air Quality) seeks to ensure proposals consider and address where they may cause direct or indirect air pollution and manage these accordingly and states where proposals cannot avoid, minimise or

mitigate air pollution in line with current national or local air quality objectives and legal requirements they must not be supported.

3.4.11. The applicant's ES appendix 7A (Marine Plan Policy Assessment) [APP-189], which accords with NPS EN-1 (paragraph 4.5.8), has not identified any conflict with relevant marine policies in the MPS or with Policy NE-AIR-1 of the North East Inshore and North East Offshore Marine Plan (June 2021) (NEMP).

THE APPLICANT'S CASE

3.4.12. The applicant's air quality assessment, detailed in ES chapter 8 (Air Quality) [APP-060], identifies potential impacts and effects of proposed development on air quality in eco-systems and human health during the construction, operational and decommissioning phases. The air quality assessment follows best practice including the Institute of Air Quality Management guidance.

3.4.13. ES chapter 8 [APP-060], is accompanied by two appendices appendix 8A (Air Quality - Construction Assessment) [APP-190] and appendix 8B (Air Quality – Operational Phase) [APP-191]. This chapter of the ES and the related air quality assessments are also accompanied by:

- Figure 8-1 (Air Quality Study Area – Human Health Receptors and Monitoring [APP-096]).
- Figure 8-2 (Air Quality Study Area – Ecological Receptors [APP-097]).
- Figure 8-3 (Air Quality Study Area – Construction Road Traffic Locations [APP-098]).
- Figure 8-4 (Air Quality Study Area – Operational Model Inputs Phase 1 [CR1-029]).
- Figure 8-5 (Air Quality Study Area – Operational Model Inputs Phase 2 [CR1-030]).
- Figure 8-6 (Annual Mean Nitrogen Dioxide (NO_2) Process Contribution (PC) for the proposed development during Normal Operations for Phase 1 and 2 Combined – for the Worst Affected Meteorological Year of 2022) [CR1-031]).
- Figure 8-7 (99.79th Percentile 1h NO_2 PC normal Operations for Phase 1 and 2 Combined – for the Worst Affected Meteorological Year of 2021 [CR1-032]).
- Figure 8-8 (99.79th Percentile 1h NO_2 PC during Emergency Operations for Phase 1 and 2 Combined – for the Worst Affected Meteorological Year of 2022 [CR1-033]).
- Figure 8-9 (99.79th Percentile 1h NO_2 PC during Start Up for Phase 1 and 2 Combined – for the Worst Affected Meteorological Year of 2020 [CR1-034]).
- Figure 8-10 (Nitrogen Deposition from PC during Normal Operations for Phase 1 and 2 Combined – for the Worst Affected Meteorological Year of 2022 [CR1-035]).
- Figure 8-11 (Ammonia (NH_3) PC Phase 1 and 2) [CR1-036].
- Figure 8-12 (Nitrogen Deposition from PC Phase1 and 2) [CR1-037].
- Figure 8-13 (Acid Deposition from PC Phase 1 and 2) [CR1-038].

3.4.14. ES chapter 8 (Air Quality) [APP-060], paragraph 8.4.7 identified the key pollutants of concern during the construction and operational phases of the proposed development as NO_X, NO_2, CO_2, SO_2, PM_{10} and $PM_{2.5}$ and confirmed that the baseline assessment only focuses on these pollutants. Data on NH_3 is not included in the assessment as it is only present during the start-up process, which is a short-term event and not considered to have a significant long-term impact on designated ecosystem sites.

3.4.15. ES chapter 8 (Air Quality) [APP-060] evaluated existing air quality conditions near the proposed development using data from local authority air quality management reports and monitoring stations. Paragraphs 8.4.9 to 8.4.10 of the assessment highlights that 2019 data was used from the local authority monitoring station at Dormanstown to evaluate emissions from nearby industrial complexes. This data indicated that background concentrations for NO_2 and PM_{10} were well within air quality assessment levels.

3.4.16. Additionally, data from RCBC monitoring of NO_2, conducted at 16 sites during 2019, including suburban and roadside locations showed good air quality within the borough, falling well within annual air quality assessment levels (paragraph 8.4.11). To supplement this data and to verify air quality models the applicant conducted NO_2 monitoring surveys from July to October 2022 and mid-June to mid-September 2023. These surveys confirmed stable NO_2 concentrations in the area, (paragraphs 8.4.12 to 8.4.13). Furthermore additional background data for NO_x, NO_2, CO, SO_2, and PM (PM_{10} and $PM_{2.5}$) were obtained from Defra, indicating that local concentrations of these pollutants are well within their respective air quality assessment levels (paragraph 8.4.16).

3.4.17. ES chapter 8 (Air Quality) [APP-060] assessed that the overall air quality near the proposed development site met the Air Quality Strategy standards. Paragraph 8.2.8, states that no Air Quality Management Areas (AQMA) have been declared for the proposed development site or its surrounding area, with the nearest AQMA located outside of the study are in Staithes, approximately 20km southeast of the proposed development.

Assessment of Impact - Construction Phase

Dust Emissions

3.4.18. The air quality chapter of the ES chapter 8 [APP-060] also assesses the potential impact and effects of dust, including the movement and handling of soils during the construction phase of the proposed development. Paragraph 8.3.14, identifies that there is no statutory regime governing the assessment of dust emissions and looks to adopt the Best Practicable Means (BPM) approach to mitigate potential impacts. This chapter of the ES explains Institute of Air Quality Management guidance has also been used to assess the risk of dust emissions from unmitigated activities and their potential impacts on human health (associated with PM_{10}), and ecological receptors and determine the level of mitigation required for adequate dust control, (paragraph 8.3.14).

3.4.19. ES chapter 8 (Air Quality) [APP-060], paragraph 8.6.2 identifies that without mitigation, dust emissions during the construction phase could have a short-term negligible to medium impact on human health and a high impact on ecological receptors, leading to significant air quality impacts. However, the ES concludes that the Framework Construction Environmental Management Plan (Framework CEMP), ([REP8-003] APV/ [REP8-041] WCBAV), secured by requirement 15 of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV), includes mitigation measures that will adequately control the predicted dust emissions on sensitive receptors. These mitigation measures outlined in section 8.5 of ES [APP-060]), lead to the conclusion that the residual effects resulting from dust emissions associated with the construction of the proposed development are not significant.

NRMM Emissions

3.4.20. This chapter of the ES [APP-060] also assesses emissions from NRMM associated with the proposed development as temporary and localised. Therefore, emissions from these sources were scoped out of the assessment, with appendix 1B (Scoping Opinion [APP-185]) setting out the reasoning for this approach.

Road Traffic Emissions

3.4.21. In terms of road traffic emissions, chapter 8 of the ES [APP-060], only considers the impacts of NO_2, PM_{10}, and $PM_{2.5}$ on air quality. The assessment determines that whilst SO_2, CO, benzene, and 1,3-butadiene are present in motor vehicle exhaust emissions, their impacts on local air quality are not considered significant. This is because the concentrations of these pollutants are low enough not to cause significant effects given the anticipated number of vehicles associated with the construction (or operation) of the proposed development. Additionally, the applicant argues that the evidence submitted shows no areas within the administrative boundaries of the relevant Councils are at risk of exceeding the relevant objectives for these pollutants (paragraph 8.3.21).

3.4.22. ES chapter 8 (Air Quality) [APP-060], paragraph 8.6.5, states that although human receptors are present along roads where construction traffic will be present, the largest change in average annual daily traffic flow occurs on an unnamed road connecting the proposed development site with the road network, where there are no adjacent human receptors. The assessment therefore considers the effects of construction traffic on air quality for human health receptors to be negligible and not significant.

3.4.23. This chapter of the ES chapter 8 [APP-060] concludes that the Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV), secured by requirement 15 of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV), includes essential mitigation measures to control and minimise air quality impacts, including those from traffic emissions. These measures, outlined in section 8.5 of ES [APP-060], lead to the conclusion that the residual effects resulting from traffic emissions associated with the construction of the proposed development are considered not significant.

Ecological Receptors

3.4.24. For all ecological receptors, with the exception of part of the Teesmouth and Cleveland Site of Special Scientific Interest (SSSI) and SPA north of the River Tees (RE008), the magnitude of impact of NO_X emissions from construction traffic is considered negligible. The applicant states that at the magnitude of impact associated with NO_X emissions from construction traffic on these sites do not exceed the first stage screening threshold of 1% of the environmental standard for annual mean NO_X concentrations. As such critical levels would not be exceeded and are not considered significant (ES chapter 8 [APP-060] ,paragraph 8.6.6).

3.4.25. In terms of nutrient nitrogen deposition impacts, the applicant states these do not exceed 1% of the environmental standards at any ecological receptors and were screened out as not significant without need for further assessment. ES chapter 8 (Air Quality) [APP-060] at table 8-10 presents a summary of the residual effects during construction.

3.4.26. At the close of the examination the applicant and Natural England (NE) remained in disagreement concerning the magnitude of impacts associated with emissions arising from the proposed development on the parts of the Teesmouth and

Cleveland SSSI and SPA north of the River Tees (RE008) mentioned above. This matter is discussed further in section 3.7 (Ecology and Nature Conservation, including Ornithology and Marine Ecology) of this report, so as to avoid duplication.

Assessment of Impact - Operational Phase

Human Health (NO_2, PM_{10}, $PM_{2.5}$, and CO Emissions)

3.4.27. The impacts of the relevant emissions on air quality during the operational stage of the proposed development on human health receptors are set out in ES chapter 8 (Air Quality) [APP-060] at table 8-8. This table shows the air quality assessment levels compared to the PCs arising from the proposed development and finds the magnitude of impact arising from NO_2, PM_{10}, $PM_{2.5}$, and CO to be either imperceptible, negligible, or very low.

3.4.28. In addition to the above, this chapter of the ES (Chapter 8) [APP-060], paragraphs 8.5.7 to 8.5.9, notes the H_2 production facility will require an EP to operate, noting the EP will specify measures, including Best Available Techniques (BAT), to mitigate potential air quality impacts with the residual significance of effect in all instances recorded as 'Not Significant' with no additional mitigations/ enhancements being required.

Ecological Receptors

3.4.29. With regard to designated habitats, ES chapter 8 (Air Quality) [APP-060] at table 8-9 shows the assessment of worst-case receptor NO_X daily mean (as the 100th percentile) and NO_X annual mean, as well as in relation to the worst-case receptors for nitrogen and acid deposition. As stated in the preceding paragraph the assessment states that the EP will mitigate the air quality impacts of the proposed development including those in relation to ecological receptors. Table 8-11 of the ES chapter 8 (Air Quality) [APP-060] presents a summary of the residual effects during operation and finds the magnitude of impact on human health and ecological receptors to be negligible, with the residual significance of effects on air quality in all instances recorded as 'Not Significant', with no additional mitigations/ enhancements being required.

Assessment of Impact - Decommissioning Phase

3.4.30. ES chapter 8 (Air Quality) [APP-060], paragraph 8.3.85, states the assessment methodology adopted for construction and decommissioning are the same. This is borne out at Table 8-12 of this chapter of the ES where a summary of the residual effects during decommissioning is presented. Indeed, it is noted the finding in tables 8-10 (Construction) and 8-12 (Decommissioning) are identical, with the magnitude of impact on human health and ecological receptors being found to be negligible.

3.4.31. The applicant in ES chapter 8 (Air Quality) [APP-060], paragraphs 8.5.13 to 8.5.15 also highlights requirement 28 (Decommissioning) of the dDCO would secure a Decommissioning Environmental Management Plan (DEMP) that will contain measures to adequately mitigate the impact of the proposed development on air quality during that phase of the proposed development. ES chapter 8 (Air Quality) [APP-060] identifies that with the implementation of the mitigation measures set out in section 8.5 the potential air quality effects during decommissioning is comparable to or less than those associated with the construction phase leading to conclusion of no significant impact.

VIEWS OF INTERESTED PARTIES

3.4.32. LIRs were received from two Local Authorities. RCBC raised no concerns regarding air quality in its LIR [REP1-043]. STBC in its LIR [REP1-045] considered that the main air quality effects were likely to be at the connection corridors during the construction phase. However, it considered the applicant's proposed mitigations to be adequate and appropriate. In terms of ecological receptors STBC noted that the air quality modelling assessment predicted that increases in NO_X, nutrient nitrogen, and acid deposition are not significant and the assessment concluded nutrient nitrogen deposition impacts do not exceed 1% of the environmental standards at any ecological receptors. Irrespective of this, and whilst STBC considered this matter could be screened out as not significant with no further assessment needed, it deferred to NE's considerations on this matter.

3.4.33. HBC and Durham County Council (DCC) raised no comments in relation to the air quality impacts of the proposed development.

3.4.34. NE raised several concerns regarding air quality and emissions affecting the Teesmouth and Cleveland Coast SSSI/ SPA/ Ramsar site in their [RR-026]. During the examination, all concerns were resolved with the except of two (NE29 and NE31) related to mitigation being required for the cumulative air quality impacts as a result of nitrogen deposition on the SSSI sand dune habitats. This outstanding concern is discussed in the Ecology and Nature Conservation section of this chapter of the report and not repeated here so as to avoid duplication.

3.4.35. Climate Emergency Planning and Policy (CEPP) raised a number of concerns regarding emissions to air in its written representation (WR) [REP2-046]. The ExA examination of these matters is set out in section 3.5 (Climate Change) of this report and they are not repeated here in order to avoid duplication.

3.4.36. No other IP raised concerns directly related to air quality during the examination.

THE EXAMINATION

3.4.37. During the examination, the applicant submitted two CRs. However, only the first CR (CR1) had implications in regard to air quality. The changes arising out of the applicant's CR1 to its original chapter 8 (Air Quality) of the ES [APP-060] are set out in appendix 1A.0 of the applicant's CR Report [CR1-045] and are limited to the revision of figures within appendix 8B (Air Quality – Operational Phase) [APP-191]. There were no changes required to appendix 8A (Air Quality – Construction Assessment) [APP-190]. CR1 consisted of 14 changes in total, with the following predicted outcomes concerning Air Quality:

- Change 1 (Addition of a second flare stack for Phase 2 (Work No. 1A.2)) would add an additional emission source on site and impact the source release locations. The applicant advises this is likely to make minor changes to the quantitative operational phase air quality assessment, but not enough to change the conclusions of the assessment as reported in the original ES chapter 8 (Air Quality) [APP-060].
- Changes 2.A (Reduction at Cowpen Bewley (Work No.); 2.B (Reduction at Venator (Work Nos. 6A.1 and 6B.1)); 2.C (Reduction to the east of the main site (Work Nos. 3A, 3B.1, 3B.3, 4, 5, 7A, and 7B)); 2.D (Reduction to the west of the main site and around the main site access point (Work No. 6A.1)); 2.E (Reduction at Lazenby (Work Nos. 6A.1 and 9)); 2.F (Removal of Northern Gas Networks AGI off the A178 Seaton Carew Road (Work No. 6A.3)); 3 (Removal of temporary construction compound at Redcar Bulk Terminal (Work No. 9)); and 9 (Removal of an AGI from the Work No. 2B area) would slightly reduce the

risk of dust impacts, but not enough to change the conclusion of the dust risk assessment as reported in the original ES chapter 8 (Air Quality) [APP-060].

- Changes 4 (Addition of temporary construction compound on land at Navigator Terminals (Work No. 9)); 6 (Reduction in plant at temporary construction compounds (Work No. 9)); and 8 (Inclusion of additional land for the National Gas Pipeline (new Work No. 2C)) would not change the outcomes of the air quality assessment as reported in the original ES chapter 8 (Air Quality) [APP-060].
- Changes 5 (Removal of air separation unit from Phase 1 (Work No. 1A.1)); and 7 (Updates to building dimensions at the main site (Work No. 1)) would remove or alter the buildings considered within the dispersion modelling assessment, including associated site layout alterations. The applicant considers this is likely to make minor changes to the quantitative operational phase air quality assessment, but not enough to change the conclusions of the assessment as reported in ES chapter 8 (Air Quality) [APP-060].

3.4.38. The ExA asked questions during the examination generally in ExQ1 [PD-008], second written questions (ExQ2) [PD-015] and ISH3 with a view to clarifying several issues on air quality including in regard to methodology and the use of embedded mitigation. It also pursued questions in regard to the adequacy of the dDCO requirements during ExQ1 [PD-008], ExQ2 [PD-015], ISH2, ISH3 and ISH4.

3.4.39. The ExA in ExQ1, Q1.3.3 sought clarification on how the use of BAT Associated Emission Levels (BAT-AEL) would control emissions during the operational phase. The applicant in its response [REP2-021] confirmed that operational emissions, including in regard to BAT-AEL, would be controlled through the EP. The EA in its response to several questions in the ExA's ExQ1 [REP2-021] confirmed a number of matters would be controlled through the Environmental Permitting Regime, including in relation to emissions from the operational plant. In this regard the ExA is satisfied that this matter will be adequately addressed through this process and notes NPS EN-1 paragraph 4.12.10 regarding working on the assumption that the relevant pollution control regime and other environmental regulatory regimes will be properly applied and enforced by the relevant regulator and advising such controls should not be duplicated.

3.4.40. In terms of use of amines/ amine degradation products, the ExA specifically sought clarification in ExQ1 and ISH3 on how the closed-loop system for the carbon capture process would ensure no emission of such products during normal operation would occur. The applicant in its response to ExQ1 [REP2-021] confirmed that operational emissions would be controlled through the EP and the position was confirmed by the EA in [REP2-065]. The ExA pursued this matter further during ISH3, with the applicant reaffirming its position in regard to the adequacy of the EP to adequately control operational air emissions. It also confirmed it had made an EP Application to the EA and that application has been registered as 'duly made' (ie the EP application was under consideration by the EA). The EA agreed with the applicant in the signed SoCG [REP8-024], submitted at DL8, that carbon capture performance would be monitored by the EP.

3.4.41. The ExA in ExQ2, Q2.3.1 and during ISH3 sought further explanations in regard to the scenarios for start-up and emergency use, especially in regard to air quality matters. The applicant in response to ExQ2 [REP5-041] and during ISH3 confirmed that the assessment modelling covered three scenarios being normal operation, start-up, and emergency. It advised that the EP requires a plan for 'Other Than Normal Operating Conditions' to manage scenarios outside of normal operating conditions. The ExA during ExQ2 also sought clarification on how flaring during

start-up and shutdown will be secured in the dDCO, as an embedded control measure of the proposed development. The applicant responded [REP5-041] that this would be secured through the EP, in the 'Other Than Normal Operating Conditions' Plan, and not in the dDCO.

3.4.42. The applicant's completed SoCG with STBC [REP8-027] reaffirmed STBC's position, as set out in their LIR [REP1-045], that the main air quality effects are likely to be experienced during the construction phase of the H_2 pipeline and associated AGIs. It also acknowledged there may be some dust effects experienced during construction, the proposed mitigation measures were considered to be adequate and proportionate, although it deferred to NE in respect of the assessment of air quality effects at designated ecological/ nature conservation sites.

3.4.43. A completed SoCG with RCBC was submitted by the applicant at DL5 [REP5-057]. This SoCG agreed that the assessment of the air quality effects of the proposed development is a comprehensive and robust analysis. Indeed, the ExA notes RCBC raised no concerns regarding air quality impacts during the examination.

3.4.44. NE raised several concerns regarding air quality and emissions affecting the Teesmouth and Cleveland Coast SSSI/ SPA/ Ramsar site in their RR [RR-026] and in WR [REP2-072]. However, all but two of these concerns were resolved during the examination. The unresolved concerns (NE29 and NE31) related to the magnitude of impacts associated with emissions from the proposed development on parts of the Teesmouth and Cleveland SSSI and SPA north of the River Tees (RE008) as set out in paragraph 3.4.34 above. With the exception of these two remaining areas of disagreement, the ExA considers all other matters concerning air quality were satisfactorily resolved. Indeed the applicant's completed SoCG with NE [REP8-026] notes, with the exception of the remaining matter as set out in table 5.1 of that document, all other matters are agreed, as set out in table 3.1 of the SoCG. Furthermore, the SoCG confirms, subject to NE being consulted on measures to avoid any Adverse Effects on Integrity from construction dust on protected sites in the final CEMP, it is satisfied in regard to the effects on designated sites from construction dust. The CEMP is secured by requirement 15 of the rDCO.

CUMULATIVE AND COMBINED EFFECTS

3.4.45. The applicant's cumulative effects assessment in the ES [APP-076] concluded there would not be any significant effects during construction or operation. This position was partially revised at DL5 [REP5-015] (paragraph 23.5.15) to represent a minor adverse impact during operation on ecological receptors. The change of impact magnitude related to recognition that, for nitrogen deposition, the critical load is already exceeded at all receptors as the background concentration is higher already than the critical load. The applicant purported that the change through the proposed development would be less than 1% at all receptors. This matter is further discussed in section 3.7 of this chapter of the report.

3.4.46. In terms of cumulative and combined effects the applicant set out summaries of potential significant cumulative and combined effects associated with the construction and operation of the proposed development in table 23-7 and 23-8 of ES chapter 23 [REP5-015]. In terms of combined effects arising from construction and operation the applicant's updated air quality assessment contained in the Technical Note: Updates to Air Quality and Traffic Cumulative Assessments [REP5-034] identifies negligible traffic related air quality effects on the receptors during these phases of the proposed development.

3.4.47. The ExA is content that there are no significant residual air quality effects arising from the proposed development when consider cumulatively with other plans and projects. Additionally, the ExA does not consider there would be any potential for combined effects arising from the proposed development in terms of air quality.

CONCLUSIONS

3.4.48. During the examination, the applicant satisfactorily answered all the ExA's queries in relation to air quality. The ExA further notes that the relevant planning authorities, including RCBC, STBC and HBC had no outstanding issues in regard to this matter.

3.4.49. Whilst NE had two outstanding issues (NE29 and NE31), which in essence related to mitigation being required for the cumulative air quality impacts as a result of nitrogen deposition on the Teesmouth and Cleveland Coast SSSI's sand dune habitats, this outstanding concern is discussed in the Ecology and Nature Conservation sub-chapter of this report and not repeated here so as to avoid duplication. In line with NPS EN-1 and NPS EN-4, the applicant has appraised and, where required, proposed mitigation regard to any air quality impacts during construction, operation and decommissioning.

3.4.50. The ExA notes the key measures to control air quality related matters during construction and decommissioning are secured via requirement 15 (Construction Environmental Management Plan (CEMP)) and requirement 28 (Decommissioning) of the rDCO, with the final CEMP being based on the Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV). Indeed, both the CEMP (requirement 15) and the DEMP (requirement 28) are to be agreed with the Relevant Planning Authorities prior to the commencement of those phases of the proposed development.

3.4.51. In consideration of the above, as well as the evidence submitted by the applicant and IP's during the examination, the ExA is satisfied in terms of air quality that any residual impacts can be effectively managed through the mitigation measures secured in requirement 15 (CEMP) and requirement 28 (Decommissioning) of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV).

3.4.52. Furthermore, the ExA is satisfied that operational emissions of the proposed development would be controlled through the EP and EP regime, which falls under the jurisdiction of the EA. This includes the appraisal and control of BAT and BAT-AEL through the EP, as well as the monitoring and control of amines and the "Close Loop System" related to the process emissions from the proposed development.

3.4.53. Having fully considered this subject, the ExA is satisfied that the issues relating to air quality would not give rise to any significant adverse effects, including cumulative and combined effects. Overall, the ExA considers the effect on air quality resulting from the proposed development and related matters are neutral in the planning balance, neither weighing for or against the proposed development.

3.5. CLIMATE CHANGE

INTRODUCTION

3.5.1. This section considers the effects of the proposed development in relation to GHG emissions, climate change resilience (CCR) and in-combination impacts in the

resilience of the design, construction, operational and decommissioning phases of the proposed development.

3.5.2. The IAPI, as set out in the ExA's Rule 6 letter [PD-005] at annex C, highlights several key issues related to climate change, which potentially warranted further examination. These related to:

- The potential impacts of different natural gases.
- The overall change in GHG emissions.
- Carbon capture usage and storage.
- The effectiveness of proposed mitigation measures.

3.5.3. Air quality and impacts arising from the emissions on human health and the natural environment, are considered under the relevant sections of this report. This also applies to matters concerning flood risk; geology, hydrogeology and contaminated land (GHCL); and materials and waste management. These matters are not considered further here in this section in order to avoid duplication.

POLICY BACKGROUND

3.5.4. The Climate Change Act 2008 set a legally binding target for the UK to reduce its GHG emissions by 80% from 1990 levels by 2050. To achieve this, this act introduced a system of legally binding five-year carbon budgets, which set limits on the total amount of GHG the UK can emit in each five-year period. This Act was amended in 2019, increasing the reduction from 80% to 100% with a view to the UK achieving Net Zero by 2050. The Carbon Budget Delivery Plan, published in 2023, outlines the proposals and policies to achieve Carbon Budgets 4, 5, and 6, including projections of carbon savings and following the Net Zero Strategy.

3.5.5. NPS EN-1, describes the national policy for energy infrastructure, with section 4.10 setting out how the energy sector should seek to deliver the government objectives in relation to climate change, adaption and resilience in response to the UK Climate Projections produced by the government.

3.5.6. Paragraph 2.3.6 of the NPS EN-1 expresses a desire to transform the energy system by tackling emissions and ensuring a secure and reliable energy supply. H_2, particularly manufactured using low carbon processes, is one of the specified clean energy sources to pursue and, where carbon is still emitted, infrastructure must be developed to capture, transport and store it. This is further discussed in paragraph 2.4.4 in which the British Energy Security Strategy is cited as being committed to designing new business models for H_2 including transport and storage infrastructure.

3.5.7. Paragraph 3.3.49 of NPS EN-1 reiterates the ambition of the British Energy Security Strategy to establish up to 10 Gigawatts of low carbon H_2 production by 2030, whilst paragraph 3.4.12 stresses an urgent need for all types of low carbon H_2 infrastructure to allow H_2 to play its role in the transition to net zero.

3.5.8. NPS EN-1 at paragraph 5.3.4 contains a list of required information for applicants to include in their GHG assessments, whilst paragraphs 5.3.5 to 5.3.7 highlight mitigation and how GHG assessments should be used to drive down GHG emissions at every stage of the proposed development and ensure that emissions are minimised as far as possible. Paragraph 5.3.8 stated the SoS must be satisfied that the applicant has, as far as possible, assessed the GHG emissions of all stages of the development. It adds in paragraph 5.3.9 that the SoS should be content that

the applicant has taken all reasonable steps to reduce the GHG emissions of the construction and decommissioning stage of the development.

3.5.9. Paragraph 5.3.11 of NPS EN-1 recognises that operational GHG emissions are a significant adverse impact from some types of energy infrastructure which cannot be totally avoided even with full deployment of carbon capture and storage technology. Nonetheless, given the range of non-planning policies that can be used to decarbonise electricity generation, such as the UK Emissions Trading Scheme, the government has determined that operational GHG emissions are not reasons to prohibit the consenting of energy projects or to impose more restrictions on them than those set out in the suite of energy NPSs.

3.5.10. In terms of Climate Change Adaptation and Resilience, paragraph 4.10.8 of NPS EN-1 states that new energy infrastructure should be designed to remain operational for many years despite climate change. It requires the applicant's assessment to consider both direct impacts, such as flooding, limited water availability, storms, heatwaves, and wildfires, and indirect impacts, such as access roads or other critical dependencies affected by flooding, storms and heatwaves, when planning the location, design, construction, operation, and decommissioning of the infrastructure.

3.5.11. NPS EN-4 covers Gas Supply Infrastructure and Gas and Oil Pipelines and should be read in conjunction with NPS EN-1. Although this NPS primarily relates to natural gas pipelines, it is also considered relevant to H_2 pipelines. Paragraph 2.3 of NPS EN-4 expands on the requirements for climate change adaptation, specifying that the applicant's assessment should consider additional risks, including flooding, sea level rise, higher temperatures, and earth movements.

3.5.12. NPS EN-5, the National Policy Statement for electricity networks infrastructure, at section 2.3 reiterates the position set out in section 2.3 of NPS EN-4.

3.5.13. In terms of the UK MPS, this is referred to above in section 2.3 of this report. It provides a framework for taking decisions affecting the marine environment, which includes the tidal River Tees. Policy NE-CC-2 of the NEMP seeks proposals to demonstrate resistance to climate change, whilst policy NE-CUSS-3 supports proposals associated with the deployment of low carbon infrastructure for industrial clusters, such as that being advanced on Teesside as part of the NEP. Additionally, policy NE-AIR-1 seeks to ensure proposals consider and address where they may cause direct or indirect GHG emissions and manage these accordingly and states where proposals cannot avoid, minimise or mitigate GHG emissions in line with current national or local air quality objectives and legal requirements they must not be supported.

3.5.14. The applicant's ES appendix 7A (Marine Plan Policy Assessment) [APP-189], has been prepared in accordance with NPS EN-1 (paragraph 4.5.8) and has not identified any conflict with relevant marine policies in the MPS or with Policies NE-AIR-1, NE-CC-2 or NE-CCUS-3, with the latter policy specifically supporting proposals associated with the deployment of low carbon infrastructure for industrial clusters, such as that being advanced on Teesside as part of the NEP.

3.5.15. The National Planning Policy Framework (NPPF) was updated in December 2024. It outlines the UK government's planning policies for England, emphasizing sustainable development and climate resilience. While the NPPF does not set specific policies for NSIPs, its policies may be important and relevant considerations. The key policies related to climate change are set out in section 14

of the NPPF and include supporting the transition to low carbon economy, climate change adaptation, flooding and coastal change. These policies aim to support the transition to a sustainable future by integrating climate considerations into planning decisions.

THE APPLICANT'S CASE

Greenhouse Gas Assessment Methodology

3.5.16. The applicant's GHG assessment was set out in ES chapter 19 (Climate Change) [APP-072] and assessed the overall change in GHG emissions that may arise from the construction, operation and decommissioning phases of the proposed development.

3.5.17. The applicant stated that a lifecycle approach was adopted to assess the potential impacts arising from the construction, operational and decommissioning of the proposed development on GHG emissions which aligns with Institute of Environmental Management and Assessment (IEMA) guidance and the GHG Protocols. The assessment of GHG impacts for the proposed development followed several key protocols and best practice guidance including:

- GHG Protocol 2004: Guidelines for developing GHG inventories and reporting standards.
- DESNZ Emission Factors: Using emission factors from the Department for Energy Security and Net Zero (DESNZ) 2023.
- IEMA Guidance (IEMA 2022) for assessing GHG emissions and evaluating their significance.
- IEMA EIA Guide to CCR and Adaptation (2020), (IEMA EIA Guide to CCR&A 2020): Provides guidance for assessing CCR in EIA.
- UK Low Carbon Hydrogen Standard (2023) (LCHS): Standards for defining low carbon H_2 production which sets a threshold of 20 grams of CO_2 equivalent per megajoule of Lower Heating Value (gCO_2e/MJ_{LHV}) to be considered low carbon emissions and sets out the requirement for minimising fugitive emissions. The applicant states that the third version of the LCHS, published in December 2023, has been used as the guide for assessing H_2 emissions in ES chapter 19 (Climate Change) [APP-072].

3.5.18. ES chapter 19 (Climate Change) [APP-072] states that the study area for the lifecycle GHG impact assessment considers direct GHG emissions arising from activities within the proposed development site and indirect emissions from activities outside of the proposed development site but related to the construction, operation and decommissioning of the Proposed Development. However, as the sources of construction materials are unknown, the applicant considers the study area for indirect emissions needed to be global. This chapter of the ES assessed the GHG emissions associated with the proposed development to including CO_2 CH_4, Nitrous Oxide (N_2O) and reports emissions as tonnes of CO_2 equivalent (tCO_2e) to quantify their impact.

3.5.19. ES chapter 19 (Climate Change) [APP-072] paragraphs 19.5.3 – 19.5.6 states that the global climate has been used as the sensitive receptor for GHG emissions impact, and this is consistent with IEMA guidance. ES chapter 19 (Climate Change) [APP-072] acknowledges that GHG emissions from specific cumulative projects should not be assessed individually, as there is no basis for selecting one project over another. The applicant states that a tonne of CO_2 equivalent emitted at one location has the same impact on the global climate as the same amount emitted elsewhere. The applicant identified that it is impractical to carry out a cumulative

assessment of the proposed development alongside other developments in a specific area due to difficulties in accessing reliable future emissions data.

3.5.20. To assess the GHG impact of the proposed development, the ES [APP-072] used the UK's five-year carbon budgets as a proxy for the global climate and highlighted that an assessment against the carbon budgets, which considers all the UK's emissions in reaching a budget, is an appropriate approach to considering cumulative impacts. The applicant states this approach is supported by the Court of Appeal case Boswell, R (On the Application of) v SoS for Transport [2024] EWCA Civ 145 (22 February 2024) and DCO decisions for projects including NZT and Drax Bioenergy Carbon Capture and Storage.

3.5.21. ES chapter 19 (Climate Change) [APP-072] states that the assessment of GHG emissions for the proposed development has been contextualised against the UK's 'UK Carbon Budget Delivery Plan' 30 March 2023 (DESNZ, 2023) to ensure alignment with national climate goals. The assessment considered the 4th, 5th, and 6th carbon budgets, which cover the periods 2023-2027, 2028-2032, and 2033-2037, respectively. The applicant states as the proposed development will be active past 2050, the assessment also compares the emissions against the net zero by 2050 target. Table 19-11 of this chapter of the ES sets out the residual operational emissions compared to UK's 'UK Carbon Budget Delivery Plan'.

3.5.22. The applicant outlines a number of uncertainties within the assessment, as identified in paragraphs 19.5.76 to 19.5.79 of ES chapter 19 (Climate Change) [APP-072]. Adjustments within the ES to take account of these are summarised by the applicant as:

- H_2 Fugitive Emissions: H_2 is not a recognised GHG but can indirectly extend the atmospheric lifespan of CH_4. The climate impact of H_2 is still unknown and not assessed. The proposed development will minimise these emissions through cold venting in line with the LCHS.
- Short-Lived Gases (CH_4 and H_2): the Global Warming Potential (GWP) of these gases is higher over a shorter time span (20 years). The assessment uses a 100-year time span for GWP in line with IEMA guidance.
- Natural Gas Leakage and Decarbonisation: a significant portion of operational emissions are driven by upstream well-to-tank emissions of natural gas, with uncertainty in the amount of leakage and its reduction. These emissions are assessed over the proposed development's lifetime based on current guidance, following the approach in the NZT DCO.
- Effects from Transport and Storage Networks: the carbon capture relies on a transport and storage network from the NEP. Emissions from this network are considered minor in the context of the overall emissions of the proposed development, as the NEP will provide CO_2 transportation and storage for multiple emitters, including NZT and the proposed development.
- Carbon Budget Delivery Plan: projected emissions from the proposed development have been compared to the relevant sectoral carbon budgets for fuel supply, power, and domestic transport sectors up to the end of the 6th Carbon Budget.

3.5.23. The applicant has taken the 'do nothing' scenario as being the baseline, whereby emissions from the ongoing consumption of fossil fuels continue, with natural gas being utilised by industry and the energy sector. The applicant considers the 'do-nothing' scenario would be contrary to the aims and objectives of decarbonising energy generation, pointing out the use of H_2 to address an otherwise hard to decarbonise sector is a key policy measure as laid out in the UK government's

Carbon Budget Delivery Plan, and it is reasonable to assume that without a reliable supply of H_2, emissions from these sectors are likely to continue.

Assessment Of Effects

3.5.24. ES chapter 19 (Climate Change) [APP-072] identified the risk of disturbing landfill sites during underground construction. The assessment highlighted that one option for river crossings involves a pipeline through a historic landfill area, which could expose landfill gases and contaminated leachate. These emissions were considered minimal and not quantifiable. The applicant considered that these emissions can be avoided through the mitigation relating to geology and soils which is discussed in ES chapter 10 (GHCL) [APP-062] and concludes that emissions from landfills are not significant at this stage. Furthermore, the applicant considers that the impact of these emissions can avoided through the mitigation measures set out in section 10.5 of ES chapter 10 (GHCL) [APP-062]. Matters relating to the applicant's assessment of potential landfill gases and contaminated leachate and mitigation measures are provided in section 3.8 (Geology, Hydrogeology and Contaminated Land) of this report and not repeated here in order to avoid duplication.

3.5.25. Table 19-1 of ES chapter 19 (Climate Change) [APP-072], details the potential GHG emissions activity during the construction including permitted preliminary works, transportation, waste management and provision and treatment of water. Primary emission sources include embodied GHG emissions, GHG emissions from fuel consumption for transportation of materials and waste. Table 19-2 of ES [APP-072] sets out the key anticipated GHG emissions sources and activities during operation including plant operation, disposal and transportation of waste and combustion of H_2. Primary operational emission sources include unabated CO_2 emissions, downstream CH_4 combustion emissions and upstream emissions (well-to tank CH_4 extraction).The applicant identified certain uncertainties in assessing certain emissions during the operational phase including amines and lists these in paragraph 19.5.58 of the ES chapter 19 [APP-072]. The applicant considered these to be minimal and less than 1% of total emissions and these have been discussed in the section dealing with the operational phase below.

3.5.26. In terms of decommissioning, the applicant states the decommissioning effects of the proposed development have been determined using a methodology similar to that used for construction and operational phases, with specific considerations for the uncertainties surrounding reliability of future forecasts and conditions associated with decommissioning. Table 19-3 of ES chapter 19 (Climate Change) [APP-072, summarises the key anticipated emissions sources and whether they were scoped in or out of the assessment.

Construction Phase

3.5.27. Construction emissions were calculated using data including vehicle movements and quantities of key construction materials required for the proposed development. The assessment identifies that detailed data for plant operation energy and fuel consumption is not available. The applicant states conservative approach was adopted to estimate GHG impact for plant operation including consideration of Royal Institute of Chartered Surveyors' Whole Life Carbon guidance figures based on standard construction project to assess the worst-case scenario (paragraph 19.5.56).

3.5.28. ES chapter 19 (Climate Change) [APP-072] considers that the Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV) contains adequate measures to mitigate the impact of the proposed development on GHG climate change during the

construction phase through relevant regulations, industry good practice and specific measures including minimising fuel consumption on site vehicles, equipment and plant, measures to minimise transportation of materials to site and minimising emissions through encouraging group transport for workers. A final CEMP, securing the content of the Framework CEMP would be secured through requirement 15 (CEMP) of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV).

3.5.29. The assessment anticipates phase 1 construction is to be completed in 2028, with Phase 2 commencing the same year for an additional 3 years, with completion late 2030. Table 19-6 of the same ES chapter19 [APP-072], sets out total construction emissions estimated at 90,220 tCO_2e over the total construction period this includes emissions from materials, transportation, waste management and plant operation. The annual emissions for construction over a 4-year period (2026-2030) is estimated at 22,555 tCO_2e. The applicant considers that overall, the GHG emissions from the proposed development construction are minor adverse and not significant. However, ES chapter19 [APP-072] concludes the proposed development of H_2 production is considered beneficial (significant) in terms of the global climate enabling a transition to a lower carbon economy due to its reduced carbon footprint compared to traditional fossil fuels such as natural gas, diesel, and coal.

Operational Phase

3.5.30. The proposed development is expected to be available and operational 24 hours a day, 7 days per week for 28 years (25 years from the completion of phase 2). In terms of maintenance schedules, the assessment assumes that any outages would be brief. The applicant therefore assumes a fully operational plant at 8,760 hours per year as the worst-case scenario. The applicant recognises some uncertainties in calculating operational emissions and lists these in paragraph 19.5.58 of the ES chapter 19 [APP-072].

3.5.31. Nonetheless, quantification is given subject to these caveats in tables 19-7, 19-8 and 19-9 which includes upstream emissions (well to tank CH_4 extraction), downstream emissions (combustion of CH_4 in output H_2 product) and uncaptured 5% CO_2 during transport and storage. The applicant concluded that the combined operation of Phase 1 and 2 of the proposed development together with associated activities, is projected to result in average annual emissions of approximately 793,147 tCO_2e. Over the anticipated 25 year operational lifetime of the proposed development this equates to a cumulative total of approximately 19,133,421 tCO_2e.

3.5.32. The assessment states that the primary mitigation strategy during operation is carbon capture, which is designed to capture 95% of GHG emissions. Schedule 1 of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV) specifies the 95% capture rate in the description of the Authorised Development. Additionally, operational fugitive CO_2, H_2 and CH_4 emissions would be regulated through the EP Regime and the EP which will be subject to conditions to regulate matters including the minimising flaring and venting of gases in operation and procedures to define operations, including start-up and shutdown, maintenance work and cleaning. The assessment identifies that a key factor of proposed development is carbon capture and would be transported and stored using the NEP.

3.5.33. However, the applicant estimates that, with the displacement of natural gas, diesel or industrial coal, there could be an emissions saving of either 39.9 million tonnes CO2 equivalent ($MtCO_{2e}$), 60 $MtCO_{2e}$ or 81 $MtCO_{2e}$ over the lifetime of the proposed development.

3.5.34. The energy output is 600 Megawatts thermal (MWth) Lower Heating Value (LHV) in Phase 1 and 1200 MWth LHV for Phases 1 and 2 combined, amounting to 252,461 Gigawatts over 25 years. The emission factor is 16.62 gCO_2e/MJ_{LHV}, which is below the low carbon standard of 20 gCO_2e/MJ_{LHV}. However, when considering downstream combustion, construction, decommissioning, and transport and storage unavailability, the emission factor increases to 21.64 gCO_2e/MJ_{LHV}. Additionally, the applicant points out if H_2 were generated without carbon capture, life cycle emissions would be 77,094,718 tCO_2e, equivalent to 84 gCO_2e/MJ, significantly exceeding the low carbon standard.

3.5.35. ES chapter 19 (Climate Change) [APP-072] assesses the impact of operational emissions as minor adverse (not significant) when viewing the proposed development Order limits in isolation. However, table 19-26 of this chapter of the ES concludes that the proposed development would have a significant beneficial effect for climate change through assisting the transition to a lower carbon economy, decarbonising energy production and diverting away from fossil fuels and natural gas. On this basis the assessment considers the proposed development to be beneficial (significant) in terms of the global climate.

Decommissioning

3.5.36. The assessment states the forecasting of decommissioning requirements in the future is challenging due to uncertainties in sector decarbonisation, although assumes that decommissioning effects would be equal to, though most likely less than, the construction phase in terms of generated emissions. The impact of GHG on climate change has been assessed as commensurate with the construction phase (90,479 tCO_2e) as a worst-case scenario and therefore considered Minor Adverse (Not Significant) in isolation. The applicant confirms its commitment to produce a DEMP, secured by requirement 28 of the dDCO, to address and mitigate the impact of the proposed development during the decommissioning phase.

3.5.37. The applicant concludes overall the proposed development is considered beneficial and significant due to its reduced carbon footprint compared to natural gas, diesel, or coal as a result of the $MtCO_{2e}$ savings outlined in the preceding paragraphs.

Climate Change Resilience

3.5.38. ES chapter 19 (Climate Change) [APP-072] at section 19.6 identifies the likelihood of climate change impacts on the proposed development and the potential consequence, taking account of mitigation measures incorporated into the design of the proposed development. Appendix 19A [APP-215] assesses the resilience of the proposed development to the projected impacts of climate change and identifies potential climate change impacts on the proposed development and associated receptors. It considered the resilience of all phases of the proposed development against both gradual climate change and the risks associated with an increased frequency of severe weather events (including those set out in paragraph 19.6.4 of ES [APP-072]).

3.5.39. The range of climate change hazards and potential impacts is set out in ES appendix 19A [APP-215] table 19-1. The CCR Assessment concludes the embedded design measures would be sufficient to reduce the risks. Additionally, the measures for the management of impact and adaption are included in the Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV), secured by requirement 15 (CEMP) of the dDCO. During the decommissioning phase a DEMP, secured by requirement 28 of the dDCO would be produced and contain measures to mitigate impacts. The assessment indicates no significant resilience risks have

been identified due to embedded mitigation measures, leading to a conclusion of no residual significant effects for the construction, operation or decommissioning phases of the of the proposed development.

In-Combination Climate Change Impacts

3.5.40. The applicant in ES appendix 19B (In-Combination Climate Change Impact Assessment) [APP-216] discusses the combined impact of climate change and the proposed development on receptors in the surrounding area. It summarises the potential in-combination climate change impacts that could occur during construction, operation and decommissioning, and assesses the significance of any impacts, as well as identifying relevant mitigations. Table 19B-1 of ES Appendix 19B (In-Combination CCR) [APP-216] shows the range of climate hazards, embedded mitigation measures, the likelihood of in-combination climate change impacts occurrence, consequence and LSE ranging from negligible (not significant), minor (not significant) to not significant (minor).

3.5.41. The assessment concluded that the mitigation measures embedded in the design of the proposed development (outlined in paragraph 19.7.18 ES chapter 19 (Climate Change) [APP-072]) and ES Appendix 19B (In-Combination Climate Change Impact Assessment) [APP-216] are sufficient to reduce the potential in-combination climate change impact of the proposed development on nearby receptors. The applicant states the DEMP, secured by requirement 28 of the dDCO will contain measures to monitor potential environmental risk including those that relate to in-combination effects on climate change and how these can be removed or mitigated. The Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV), secured by requirement 15 of the dDCO, contains measures to address how climate impacts to construction will be managed and mitigated. Consequently, the applicant considers the mitigation measures embedded within the proposed development design and detailed ES Appendix 19B (In-Combination Climate Change Impacts) [APP-216] are sufficient to reduce the in-combination climate change impact of all phases of the proposed development leading to a conclusion of no significant residual effects.

VIEWS OF INTERESTED PARTIES

3.5.42. The LIRs submitted to the examination by RCBC and STBC contain policy support for low carbon energy and a presumption in favour of sustainable development. No substantive concerns regarding climate change were made in these LIRs, by these Local Authorities.

3.5.43. Similarly, the UK Health and Security Agency (UKHSA) did not raise concerns within its RR [RR-033] in regard to climate change. The UKHSA acknowledged that there would not be any emissions to air of amines and amine degradation products during normal operation, as the CO_2 capture process is a closed loop system, and that a detailed assessment of emissions to air of both amines and other combustion gases from the operational H_2 production facility would be undertaken within a separate EP application.

3.5.44. CEPP objected to the proposed development in respect of the applicant's assessment methodology, calculations and modelling, the 95% carbon capture rate; emissions factors for upstream fugitive emissions from the natural gas supply and alleged the applicant was underestimating the GHG emissions and the effects thereof (This list of issues is a summary and not intended to be exhaustive). CEPP also took part in ISHs during the examination.

3.5.45. CEPP maintained its objections throughout the examination. It concerns extended across a number of submissions, including: [RR-007]; [REP2-046] to [REP2-063]; [REP3-014] to [REP3-017]; [REP4-036] to [REP4-038]; and [REP6a-026] to [REP6a-028]. The ExA noted that the CEPP's submissions were primarily related to the merits of policy, as set out in the NPSs, in regard to climate change and that the applicant responded to this matter in its 'Response to CEPP's WR' [AS-040]. The ExA were satisfied with the applicant's response in this regard.

3.5.46. Other than those IPs listed above, no other IPs raised concerns in regard to the matter of climate change, including the applicant's ES chapter 19 (Climate Change) or its conclusions in respect of CCR. Whilst the ExA asked questions seeking clarification in regard to the issue of climate change in its ExQ1 [PD-008] and ExQ2 [PD-015], the responses provided by the applicant at DL2 [REP2-023] and DL5 [REP5-043] were of sufficient detail to satisfy the ExA in regard to the questions raised.

THE EXAMINATION

3.5.47. CEPP raised several technical issues with the applicant's assessment methodology and the conclusions reached. In general terms, CEPP raised the following (non-exhaustive) issues at the onset of the examination [REP2-046]:

- The application of the Finch Case, the principal of full knowledge and whether the applicant had identified all GHG effects.
- Clarification of the applicant's calculation method - the applicant's ES severely underestimates the GHG emissions and the effects thereof.
- the proposed development claims a 95% carbon capture rate when no similar project has achieved more than 80% carbon capture.
- The adequacy of the EP to control and monitor GHG emissions.
- emissions factors for upstream fugitive emissions from the natural gas supply are based on out-of-date data.
- the climate impact of CH_4 is inadequately modelled.

The Finch Judgement

3.5.48. CEPP's refers to the judgement of '*R (on the application of Finch on behalf of the Weald Action Group) v Surrey Council and others'* (Finch) and expressed concern as to whether the applicant had identified all GHG effects based on as much information as could reasonably obtained. Specifically, whilst CEPP [REP2-046] acknowledged that indirect emissions, both upstream and downstream emissions of the proposed development, had been scoped into the ES, CEPP argued conflict with the Finch judgement insofar as whether:

- the full knowledge of the environmental cost of the project had been described in the ES;
- the ES contains as much knowledge as can reasonably be obtained, given the nature of the proposed development, about its LSEs on the environment;
- the possible future effects on the environment been adequately described; and
- the ES been "forward looking", and has it tested whether effects are likely (in the future), and then fully included and described them in the ES.

3.5.49. CEPP referred to the case of *'R (on the application of Friends of the Earth and another) v SoS for Levelling Up, Housing and Communities and others'* 2024 which concerned the Whitehaven coal mine. This case applied the principles established in the Finch judgement and further clarified the legal requirement for EIAs to be

conducted with “full knowledge” of a proposed development’s environmental impact. In particular, the court held that an assessment should assess not only the direct emissions from a proposed development but also the indirect and downstream emission where these are reasonably foreseeable. The case emphasised that a lawful EIA must provide a comprehensive understanding of a proposed development’s full climate change impact, to enable informed decision making.

3.5.50. The applicant stated in its response [AS-040] that the approach to the assessment of GHG in ES chapter 19 (Climate Change) [APP-072] provided adequate and significant information to ascertain the LSEs of the proposed development. Furthermore, the applicant stated the phrase ‘full knowledge’ is not a mandate for any applicant or decision-maker to seek out every conceivable piece of environmental information about a particular project. Paragraphs 2.2.4 to 2.2.7 of [AS-040] concludes that there is no abstract state or threshold of knowledge which must be obtained, but the judgement of the decision-maker takes primacy in determining whether adequate environmental information exists.

3.5.51. In [REP2-023], the applicant stated that the Finch decision emphasised that EIAs must consider indirect effects (including both upstream and downstream impacts). The applicant stated the judgement stressed that assessments should only be required if a reasoned conclusion can be reached (‘not be mere conjecture or speculation’), meaning there must be sufficient evidence to establish the link between the project and its effects. Additionally, the judgement highlighted the necessity for an ES, particularly regarding GHG assessments, to consider both upstream and downstream effects of the project, which could be either adverse or beneficial. The applicant confirmed that ES chapter 19 (Climate Change) [APP-072] assessment considered:

From an upstream point of view:

- the emissions associated with construction supply chains.
- the emissions associated with its ‘feed’ supply of ‘well to tank’ CH_4 emissions
- imported electricity.

From a downstream point of view, the applicant has considered:

- emissions associated with the CO_2 transport and storage infrastructure.
- residual CH_4.
- the beneficial use of H_2 as a replacement gas supply for off-takers.

ExA’s considerations on the applicant's GHG Emissions Assessment in light of the Finch Judgement

3.5.52. The ExA is satisfied that ES chapter 19 (Climate Change) [APP-072], adopted a lifecycle approach to assess the potential impacts of construction, operation and decommissioning in regard to GHG emissions arising from the proposed development and that this approach is consistent with the principles set out by the IEMA (IEMA, 2022).

3.5.53. On the basis of the evidence before it, the ExA considers the ES provides a complete assessment of climate change impacts, including upstream and downstream effects. Furthermore, the ExA considers that a reasonable level of information was presented in the ES, and across the examination, to enable it to conclude the applicant carried out a proportionate assessment of GHG emissions, including downstream and upstream emissions.

3.5.54. Overall, the ExA is satisfied the applicant has, as far as is possible, assessed the GHG emissions at all stages of the development, including proportionate consideration of upstream and downstream effects, as well as direct and indirect effects resulting from all phases of the proposed development over its lifetime. The ExA considers this accords with the Finch judgement.

Clarification Of Calculation Methods

3.5.55. CEPP in section 6 of [REP2-046] raised additional concerns relating to the applicant's calculations. Specifically CEPP stated that it was unable to replicate the applicant's calculations based on available figures in relation to Tables 19-8 and 19-9 of the ES [APP-072], identifying a difference of 695,258 tCO_2e .As such CEPP suggested the applicant's figures had been underestimated.

3.5.56. The applicant in its response to CEPP's WR [AS-040], at section 4.0, explained the discrepancies between its figures and that of CEPP [REP2-046]. It explained the differences are due to the method of calculating emissions separately for each phase and then combining them. The applicant did not consider this to be a material issue.

3.5.57. The applicant explained the total emissions over the anticipated 25 year life of the proposed development was calculated by adding the total anticipated emissions from the first 2 years of Phase 1 operating alone (445,518 tCO_2e) to the emissions from the subsequent 23 years of the combined operation of Phase 1 and 2 (793,147 tCO_2e per year) resulting in 15,103,547 tCO_2e over 23 years which equates to the 16.62 gCO_2e/MJ carbon intensity figure presented in paragraph 19.5.69 of ES [APP-072]. The applicant stated that the calculation method adopted with reference to the figures in tables 19-8 and 19-9 of the ES [APP-072] align with the LCHS.

ExA's considerations on the applicant's GHG emissions calculation method.

3.5.58. The ExA considers that a reasonable level of information was presented in the applicant's [AS-040], at section 4.0, and across the examination on this issue. The ExA is satisfied that that the applicant's submissions on this issue adequately explains and clarifies the differences noted by CEPP in [REP2-046] in respect of tables 19-8 and 19-9 of the ES [APP-072] and demonstrates how the calculation method adopted by the applicant in the ES aligns with the LCHS. In this regard the ExA considers the applicant has carried out a proportionate assessment of operational emissions for the anticipated life span of the proposed development.

The 95% Capture Rate and the Environmental Permit

3.5.59. The applicant claims a 95% carbon capture rate of CO_2 emissions is achievable, whereas CEPP argued no similar project has achieved more than an 80% carbon capture rate. The applicant at paragraph 1.1.6 of [AS-040], identified that the embedded mitigation measures in the design of the proposed development used proven technologies such as autothermal reforming and "Closed Loop" carbon capture, thus making the 95% carbon capture rate claimed for the proposed development achievable.

3.5.60. CEPP in [REP2-046], and [REP4-038] expressed doubts about the environmental permitting regimes ability to secure the 95% carbon capture rate. CEPP referred to the Keadby 3 and NZT DCOs as examples of approaches to securing carbon capture rates by means a requirement in the dDCO. The applicant's oral submission in ISH3 [REP6a-019] stated CEPP has misunderstood how projects like NZT and Keadby 3 dealt with the carbon capture rate.

3.5.61. The applicant clarified that the dDCO submitted at DL5 achieves the same objective as the drafting in the Keadby 3 and NZT DCOs, specifying that the H_2 production facility must be designed to capture a minimum rate of 95% CO_2. Indeed the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV) for the proposed development, at schedule 1 (Authorised Development), specifies in the description of Work Nos. 1A.1 and 1B.1 as each being a "…carbon capture enabled H_2 unit of 600 MWth, which is designed to capture a minimum rate of 95% of the CO_2 emissions of this H_2 unit operating at full load…"

3.5.62. The applicant's oral submission in ISH3 [REP6a-019] also stated that the wording for all projects is consistent, with the approach differing slightly based on the type of facility. For Keadby 3 and NZT, the reference is to the 'generating station' operating at full load, reflecting their nature as electricity generating stations, whereas the proposed development is a H_2 production facility. For Keadby 3 and NZT, the wording was added to the definition of 'carbon capture and compression plant', not directly into Schedule 1. This is because Keadby 3 and NZT involve post-combustion carbon capture, with specific separate pieces of equipment involved in the carbon capture process, listed under separate Schedule 1 Work Numbers. In contrast, the proposed development involves pre-combustion carbon capture, meaning the carbon capture process is integrated into the wider H_2 production process within the same facility. The different aspects of the process are listed under Work No. 1A.1 and Work No. 1A.2 of Schedule 1 f the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV).

3.5.63. Throughout the examination the applicant advised the carbon capture rate would be secured through the EP. The EA confirmed that carbon capture efficiency is a technical parameter considered in the determination of the EP application and advised that such controls should not to be duplicated within the dDCO [AS-044]. The EA was clear it would determine whether the EP application uses BAT on this matter. The EA also indicated conditions would be attached to the EP in line with its guidance and that the carbon capture rate should be a matter for the EP. The above positions were reaffirmed in the applicant's completed SoCG with the EA [REP8-024].

ExA's considerations on the 95% Carbon Capture Rate and Environmental Permit

3.5.64. The ExA is satisfied the applicant, via the Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV), has taken reasonable steps to avoid and reduce emissions during construction.

3.5.65. During operation the proposed development is designed to capture a minimum rate of 95% of CO_2 emissions from each of the H_2 unit operating at full load operation through the use of carbon capture and storage technology. The ExA is satisfied that the 95% carbon capture rate is adequately secured by the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV) as a result of Schedule 1 specifying the minimum capture rate of 95% of CO_2 emissions.

3.5.66. The ExA also consider the unabated 5% CO_2 would be significantly outweighed by the benefits of the proposed development in terms of providing a low carbon alternative to natural gas and, potentially, reducing carbon emissions by a substantial amount overall from the energy sector.

3.5.67. Furthermore, the ExA is satisfied that the capture rate will be a condition in the EP and in accordance with NPS EN-1 there is no need to duplicate controls in the DCO.

The ExA is satisfied that this matter will be adequately addressed through the Environmental Permitting Regime and note NPS EN-1, paragraph 4.12.10, regarding working on the assumption that the relevant pollution control regime and other environmental regulatory regimes will be properly applied and enforced by the relevant regulator and advising such controls should not be duplicated.

Fugitive H_2 Emissions and Amines

3.5.68. CEPP maintained that the full knowledge GHG effects have not been identified or described, let alone substituted processes [REP3-017], stating any substitution effect must be determined from full information of the two effects, which it is claimed balance each other out. CEPP notes an absence of amine solvent emissions and fugitive H_2 emissions from the 'full knowledge' effects, stating both are material to the outcome of the assessments.

3.5.69. CEPP suggested that the applicant had failed to list amine solvent emissions as an upstream effect of the proposed development, nor had it accounted for fugitive H_2 emissions as a downstream effect [REP3-017] and that the applicant should have used a 20-year timeframe for GWP as opposed to the 100-year period relied upon.

3.5.70. The applicant rebutted these points in its DL4 submission [REP4-014], at paragraph 4.6.1 and sections 2 and 3, providing details as to the potential level of emissions predicted in each case, and giving reasons why neither were of substantive consequence to the assessment or conclusions reached in the ES. In particular, the applicant stressed since fugitive H_2 was not classed as a GHG, it would be inappropriate to consider this within the context of tCO2e.

3.5.71. The applicant, also rebutted CEPP's argument concerning it suggesting a 20-year timeframe for GWP being applied in regard to GWP, stated in [AS-040] the GWP100 was the only appropriate metric for the assessment of GHG and the use of GWP100 aligns with government policy. Furthermore, the applicant at paragraph 2.3.4, alleged CEPP's position in this regard constituted a fundamental disagreement with government policy support towards blue H_2 and raised judgements to the ExA's attention where it had been found inappropriate to challenge individual projects based on challenging underlying government policy.

3.5.72. The ExA sought clarification from the applicant in ExQ1, Q1.5.5 to explain how expected fugitive H_2 emissions of the proposed development would be minimised and monitored in line with the UK LCHS. The applicant provided a detailed response in [REP2-023] re-affirming the position that there is no clear method currently to accurately estimate the emissions impact of fugitive H_2 due to high uncertainty and limited available literature. Given this, and as H_2 emissions do not feature within UK Carbon budgets or the UK LCHS, there was no basis on which to assess the significance of fugitive H_2 emissions resulting from the operation of the proposed development.

The ExA's considerations in regard to fugitive H_2 Emissions and Amines

3.5.73. On the basis of the evidence before it, the ExA is satisfied with the applicant's approach to fugitive emissions, as set out in ES chapter19 (Climate Change) [APP-072]. In reaching this view, the ExA acknowledges the applicant's arguments as set out in [AS-040] that the phrase 'full knowledge' is not a mandate for any applicant or decision-maker to seek out every conceivable piece of environmental information about a particular project and that there is no abstract state or threshold of knowledge which must be obtained, but the judgement of the decision-maker takes primacy in determining whether adequate environmental information exists.

Change Request 1 and implications for Climate Change and Climate Change Resilience

3.5.74. The applicant proposed 14 changes at CR1 and these are detailed in section 1.7 of this report.

3.5.75. In terms of CR1 Table 4-1 of the applicant's Change Application Report [CR1-044] indicates that all of the proposed development changes, except change 1, would have a positive impact or neutral impact upon climate change during all phases of the proposed development. The applicant states that the ES chapter 19 (Climate Change) [APP-072] therefore represents the worst-case scenario. The applicant highlights that change 5 is particularly beneficial due to the reduction in emissions from decreased electricity demand (70 Megawatts (MW) to 40MW in relation to Phase 1 of the proposed development). Changes 2, 3, 6 and 9 are also said to have beneficial impacts. The applicant states change 4 and 7 do not materially affect construction or operational GHG emissions reported in the original ES chapter 19 (Climate Change) [APP-072].

3.5.76. CR1, change 1 [CR1-044]) would introduce an additional flare with the same operational specification as assessed in tables 19-8 and 19-9 of the original ES [APP-072], which would slightly increase GHG emissions. However, the assessment considers this increase to be insignificant, as it would be less than 1% of the proposed development's operational GHG emissions.

3.5.77. In terms of Climate Change Resilience, the applicant concluded the assessment in ES appendix 19A (CCR) [APP-215], remains robust as the worst-case scenario. The applicant argues the benefits of change 5, as referred to above, significantly outweigh the GHG increases associated with change 1.

3.5.78. In ExQ2, Q2.5.1 [PD-015], the ExA requested the applicant provide evidence supporting the view that the changes identified in [CR1-044] would have an overall beneficial impact on climate change and climate change resilience. The ExA specifically sought clarification that the slight increase in GHG emissions associated with change 1 would be outweighed by the beneficial impact of change The applicant's response [REP5-043] clarified that lifetime emissions from flare pilots, flue gas, and vent and seal leakage total 209,122 tCO_2e, which is about 1% of total operational emissions, as shown in tables 19-8 and 19-9 of ES chapter 19 (Climate Change) [APP-072]. Whilst the applicant pointed out emissions from flare pilots account for approximately 27% of the above mentioned emissions, the additional flare pilot (Change 1) is expected to contribute less than 1% of annual operational emissions, making its impact insignificant. Additionally, change 5, which reduces power demand by 42.85% (% reduction in power demand from 70 MW to 40 MW (Phase 1) or 140 MW to 80 MW (Phase 1+2)), would result in a larger reduction in GHG emissions than those from the flare pilots. Indeed, the applicant highlighted the reduction in power demand would lead to a decrease of 360,618 tCO_2e ([REP5-043], Q2.5.1).

ExA's considerations regarding CR1 and its Implications for Climate Change and Climate Change Resilience

3.5.79. The ExA agrees with the applicant's view that whilst the inclusion of an additional flare, as proposed under Change 1, would increase GHG emissions, those emissions would contribute less than 1% of annual operational emissions making its impact insignificant. The ExA also agreed such an increase would be significantly outweighed by the substantial GHG reductions associated with Change 5 that would

result in a reduction in power demand from 70 MW to 40 MW (Phase 1) or 140 MW to 80 MW (Phase 1 and 2).

3.5.80. Overall, the ExA considers the CR1 changes and the impact of the additional flare does not undermine ES chapter 19 (Climate Change) [APP-072] or its accompanying documents. Indeed the ExA considers ES chapter 19 (Climate Change) [APP-072] and ES Appendix 19A (CCR) [APP-215] remain robust and reflective of the worst-case scenario.

CUMULATIVE AND COMBINED EFFECTS

3.5.81. In respect of cumulative and combined effects, the LIRs did not raise climate change as a specific area of concern ([REP1-043] and [REP1-045]). CEPP were the sole objector to the applicant's ES methodology, assessment and conclusions in regard to climate change.

3.5.82. CEPP raised concerns in regard to cumulative effects and argued such an assessment should be made across the UK gas-CCS and blue H_2 sector, based on current projections of planned roll-out to 2035 [REP2-046]. The applicant's response in [AS-040], (paragraph 4.4.1) stated: *"CEPP's Written Representation asks the Applicant to provide a cumulative assessment across the natural gas, CCS and blue hydrogen sector. As stated in paragraphs 19.5.3 to 19.5.6 of the ES [APP-072], a cross-sector cumulative emissions assessment is neither required to satisfy the requirements of the EIA Regulations nor in line with IEMA guidance. CEPP has not identified any other legal or policy basis that would justify its request."*

3.5.83. Whilst CEPP maintained objections to the proposed development on various climate change grounds, the ExA is satisfied that the applicant has conducted a proportionate and reasonable assessment in the ES [APP-076], as updated in [REP5-015] and has adopted an appropriate approach to assessing cumulative and combined effects. The ExA does not have any concerns at the conclusion of the examination in this regard.

CONCLUSIONS

3.5.84. The ExA has carefully reviewed the submissions made in regard to climate change and notes, with the exception of CEPP, no other IPs objected to the proposed development in regard to climate change throughout the examination. The ExA agrees with the applicant's conclusion that the proposed development will have a beneficial and significant impact on climate change. This is due to the production of low carbon hydrogen from natural gas, enabled by carbon capture technology designed to achieve a minimum capture rate of 95% of CO_2 emissions. As set out in ES chapter 19 (Climate Change) [APP-072], this approach would significantly reduce the carbon footprint compared to the direct use of fossil fuels such as natural gas, resulting in substantial $MtCO_2e$ savings over the project's lifetime.

3.5.85. Where emissions would occur, the ExA is satisfied the applicant, via the Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV), has taken reasonable steps to avoid and reduce emissions during construction. The ExA is satisfied that the applicant's ES is robust in regard to climate change assessment and considerations and incorporates all the information required to comply with paragraph 5.3.4 of NPS EN-1.

3.5.86. The ExA also notes the development is designed to capture a minimum rate of 95% of the CO_2 emissions of each of the H_2 unit during operation through the use of carbon capture and storage technology, consistent with other recently made DCOs.

In this instance the 95% carbon capture rate is specified within the description of the proposed development in Schedule 1 of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV).

3.5.87. In terms of the unabated 5% CO_2 emissions, the ExA is satisfied this would be significantly outweighed by the benefits of the proposed development in terms of providing a low carbon alternative to natural gas and reducing carbon emissions by a substantial amount overall from the energy sector.

3.5.88. The ExA is satisfied in regard to the applicant's Climate Change Resilience Review, ES chapter 19 (Climate Change) [APP-072] and Appendix 19A [APP-215], which aligns with section 4.10 of NPS EN-1 and provides an adequate and robust assessment of the resilience of the proposed development's projected impacts on climate change, including flooding, sea level rise, temperature increases and extreme weather events.

3.5.89. The assessment considers the full life cycle of the proposed development (construction, operation and decommissioning) and identifies sensitive receptors, potential hazards and appropriate mitigation and adaptation measures. The ExA is satisfied that the Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV), secured by requirement 15 (CEMP) of the dDCO, and during the decommissioning phase a DEMP, secured by requirement 28 of the dDCO, would secure appropriate mitigation measures and that those mitigation measures accord with NPS EN-1 paragraphs 5.3.5.to 5.3.7.

3.5.90. The ExA is also satisfied in regard to the applicant's cumulative and combined effects assessment, ES chapter 23 [APP-076], as updated in [REP5-015], which it considers has been conducted in a proportionate and reasonable way. At the close of the examination the ExA did not have any concerns regarding the applicant's conclusion in regard to cumulative and combined effects in terms of climate change.

3.5.91. Bearing all of the above in mind, the ExA is satisfied that the applicant's ES is robust in regard to climate change assessment and considerations. In reaching its conclusion, the ExA agrees with the applicant, in regard to its approach in its assessment of climate change impacts, which include the beneficial off-set of other carbon emissions in its consideration of the downstream effects. However, even if the ExA is wrong in taking this position and a more refined interpretation of the Supreme Court judgement is applied, the ExA considers, on the basis of the evidence before it, the proposed development would still be acceptable in this regard.

3.5.92. Having considered all of the above, the ExA is satisfied that the proposed development would contribute to meeting the UK's carbon commitment. It would further the transition to a low carbon economy by supporting the government in achieving its decarbonisation objectives, whilst delivering national, regional and local economic benefits, at scale, in line with NPS EN-1, NPS EN-4 and NPS EN-5. However, the ExA has already given very great positive weight in favour of the development on this basis in section 3.3 (Principle of Development) of this report and as such applies a neutral weight in terms of the planning balance related to this section (section 3.5 (Climate Change)) of the report, neither weighting for nor against the proposed development.

3.6. CULTURAL HERITAGE

INTRODUCTION

3.6.1. This section addresses the potential impacts and effects of the construction, operation (including maintenance) and decommissioning of the proposed development on cultural heritage, including the historic environment/ designated and non-designated heritage assets.

POLICY BACKGROUND

3.6.2. Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010 states:

- When deciding an application which affects a listed building or its setting, the SoS must have regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses.
- When deciding an application relating to a conservation area, the SoS must have regard to the desirability of preserving or enhancing the character or appearance of that area.
- When deciding an application for development consent which affects or is likely to affect a scheduled monument or its setting, the SoS must have regard to the desirability of preserving the scheduled monument or its setting.

3.6.3. NPS EN-1 recognises that energy infrastructure development can adversely impact the historic environment during construction, operation, and decommissioning (paragraph 5.9.1). It distinguishes between designated and non-designated heritage assets (paragraphs 5.9.3 to 5.9.7), stating there is *"…clear evidence that such heritage assets have a significance that merits consideration… even though those assets are of lesser significance than designated heritage assets."* (paragraph 5.9.7).

3.6.4. It is clear in NPS EN-1 applicants must describe the significance of affected heritage assets and how their settings contribute to that significance, with appropriate assessments for archaeological interest as part of its submission (paragraphs 5.9.10 and 5.9.11). It also emphasises that recording evidence of a heritage asset is not a substitute for its preservation, and this consideration should not influence consent decisions (paragraph 5.9.16). Indeed, the NPS sets out decision-makers should ensure developers record and advance understanding of an asset's significance before it is lost and that the extent of the requirement should be proportionate to the nature and level of the asset's significance (paragraph 5.9.17).

3.6.5. When determining applications this NPS indicates, the SoS should take into account the desirability of sustaining and, where appropriate, enhancing the significance of heritage assets, the contribution of their settings and the positive contribution they can make to sustainable communities and economic vitality (paragraph 5.9.25). Indeed, the NPS is clear as to the *"…considerable importance and weight to the desirability of preserving all heritage assets"* and that *"Any harm or loss of significance of a designated heritage asset… should require clear and convincing justification."* (paragraph 5.9.28).

3.6.6. Indeed, NPS EN-1 states where *"…the proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset the SoS should refuse consent unless it can be demonstrated that the substantial harm to, or loss of, significance is necessary to achieve substantial public benefits that outweigh that harm or loss…"* or the other criteria specified in the paragraph are met (paragraph 5.9.31). Where less than substantial harm occurs, it sets out public benefits must be weighed against the damage (paragraph 5.9.32).

3.6.7. For non-designated heritage assets, the NPS states *"…weighing applications that directly or indirectly affect non-designated heritage assets a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset."* (paragraph 5.9.33). It also sets out when considering applications for development affecting the setting of a heritage asset, the SoS should treat favourably applications that preserve those elements of the setting that make a positive contribution to, or that better reveal the significance of, the asset. NPS EN-1 goes on to advise when considering applications that do not do this, the SoS should weigh any negative effects against the wider benefits of the application (paragraph 5.9.36).

3.6.8. NPS EN-4, the NPS for Gas Supply Infrastructure and Gas and Oil Pipelines, specifies the ES must set out any effects on heritage assets and the wider historic environment, as explained in section 5.9 of NPS EN-1 (paragraph 5.13.20). This NPS also refers to dredging and the adverse effects it can have on heritage assets, such as marine archaeology (paragraph 5.13.17).

3.6.9. NPS EN-5, the NPS for Electricity Networks Infrastructure highlights obligations on transmission and distribution licence holders, under section 9 of the Electricity Act 1989, in formulating proposals for new electricity networks infrastructure, to: *"have regard to the desirability of preserving… sites, buildings and objects of architectural, historic or archaeological interest; and …do what* [they] *reasonably can to mitigate any effect on any such …features, sites, buildings or objects."* (paragraph 2.2.10).

3.6.10. Additionally, this NPS notes at paragraph 2.9.25 *"the SoS should only grant development consent for underground… sections of a proposed line over an overhead alternative if they are satisfied that the benefits accruing from the former proposal clearly outweigh any extra economic, social, or environmental impacts that it presents, the mitigation hierarchy has been followed, and that any technical obstacles associated with it are surmountable."* The potentially very disruptive effects of undergrounding on archaeological and heritage assets is one example of the environmental impacts referenced above.

Marine Policy Statement/ Marine Plans

3.6.11. The MPS is referred to above in section 2.3 of this report. It provides a framework for taking decisions affecting the marine environment, which includes the tidal River Tees. Policy NE-HER-1 of the NEMP is aimed at managing the impacts of development upon heritage assets. The applicant's ES appendix 7A (Marine Plan Policy Assessment) [APP-189], in accordance with EN-1 (paragraph 4.5.8) and has not identified any conflict with relevant marine policies in the MPS or with Policy NE-HER-1 of the NEMP.

National Planning Policy Framework

3.6.12. The NPPF describes the setting of a heritage asset as the surroundings in which a heritage asset is experienced. A core planning principle in the NPPF is to conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations (paragraph 202).

3.6.13. When considering the impact of proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation, and the more important the asset, the greater should be that weight (paragraph 212).

3.6.14. Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification (paragraph 213). Where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, decision makers should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or other specified criteria is met (paragraph 214). Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal (paragraph 215).

3.6.15. In terms of non-designated heritage assets, the NPPF states the effect of an application on the significance of that asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset (paragraph 216).

National Planning Practice Guidance

3.6.16. The National Planning Practice Guidance (NPPG) in regard to the historic environment provides further advice and guidance to accompany policies in the NPPF and expands on terms such as 'significance' and its importance in decision making. It is clear that *"understanding the significance of a heritage asset and its setting from an early stage in the design process can help to inform the development of proposals which avoid or minimise harm…"* (paragraph: 008, Ref. ID: 18a-008-20190723). The NPPG is also clear that understanding the potential impact and acceptability of development proposals is very important, but *"The level of detail should be proportionate to the asset's importance and no more than is sufficient to understand the potential impact of the proposal on its significance."* (paragraph: 009, Ref. ID: 18a-009-20190723).

3.6.17. When considering impacts to a heritage asset, the NPPG discusses levels of harm, noting where potential harm to designated heritage assets is identified, it needs to be categorised as either less than substantial harm or substantial harm (paragraph: 018, Ref. ID: 18a-018-20190723).

3.6.18. In terms of public benefits, the NPPG states benefits should follow from the proposed development and should be of a nature and scale to be of benefit to the public and not just a private benefit. However, benefits do not always have to be visible or accessible to the public in order to be of public benefit (paragraph: 020, Ref. ID: 18a-020-20190723).

THE APPLICANT'S CASE

3.6.19. ES chapter 17 [APP-070] assesses the effect of the proposed development on cultural heritage (Heritage Assessment), whilst ES Appendix 17A [APP-214] provides a Cultural Heritage Desk Based Assessment. Chapter 17 is also accompanied by Figure 17-1 (Locations of Designated Heritage Assets) [AS-020], Figure 17-2 (Locations of Non-Designated Heritage Assets) [AS-021], Figure 17-3 (Location of Cultural Heritage Events) [APP-175] and Figure 17-4 (Historic Landscape Character) [APP-176].

3.6.20. As a result of the applicant's second Change Request (CR2), a Technical Note for the Implications of Change 3 on cultural heritage [REP7-013] was submitted. This Technical Note, at Appendix 1, contains the archaeological evaluation, undertaken

by Wessex Archaeology between 18–22 November 2024, of an area situated to the south-east of Cowpen Bewley, which measures approximately 200m long by 80m wide. This evaluation comprised the excavation and recording of seven trial trenches.

Scope And Methodology

3.6.21. The assessments of historic environment impacts (Chapter 17 of the ES [APP-070]) was undertaken in accordance with the requirements of NPS EN-1, NPS EN-4, NPS EN-5 and the NPPF. Additionally, the applicant had regard to the following guidance:

- Historic England's (Good Practice Advice (GPA), including GPA2 - Managing Significance in Decision-Taking in the Historic Environment (Historic England, 2015), GPA3 - The Setting of Heritage Assets (Historic England, 2017), as well as Advice Note 12: Statements of Heritage Significance (Historic England, 2019) and Advice Note 15: Commercial Renewable Energy Development and the Historic Environment (Historic England, 2021)).
- The Chartered Institute for Archaeologists (CIfA) - Standard and Guidance for Historic Environment Desk-Based Assessment (CIfA, 2020) and the CIfA Code of Conduct (CIfA, 2022).
- The "Principles of Cultural Heritage Impact Assessment in the UK", published jointly by the IEMA, the Institute of Historic Building Conservation and the CIfA.

3.6.22. The applicant also confirms the ES also took national and local policy and guidance into account. ES chapter 17 [APP-070] sets out the proposed development had been designed, as far as possible, to avoid and minimise impacts and effects to the historic environment through the process of design development, and by embedding mitigation measures into the design at both the construction and operational phases of the proposed development.

3.6.23. With regards to the terrestrial historic environment, the desktop assessment reviewed an extensive number of data sources and these are listed in ES chapter 17 [APP-070] at paragraph 17.3.21. In terms of marine heritage impacts, these were scoped out in the Planning Inspectorates Scoping Opinion [APP-185], as no marine assets are situated within the proposed development site and the proposed development site does not contribute to the significance of any marine or underwater assets situated in the River Tees. Furthermore, the applicant's ES confirmed the proposed development would not result in any impacts to marine or underwater assets through changes to setting.

3.6.24. The applicant adopted different sizes of study areas depending on the type of heritage assets: a 5km radius from the application site for designated heritage assets (see ES figure 17-1 [AS-020]); and 1km radius from the application site for non-designated heritage assets (see ES figure 17-2 [AS-021]). The applicant advises it planned to survey a total area of approximately 59 ha, but 8 ha were inaccessible due to being waterlogged or too overgrown to allow access to the survey equipment. However, given the lack of result in the remainder of the survey areas, the applicant considered a review of available aerial photographs and LiDAR imagery to be sufficiently robust to inform the archaeological baseline in these areas.

3.6.25. Some areas of the proposed development site could not be accessed during the site walkovers due to lack of land access. While the proposed development site is sufficiently well understood through desk-based research to assess the presence, absence and potential for significant remains, the survival of remains associated

with the Redcar (SMR5711) and Coatham Iron Works (SMR5709) could not be ascertained where 20th century development may not have subsequently removed them. As a means to mitigate the risk of significant remains being impacted, the area identified as likely to hold such remains were removed from the proposed development site. With no works in this area, the applicant considered no impacts would occur on remains located therein.

3.6.26. The applicant set out the existing baseline conditions in ES chapter 17 [APP-070] at section 17.4, this includes the existing baseline for geography and topography and historic landscape and provides a summary of archaeological and historical background. The applicant notes a total of 544 designated heritage assets are within 5km study area. The designated heritage assets comprised:

- 26 Scheduled Monuments;
- 506 Listed Buildings;
- 2 Registered Historic Parks and Gardens; and
- 20 Conservation Areas.

3.6.27. In terms of non-designated heritage assets 585 non-designated heritage assets or 'monuments' are recorded by the Historic Environment Record within the 1 km study, of which 50 are within the proposed development site boundary, although only 21 of these survive. Additionally, the Historic Environment Record records 99 previous archaeological investigations or 'events' wholly or partially within the 1 km study area. However, none of are recorded as within the proposed development site.

3.6.28. A summary of heritage assets likely to be impacted by the post development is set out at table 17-5 of ES chapter 17 [APP-070]. No impacts were identified in terms of registered historic parks and gardens. Only one heritage asset listed within table 17-5 is identified as having high heritage value (Eston Nab Hillfort (SMR1011273)), In addition this table identified fourteen heritage assets of medium heritage value, fourteen at low heritage value and three at very low heritage value.

3.6.29. The ES chapter 17 [APP-070] sets out proposed development design and impact avoidance measures during its construction, operation and decommissioning phases; noting the Framework CEMP set out key measures to be employed during these phases (See ES chapter 17, sections 17.5, 17.6 and 17.7). The dDCO secures the submission of the CEMP by virtue of requirement 15 (CEMP) and a Written Scheme of Investigation (WSI) in relation to archaeology by virtue of requirement 13 (Archaeology).

3.6.30. In terms of permanent impacts, the applicant advised no designated heritage assets are located within the main site (Work No.1) as a result of it having been developed extensively since the late 19th century, as all traces of the breakwater, reclamation wall, jetty and tramway features that appeared on 19th century map evidence is likely to have been removed due to the site's industrial heritage. With no surviving remaining features within the main site the applicant concluded there were no archaeological interests and therefore there would be no impact and no effect on historic assets.

3.6.31. In terms of permanent impact on the remaining Work Nos., the applicant's assessment related to the magnitude of impact and the resulting effect/ significance are detailed in ES chapter 17 [APP-070] paragraphs 17.6.9 to 17.6.45 and are briefly summarised in the table below:

Table 2: Summary of magnitude of impact and the resulting effect/ significance, as relevant to relevant Work Nos.

Work No.	Magnitude of Impact	Effect/ Significance
Work No. 2 - Natural Gas Connection Corridor.	Medium.	Minor adverse (Not significant).
Work No. 3 - Electrical Connection Corridor,	Medium, in relation to remains at Coatham Ironworks and former reservoir.	Minor adverse (Not significant).
	Low, in relation to the line of the North Eastern Railway (Darlington section).	Minor adverse (Not significant).
Work No. 4 and 5 - Water and Waste Water Connection Corridors.	Medium, in relation to remains at Coatham Ironworks and former reservoir.	Minor adverse (Not significant).
Work No. 6 and 11 - H_2 Pipeline Corridor and Replacement Land	Low, in relation to the deserted mediaeval village of West Coatham.	Minor adverse (Not significant).
	Medium, in relation to World War II anti-landing glider posts	Minor adverse (Not significant).
	Medium, in relation to undated enclosure and boundary ditch is southeast of Cowpen Bewley (GS site 2).	Moderate adverse (Significant).
	Medium, in relation to Romano-British settlement.	Moderate adverse (Significant).
	Very low, in relation to field system (ridge and furrow).	Negligible (Not significant).
	Low, in relation to the truncation of ridge and furrows, field boundaries and 'important' hedgerows resulting in a slight loss in the ability to understand and appreciate the historical significance of the Cowpen Bewley Conservation Area.	Minor adverse (Not significant).
	The temporary removal of important hedgerows.	Minor adverse (Not significant).
Work No. 7 - CO_2 Export Corridor	Medium, in relation to remains at Coatham Ironworks and former reservoir.	Minor adverse (Not significant).
Work No. 8 - O_2 And Nitrogen Gas Connection Corridor	As Works Nos. 1 to 7 above.	As Works Nos. 1 to 7 above.

Work No. 9 - Temporary Construction Compounds (Temporary Construction and Laydown Areas)	No Permanent impacts to known or potential heritage assets.	-
Work No. 10 - Access and Highway Improvements	Low, in regard to works across a number of known assets, including an unnamed spoil heap (SMR5652), Lackenby Iron Works (SMR5659), Annealed Concrete works (SMR5654), a brick yard (SMR5653), the Mill Race drainage channel (SMR5716), the North Eastern Railway (Darlington section) (SMR5908), Redcar Iron Works (SMR5711), Coatham Iron Works (SMR5709), Redcar Jetty (SMR5636) and medieval field systems containing remains of ridge and furrow (SMR658).	Negligible (Not significant).

3.6.33. With regard to temporary impacts, the applicant states there are no heritage assets within or in the immediate vicinity of the proposed development site, with no impact on those located closest to the main site or other elements of the proposed development. It considers the proposed development would not introduce noticeable change within the setting of those heritage assets and activities would be obscured by intervening earthen bunds and urban landscapes. As a result, the applicant concludes there would be no impact to those heritage assets, resulting in no effect.

3.6.34. In terms of temporary impacts resulting from the H_2 Pipeline Corridor, the applicant considers this may result in a temporary impact on Cowpen Bewley Conservation Area, as it is possible that construction activities may be visible/ audible from within the core of the village. However, the applicant does not consider such temporary impact would affect the ability to appreciate the architectural qualities of its buildings and the historical relevance of its layout.

3.6.35. Additionally, the applicant considers any changes to the field boundaries and hedgerows that contribute to the significance of the conservation area, would be reinstated following construction. As such it considers the magnitude of impact resulting from the proposed development to be low, resulting in a temporary Minor (Adverse) effect,

3.6.36. In terms of the likely impact on more distant heritage assets resulting from the construction of the proposed development, the applicant states this phase of the proposed development would not result in impacts to the scheduled remains of Eston Nab Hillfort, Kirkleatham Conservation Area, Coatham Conservation Area, Seaton Carew Conservation Area, Yearby Conservation Area or Greatham Conservation Area.

3.6.37. Turning to heritage impact during the operational phase of the proposed development, the applicant argues there would be no additional physical impacts to

buried heritage assets during this phase. As such the magnitude of change to a heritage asset's setting would be in terms of physical presence, including components of the operational development such as aural intrusion into that setting.

3.6.38. As the pipelines would either be constructed below-ground or mounted on existing above ground racking, they would either not be visible or represent no change to the character of an area or to the setting of a heritage asset. Therefore, the applicant argues there would be no resultant impact on heritage assets during the operational phase resulting from the pipelines. In terms of the H_2 Production Facility, located on the main site, the applicant considers this would be the most visually prominent components of the operational development. It argues the main site is located on the edge of a heavily industrial area of Teesside; an area that has been occupied by industrial structures since the 19th century and which has also seen multiple changes as industries and technologies adapted and advanced. The presence of structures within the main site would represent a new building amongst the cluster of existing industrial buildings in this part of the Tees Valley. Whilst its presence would represent a change in views of this area, the change would not be incongruous with the area's existing character.

3.6.39. Through the use of mitigations, such as a lighting strategy, which forms part of the CEMP secured by Schedule 2, requirement 15 of the dDCO, the applicant argues the proposed development during operation would not be an impact on heritage assets during operation.

3.6.40. With regard to decommissioning, the applicant argues the impacts from associated activities would be temporary and similar to construction impacts. It considers these impacts would not be greater than those reported during construction and once decommissioning is complete, the removal of above ground structures may enhance the setting of heritage assets which would be beneficial. Additionally, the applicant is clear heritage impacts would be further considered at the time of decommissioning through a DEMP, which if made would be a requirement of the DCO (See Schedule 2 (requirement 28)).

3.6.41. Finally in terms of essential mitigations and enhancements, the applicant advises known heritage assets have been avoided by design (embedded mitigation). Where it has not been practicable to avoid archaeological heritage assets essential mitigation is secured through a programme of archaeological evaluation and mitigation, with a WSI (secured as part of the Framework CEMP (Schedule 2 requirement 15 of the dDCO) needing to be agreed by the relevant Planning Authorities.

3.6.42. Additionally, the applicant's Framework CEMP included the need to adopt a protocol to mitigate potential impacts to previously unknown archaeological assets that may be encountered during construction. The protocol requires procedures for the reporting, protection and management such discoveries. With the adoption of such a protocol any unexpected archaeological remains discovered would be safeguarded during construction.

3.6.43. In terms of the operational phase of the proposed development, no significant adverse heritage effects were identified by the applicant and as such no essential mitigation measures are proposed by it. In terms of decommissioning, the applicant assumes there would be no additional impacts to buried cultural heritage assets during this phase that have not already been mitigated during the construction phase. As such, it considers there to be no need for essential mitigation measures arising from the decommissioning phase.

3.6.44. A summary of the residual effects on cultural heritage and their significance is provided in the ES chapter 17 [APP-070] at Table 17-6. In conclusion and based upon the worst-case scenario prior to essential mitigation, the applicant considers a Moderate Adverse (Significant) effect has been identified on archaeological remains of an undated enclosure (GS Site 2) and those associated with Romano-British settlement (GS Site 3) within the H_2 Pipeline Corridor (Work No. 6).

3.6.45. Irrespective of the above, with the mitigation measures, described in section 17.7 of the ES chapter 17 [APP-070], it considers a programme of archaeological evaluation and excavation in advance of construction, would ensure that the significant effect is offset to minimise residual significant effects that may occur, such that they would not be significant. The details of the evaluation and mitigation are secured through a WSI and Framework CEMP, as part of the dDCO (see Schedule 2, requirement 15 of the dDCO). With the exception of the above, the applicant has not identified other significant adverse heritage effects resulting from the proposed development.

VIEWS OF INTERESTED PARTIES

3.6.46. Historic England in its RR [RR-020] considered *"…the impact of this proposal will be minimal."*. However, it qualified its position stating: *"There may be other historic environment issues relevant to this application, but we consider that it is for others, particularly the Local Authorities, and their conservation and archaeology advisors, who are best equipped to provide advice on these.".* In its RR responding to consultation on CR1 [RR-042], Historic England advised it understood *"…changes relates to the proposed provision of additional land to facilitate the inclusion of an existing natural gas pipeline within the Order limits of the DCO Application.*". On this basis it confirmed *"…we have no concerns with the proposed additional land required.".*

3.6.47. LIRs were received from two Local Authorities, RCBC [REP1-048] and STBC [REP1-045].

3.6.48. In terms of heritage assets RCBC in its LIR [REP1-048] highlighted local plan policies SD4 (General Development Principles), HE1 (Conservation Areas) and HE2 (Heritage Assets), confirming in regard to:

- SD4(c) the proposed development *"…will not result in unacceptable loss or significant adverse impacts on heritage assets…"* (paragraph 7.12).
- SD4(o) *"based on the ES assessment the development can respect and enhance the historic environment and both designated and non-designated heritage designations…"* (Ibid).
- HE1 and HE2 *"no conflicts arise and the conclusions of the ES in this respect are acceptable."* (paragraph 7.26)

3.6.49. In terms of the South Tees Area SPD (May 2018) RCBC's LIR [REP1-048] confirmed the DCO proposal is consistent with *"Development Principle STDC1 (Regeneration Priorities) in that it meets…"* a number of objectives including to *"…support the protection of heritage assets and historic environment…"* (paragraph 8.5).

3.6.50. With regard to heritage assets STBC in its LIR [REP1-048] focused on Cowpen Bewley in relation to the connection corridors being close to the Conservation Area and a number of listed buildings. It also referenced areas of archaeological importance and two historic hedgerows.

3.6.51. STBC noted the ES considered no LSEs on cultural heritage being anticipated as a consequence of the construction and operation (including maintenance) and decommissioning of the proposed development. It also noted mitigation measures proposed by the applicant, including a programme of archaeological evaluation and excavation, with details and any mitigation to be agreed with the Local Planning Authority and Tees Archaeology. Furthermore, it noted implementation would be secured through a WSI and the Framework CEMP.

3.6.52. On that basis STBC confirmed it had no objections to the proposal from a cultural heritage aspect but deferred to Tees Archaeology for specialist archaeological comment. It should be noted that Tees Archaeology did not engage directly with the ExA but advised STBC, as the County Archaeologist, when STBC responded to ExQ1 [AS-033].

3.6.53. The Marine Management Organisation (MMO) made no comments in respect of marine heritage assets in its RR [RR-021] or in its Written Representation submitted at DL1 [REP1-034]. Indeed other than noting Historic England's RR [RR-020] in its Written Representation [REP1-034] it makes no other reference to marine heritage in that submission.

3.6.54. No other IP raised cultural heritage during the examination.

THE EXAMINATION

3.6.55. Historic England's position in regard to cultural heritage is set out above. The ExA noted these comments and considers them to be important and relevant in the consideration of cultural heritage.

3.6.56. The ExA also notes the applicant's SoCG completed with DCC [REP4-018] agrees the heritage assessment and mitigation measures as set out in the ES are appropriate and proportionate. With regard to HBC, the applicant's completed SoCG with HBC [REP8-025] notes the assessment of effects on the historic environment as a "Matter to be agreed.". However, the applicant also points out the SoCG notes HBC's position as set out in its consultation response on 23 October 2023, which at that point in time confirmed HBC considered *"…the proposed mitigation measures set out in Chapter 17 are reasonable, though they may need to be reviewed once the assessment within the ES has been completed."*. The ExA notes HBC did not engage with it further during the examination.

3.6.57. In addition to the above, the ExA also notes the MMO made no comments in respect of heritage assets, including in relation to marine heritage, in its RR [RR-021] or its Written Representation [REP1-034], other than in the latter document the MMO noted Historic England RR [RR-020]. Additionally the ExA notes no reference to the historic environment was made in the applicant's completed SoCG with the MMO [REP7-031].

3.6.58. Pursuing the matter of cultural heritage further, the ExA primarily examined this subject through its ExQ1 [PD-008], together with further information sought under Rule 17 of the EPR ([PD-020] and [PD-023]). The applicant responded to the ExA's ExQ1 on cultural heritage in its DL2 submission [REP2-025], satisfying the ExA in regard to the applicant's 'assumptions and limitations'; and securing mitigation on cultural heritage through requirements in the dDCO. However, whilst agreeing to many of the applicants stated positions, as set out in ES chapter 17 [APP-070] regarding cultural heritage, STBC in response to ExQ1 [AS-033] set out a number of matters in which further clarification or information regarding archaeology was

sought. This included in relation alternative ways of securing cultural heritage mitigation and wording within the dDCO in regard to 'Permitted Preliminary Works' and whether there was a further need for archaeological monitoring in selected areas of higher archaeological potential.

3.6.59. The applicant responded to STBC's response to ExQ1 at DL3 in [REP3-006] acknowledging Tees Archaeology's comments concerning the non-designated World War II anti-landing glider posts and ridge and furrow surrounding Cowpen Bewley advising mitigation measures to protect heritage assets are secured via requirements 13 (Archaeology) and 15 (CEMP) of the dDCO (Current version [REP7a-003] (APV)). Note – Only the APV of the dDCO is referred to in regard to this matter due to the fact the archaeology in question is located within the Cowpen Bewley arm of the H_2 Pipeline Corridor and the matter falls away if that arm is severed from the remainder of that corridor).

3.6.60. In addition, the applicant argued an Archaeological Management Strategy is not required, as appropriate measures sufficient to secure cultural heritage mitigation and protect the archaeological and cultural heritage assets in this location are already secured in the above mentioned requirements in the dDCO.

3.6.61. The applicant also confirmed the definition of 'permitted preliminary works', as drafted in the dDCO (Current version [REP7a-003] (APV)), specifically includes 'archaeological investigations', which inherently covers intrusive archaeological surveys. The applicant stressed archaeological matters would be addressed through of a programme of archaeological evaluation and mitigation to be set out in site-specific WSIs, which are to be prepared and approved by the relevant Planning Authorities prior to construction.

3.6.62. As noted above, the position of both RCBC and STBC are set out in the LIRs. These positions were further confirmed in the applicant's SoCG completed with both RCBC [REP5-057] and STBC [REP8-027]. RCBC confirmed it had *"…no comments to raise with regard to the assessment of the impact of the proposed development on the historic environment"* and STBC repeated the position as set out in its LIR. However, STBC also noted that the applicant had corresponded with it confirming the results of the trial trench investigations with Tees Archaeology and advising a suitable programme of archaeological mitigation was discussed in a series of email exchanges in January 2025. STBC also agreed:

- Discussions regarding trail trenching were ongoing and that trial trenching was undertaken *"…on 18 November 2024 and a County Archaeologist from Tees Archaeology visited the Site to inspect the excavation of the trial pit on 19 November where it was verbally communicated that nothing of archaeological significance was discovered. A report of the trial trenching is being prepared and will be shared with Tees Archaeology.".*
- *"Following the provision of the results of the Trial Trenching to Tees Archaeology, a suitable programme of archaeological mitigation was discussed and agreed between the two parties. The Framework CEMP has been updated at DL7 to capture this, and the matter is now agreed between the two parties."*

3.6.63. In addition to the above, the applicant at DL7 submitted a technical note regarding cultural heritage along with CR2 [REP7-013], were it suggests a suitable programme of archaeological mitigation has been agreed. However, the ExA sought further information under Rule 17 of the EPR [PD-020] in this regard from both the applicant and STBC/ Tees Archaeology. Neither STBC, nor Tees Archaeology responded to this request for further information, but the applicant provided copies

of the January e-mail exchanges referred to above in its DL7a submission [REP7a-041] (Appendix A).

3.6.64. The ExA sought further information in [PD-023] regarding this matter as whilst Tees Archaeology appeared to be satisfied with the proposed mitigation measures for the area within the Cowpen Bewley arm of the H_2 Pipeline Corridor, referred to by them as the 'teacup handle', it also appeared to seek other information, including in relation to the 'western corner' near Venator and the need to remove or minimise impacts on the anti-glider posts. It should be noted the applicant refers to this area of land as the 'coffee cup handle' and the ExA uses that reference, where relevant, throughout this report. Additionally, the 'coffee cup handle' can be seen on original Land Plans [APP-008] (Sheet 3).

3.6.65. The applicant responded to the ExA's request for further information at DL9 [AS-054] advising:

- It had sought to clarify the mitigation requirements for the glider posts, with Tees Archaeology providing a plan in confidence of the location of the glider posts shared in confidence to assist the design but noting that the figure could not be reproduced. The applicant confirmed it had ascertained the proposed route of the H_2 pipeline could be designed to avoid impacting any glider posts and advised the Framework CEMP at Table 8-10 was updated at DL7 [REP7-009] (Current APV ([REP8-003])) to avoid impacts to these assets.
- The plan to mitigate the impacts through avoidance were communicated with the Tees Archaeologist on 04/02/2025 and the matter was resolved, as outlined in the applicant's completed SoCG with STBC [REP8-027].
- The area of proposed mitigation planting north of Cowpen Bewley would be subject to a programme of archaeological trial trenching, pursuant to requirement 13 of the draft DCO (Current version [REP7a-003] (APV)), which would determine the design of the mitigation planting and/ or archaeological recording that may be required prior to construction.

3.6.66. As such the ExA is satisfied appropriate mitigation would be secured in terms of this matter through the dDCO (Current version [REP7a-003] (APV)).

3.6.67. Taking all important and relevant heritage asset matters into account, the ExA has given careful consideration to the impact of the development on heritage assets, especially in relation to the Infrastructure Planning (Decisions) Regulations 2010 (Decisions Regulations) and relevant policy. NPS EN-1 has provided the basis for its consideration, supported by the relevant parts of NPS EN-4, NPS EN-5 and the relevant parts of the NPPF and the Local Development Plan.

3.6.68. The ExA recognise the importance of conserving both designated and non-designated heritage assets, however in the present case it is mindful that the proposed development would be seen within the existing industrial context with large industrial buildings, stacks, industrial pipe corridors and associated infrastructure that is already prominent in the skyline. Whilst the proposed development would result in the erection of tall structures these would not, in the ExA's opinion, be discernibly or significantly different from those that exist in the surrounding area or in relation to the size and scale of other consented developments, including any made DCO such as NZT.

3.6.69. Whilst the proposed development would be visible from designated and non-designated heritage assets; including, but not limited to:

- Designated heritage assets- Eston Nab Hill Fort; Marsh Farmhouse and Farm Cottage; the Garden Wall South of Marsh Farmhouse; the Barn and Stable Circa 10 Metres North West of Marsh Farmhouse; Westfield House, 1-20 Dormans Crescent; Conservation Areas in the vicinity of the proposed development including Kirkleatham, Coatham, Seaton Carew, Cowpen Bewley, Yearby and Greatham.
- Non- designated heritage assets - the field system (ridge and furrow); the moat of Belasis Manor House; Cowpen Marsh and Saltholme sea defences; the Coatham land reclamation wall; the Normanby Jetty to South Gare land reclamation wall; Coatham Ironworks; Redcar Ironworks; Decoy Ponds; the North Eastern Railway (Darlington Section); Mill Race; Concrete anti landing glider posts; Warrenby Anti-tank blocks; GS Site 2; and GS Site 3,

the new structures, including the above ground elements of the H_2 pipeline corridor and the AGIs, would be seen within the existing industrial context with large industrial buildings, stacks, industrial pipe corridors, and associated infrastructure already prominent in the skyline. When considering the essential mitigations identified by the applicant, which is to be secured through requirement 13 (Archaeology) and requirement 15 (CEMP) of the dDCO, the ExA considers the proposed development would have a negligible to minor adverse (not significant) impact on the designated and non-designated heritage assets.

3.6.70. As such, the proposed development would result in less than substantial harm to the significance of designated heritage assets, albeit that harm ranges from negligible to minor adverse. This harm needs to be weighed in terms of the scale of any harm or loss and the significance of any of the designated heritage assets against any public benefits arising from the proposed development.

3.6.71. In terms of non-designated heritage assets, the ExA considers the proposed development would have a negligible to minor adverse effect on these heritage assets and a balanced judgement as to the scale of any harm or loss and the significance on these and other non-designated heritage assets needs to be applied.

3.6.72. In terms of the accepted CR1 [CR1-044] and CR2 [REP7-011], the ExA sees no reason to disagree with the conclusions reached within those documents that no changes to the conclusions of the assessment of likely significant residual effects on cultural heritage would occur, as presented in ES chapter 17 [APP-070].

CUMULATIVE AND COMBINED EFFECTS

3.6.73. The applicant's cumulative and combined effects assessment [APP-076] was updated during the course of the examination [REP5-015]. For cumulative effects, the applicant incorporated additional projects into its shortlist in response to IP requests [REP5-015] (paragraph 23.5.124). All shortlisted developments scoped in are considered to have a negligible cumulative effect during construction and operation. Historic England had no substantive comments on the submissions ([RR-020], [RR-042] or [REP8-043]), whilst the local authorities had no specific concerns in respect of cumulative effects at the close of the examination (RCBC [REP5-057], HBC [REP8-025] and STBC [REP8-027]).

3.6.74. The ExA considers the cumulative and combined effects assessment to have properly identified the risk of such effects and is satisfied the applicant's mitigation measures as secured through requirement 13 (Archaeology) and requirement 15 (CEMP) of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV) would work to mitigate that risk to an appropriate level. The ExA is satisfied in regard to the

applicant's cumulative and combined effects assessment and has no concerns regarding the residual cumulative effects in this instance.

CONCLUSIONS

3.6.75. The ExA has found above that the applicant has adequately assessed the significance of the heritage assets affected by the proposed development and that sufficient information to reach a conclusion on the nature, significance and value of identified designated and non-designated heritage assets has been provided. The ExA has also found the necessary information to allow sufficient understanding of the contribution that setting makes to their significance and the implications of the proposed development for those settings has also been provided so that the extent of the impact can be understood. As such the ExA finds the application meets the requirements of NPS EN-1, NPS EN-4 and NPS EN-5 in that regard.

3.6.76. Furthermore, the ExA is clear the proposed development would result in less than substantial harm on designated heritage assets, with harm to non-designated heritage assets also occurring. These harms are weighed against the public benefits of the proposed development at section 5.3 of this report, in the planning balance, where we conclude on the cultural heritage effects of the proposed development.

3.7. ECOLOGY AND NATURE CONSERVATION, INCLUDING ORNITHOLOGY AND MARINE ECOLOGY

INTRODUCTION

3.7.1. Ecology and nature conservation, including ornithology and marine ecology, were listed in the IAPI ([PD-005] at Annex C). Such matters include the potential effects on protected species and habitats in the terrestrial, aquatic and marine environments, and the adequacy and security of proposed mitigation, monitoring and management to ensure protection of these, as well as opportunities for the conservation and enhancement of biodiversity.

3.7.2. Matters relating to Special Areas of Conservation (SAC), SPA and Ramsar Sites are assessed in the Habitats Regulations Assessment (HRA) provided in chapter 5 and not repeated here in order to avoid duplication.

POLICY BACKGROUND

3.7.3. The Overarching National Planning Policy Statement for Energy (NPS EN-1) highlights the principal importance for the conservation of biodiversity, including in regard to the protection and enhancement of habitats and species (paragraph 5.4.16). Indeed, paragraphs 5.4.17 to 5.4.24 advise applicants what is required to be included in its ES, with paragraphs 5.4.25 to 5.4.31 setting out what is expected in terms of applicants undertaking a HRA. Additionally, paragraphs 5.4.33 and 5.4.34 are relevant to the applicant's assessment concerning the protection and enhancement of habitats and species.

3.7.4. Paragraph 5.4.35 of NPS EN-1 states that applicants should include appropriate avoidance, mitigation, compensation and enhancement measures as an integral part of the proposed development. In particular, it advises the applicant should demonstrate that:

- during construction, they will seek to ensure that activities will be confined to the minimum areas required for the works.
- the timing of construction has been planned to avoid or limit disturbance.
- during construction and operation best practice will be followed to ensure that risk of disturbance or damage to species or habitats is minimised, including as a consequence of transport access arrangements.
- habitats will, where practicable, be restored after construction works have finished.
- opportunities will be taken to enhance existing habitats rather than replace them, and where practicable, create new habitats of value within the site landscaping proposals. Where habitat creation is required as mitigation, compensation, or enhancement, the location and quality will be of key importance. In this regard habitat creation should be focused on areas where the most ecological and ecosystems benefits can be realised.
- mitigations required as a result of legal protection of habitats or species will be complied with.

3.7.5. NPS EN-1 is clear when making decisions the SoS should ensure that appropriate weight is attached to designated sites of international, national, and local importance; protected species; habitats and other species of principal importance for the conservation of biodiversity; and to biodiversity and geological interests within the wider environment (paragraph 5.4.48).

3.7.6. Indeed paragraph 5.4.54 of NPS EN-1 is clear the SoS should ensure that species and habitats identified as being of importance for the conservation of biodiversity are protected from the adverse effects of development by using requirements, planning obligations, or licence conditions where appropriate. Additionally, paragraph 5.4.55 setting out further information in this regard, including setting out consent should be refused where harm to a protected species and relevant habitat would result, unless there is an overriding public interest and the other relevant legal tests are met.

3.7.7. In terms of SSSIs, NPS EN-1 at paragraph 5.4.7 advises where a SSSI or its features are not internationally designated they should be given a high degree of protection. Indeed paragraph 5.4.8 of the NPS advises development on land within or outside a SSSI, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted, with the exception of where the benefits (including need) of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of SSSIs.

3.7.8. With reference to Biodiversity Net Gain (BNG) section 4.6 of NPS EN-1 advises not only should projects avoid, mitigate and compensate harms, following the mitigation hierarchy, but also consider whether there are opportunities for enhancements, with biodiversity net gain being an essential component of environmental net gain (paragraphs 4.6.1 and 4.6.2). However, must be noted that s99 and Schedule 15 of the Environment Act 2021, which makes provision for biodiversity gain in relation to development consent for NSIPs, are not yet in force.

3.7.9. NPS EN-4 for Natural Gas Supply Infrastructure and Gas and Oil Pipelines at section 2.21 considers the effects of gas pipelines on biodiversity. It notes that with mitigation a pipeline can affect both landscape, visual amenity and ecology. With regard to biodiversity it is analysed that often pipelines can have effects on specific

landscape elements within or adjacent to the pipeline route such as grasslands, field boundaries, trees, woodlands, and watercourses.

3.7.10. Paragraphs 2.21.30 and 2.21.31 of NPS EN-4 explains the ES must include an assessment of the biodiversity and landscape and visual effects of the proposed route and of the main alternative routes considered. It also sets out the application should also include proposals for reinstatement of the pipeline route as close to its original state as possible and take into account any requirements for agreements with the landowner to access areas for aftercare and management work.

3.7.11. In terms of decision making NPS EN-4 states the SoS should follow the principles for decision making set out in sections 5.4 (Biodiversity and Geological Conservation) and 5.10 (Landscape and Visual) of NPS EN-1 (paragraph 2.23.3).

3.7.12. NPS EN-5 for Electricity Networks Infrastructure at section 2.9 considers the effects that electricity network infrastructure can have on biodiversity, especially birds. Paragraph 2.9.6 requires the applicant to consider any such possible impacts, particularly on feeding and hunting grounds, migration corridors and breeding grounds.

3.7.13. In terms of the MPS, this is referred to above in section 2.3 of this report. It provides a framework for taking decisions affecting the marine environment, which includes the tidal River Tees. Policies NE-BIO-1 to NE-BIO-3 of the NEMP seek to ensure proposals enhance the distribution of priority habitats and priority species; enhance or facilitate native species or habitat adaptation or connectivity, or native species migration; and conserve, restore or enhance coastal habitats.

3.7.14. Additionally, Policy NE-MPA-4 of the NEMP states that proposals that could have significant impacts on the distribution of priority habitats and species must demonstrate that they would avoid, minimise and mitigate adverse impacts so that they are no longer significant. Whilst Policies NE-INNS-1 and NE-INNS-2 are relevant policies on Invasive Non-Native Species (INNS), disturbance, underwater noise and cumulative effects.

3.7.15. The applicant's ES Appendix 7A (Marine Plan Policy Assessment) [APP-189], submitted in accordance with NPS EN-1 (paragraph 4.5.8), has not identified any conflict with relevant marine policies in the MPS or with Policies NE-BIO-1 to NE-BIO-3, NE-MPA-4, NE-INNS-1 or NE-INNS-2.

3.7.16. Additional policy guidance can be found in the NPPF which espouses a commitment to improving biodiversity, whilst minimising impacts on it (paragraph 187). It is also recognised that policies in the NPPF may have relevance to the development of such projects. However, it should be noted that paragraph 5 makes it clear that the NPPF does not set out policies for NSIPs.

3.7.17. Overarching environmental objectives of the NPPF seek to protect and enhance our natural environment, minimising impacts on and improving biodiversity and securing measurable net gains for biodiversity (paragraph 8c), whilst seeking to prevent the loss of irreplaceable habitats (paragraph 193c). It also espouses a commitment to improving biodiversity, minimising impacts on it and supports development that integrates improved biodiversity as part of its design (paragraph 193d).

THE APPLICANT'S CASE

3.7.18. ES chapter 12 [APP-064] identifies the potential impacts and effects on terrestrial and aquatic (freshwater, i.e. above Mean High Water Springs (MHWS)) ecology. The potential effects of the proposed development on biodiversity and ecology are assessed in detail within three chapters. These are ES chapter 12: Ecology and Nature Conservation, including aquatic (freshwater) ecology [APP-064], ES chapter 13: Ornithology [APP-065], and ES chapter 14: Marine Ecology [APP-067]. The applicant has also submitted a Report to Inform Habitats Regulations Assessment [REP6a-010]. Those matters related to the HRA are considered in chapter 4 of this report.

3.7.19. These above-mentioned chapters were supported by figures and appendices containing surveys, baseline data and detailed appraisals and these are detailed in the sections below entitled 'Terrestrial and Aquatic Ecology', Marine Ecology, and Ornithology, as relevant to those ES chapters.

Terrestrial and Aquatic Ecology

3.7.20. In terms of Terrestrial and Aquatic Ecology ES chapter 12 [APP-064] the assessment has been undertaken in accordance with best practice guidance published by the Chartered Institute of Ecology and Environmental Management (CIEEM, 2019). It is supported by a Phase 1 Habitat and Botanical Survey Report (Appendix 12A) - [APP-201]; a Great Crested Newt Survey Report (Appendix 12B) - [APP-202]; a Bat Survey Report (Appendix 12C) [APP-203]; a Reptile Survey Report (Appendix 12D) [APP-204]; an Invertebrate Survey Report (Appendix 12E) [APP-205]; a Water Vole and Otter Survey Report (Appendix 12F) [APP-206]; and an Aquatic Ecology Survey Report (Appendix 12F) [APP-207].

3.7.21. Of the nearby statutory sites there are three SPAs, three SACs and two Ramsar sites within 15km of the proposed development site. Additionally, there are 20 SSSIs within 15km of the proposed development, three National Nature Reserve (NNR) and four Local Nature Reserve (LNR) within 2km of the development site. Details of statutory designated sites, including the reason for designation, are summarised in Table 12-3 of ES chapter 12 [APP-064] and the locations in relation to the proposed development site are shown in figure 12-1 [APP-145].

3.7.22. In addition to the above there are 20 non-statutory designated sites of ecological importance within 2km of the proposed development site. These are all Local Wildlife Sites (LWS) and are summarised in Table 12-3 of ES chapter 12 [APP-064].

3.7.23. An Extended Phase I Habitat Survey was undertaken of all of the land within the proposed development site and can be found at Appendix 12A - Phase 1 Habitat and Botanical Survey Report [APP-201]. On the main site, the habitats were identified as bare ground, ephemeral/ short perennial vegetation, dense scrub, amenity grassland, hard standing and buildings. In the connection corridors the habitats were identified as broadleaved plantation woodland, dense and scattered scrub, hedgerows, semi-improved neutral grassland, poor semi-improved neutral grassland, improved grassland, amenity grassland, ephemeral/ short perennial vegetation, arable, running water, standing water, marshy grassland, swamp, saltmarsh, mudflats, buildings and hardstanding.

3.7.24. In addition to the above the Extended Phase I Habitat Survey [APP-201] undertook species-specific surveys to obtain baseline information to determine the presence, or otherwise, of protected and notable species within the proposed development site. These included surveys for terrestrial invertebrates, amphibians, reptiles, fish, bats, water vole, otter, badger, brown hare, hedgehog, aquatic macroinvertebrates, aquatic macrophytes and INNS.

3.7.25. The applicant sets out further details in regard to both these habitats and their importance, as well as the protected and notable species in section 12.4 of ES chapter 12 [APP-064]. In addition a summary of the baseline ecology conditions and the potential for to be affected by the proposed development in the absence of embedded and additional mitigation is presented in Table 12-5 of ES chapter 12 [APP-064]. In terms of Statutory Designated Sites this table shows the following ecological features were taken forward for assessment and the applicants reasoning for doing so:

- Teesmouth and Cleveland Coast SPA, as there is potential for loss of functionally linked land, noise and visual disturbance of qualifying bird species, atmospheric pollution (dust and nitrogen), and changes in water quality to affect the designated site (Note: This matter is addressed in chapter 4 of this report).
- Teesmouth and Cleveland Coast Ramsar, as there is potential for direct habitat loss (in the event of Horizontal Directional Drilling (HDD) collapse only) and indirect habitat loss, loss of functionally linked land, noise and visual disturbance of qualifying bird species, atmospheric pollution (dust and nutrient nitrogen), and changes in water quality to affect the designated site. (Note: These matters are addressed in other sections of chapter 3 and within chapter 4 of this report).
- Teesmouth and Cleveland Coast SSSI, which is adjacent to the connection corridors and 5 miles west of the main site, due to the potential for indirect effects upon habitats, noise and visual disturbance of SPA birds, atmospheric pollution, and changes in water quality to affect the SSSI.
- Teesmouth NNR, which is within/ overlapping the main site, with the potential for direct and indirect effects on habitats, noise and visual disturbance of birds / seals, atmospheric pollution, and changes in water quality to affect the designated site.
- Cowpen Bewley Woodland Country Park LNR, which overlaps the proposed development site and potential for direct habitat loss if the Option A H_2 pipeline routeing is progressed.
- Charlton's Pond LNR, Billingham Beck Valley LNR and Seaton Dunes and Common LNR in regard to potential air quality effects.

3.7.26. During construction, the applicant points out demolition and site remediation works are taking place within the main site and bare ground is present where buildings and structures have been removed, and in the absence of development, these areas may become colonised with vegetation. Semi-natural habitats surrounding the main site, within the proposed development are unlikely to change over the short term, with existing habitats are likely to largely continue as present. Therefore, the applicant considers habitats and species present are unlikely to undergo significant change prior to proposed development construction.

3.7.27. The applicant anticipated that managed habitats within the proposed development would not significantly change in habitat extent, type or species composition if they continue to be managed. It also considers that semi-natural and natural habitats were unlikely to change significantly, but changes in the distribution of some species would be likely to occur as habitats develop, but over the short term any such changes would be relatively minor.

3.7.28. During operation, the applicant considered baseline ecological conditions at the start of operation would not differ substantively from those during construction, although it notes change is possible over the anticipated operational life of the proposed development. However, it considers there are no grounds to expect any marked change in local land management practice and the habitats by the time of commencement of operations.

3.7.29. Additionally the applicant notes it is difficult to be certain how the nature conservation value of these designations may change over the medium to long term operational period, and this would ultimately depend on long-term management regimes but considers land would be released for new development in the current and former industrial land within Teesworks and surrounding area in accordance with existing local plans and policy for regeneration of the South Tees Area.

3.7.30. As such the applicant notes the extent of ecologically valuable open mosaic habitat and grassland habitats in these areas may decrease as a result of such development and therefore the relative nature conservation value of remaining areas of semi-natural habitat may as a result increase over time. However, the applicant considers through the implementation of planning policy and legal requirements, is likely to result in future adjacent developments incorporate features of value for biodiversity, resulting in small to moderate improvements in the future baseline over the operational life of the proposed development.

3.7.31. In terms of decommissioning the applicant considers this would be strongly influenced by future land-use and nature conservation regimes affecting adjacent land. It notes the balance between adverse effects and beneficial habitat improvements is unknown and this limits the assumptions that can be made. However, it states the likely Zone of Influence (ZoI) of decommissioning would be much smaller than the previous phases of the development and likely only to involve the removal of above ground infrastructure within the built footprint of the proposed development. It also stresses ecological surveys would be commissioned, as appropriate, to inform the scope of the decommissioning works and such decommissioning activities would be conducted in accordance with the appropriate guidance and legislation at the time of the proposed developments closure.

3.7.32. In regard to impact avoidance measures the applicant has advise these have been or would be incorporated into the design or are already standard construction or operational practices. Such embedded mitigation is to be incorporated in all phases of the proposed development.

3.7.33. The applicant advises in terms of construction, it has sought to avoid nature conservation designations as far as reasonably practicable in the design of the proposed development. It states it has continuously refined routing options to avoid or minimise adverse environmental effects, including those on features of ecological importance within and around Greatham Creek. These areas include statutory and non-statutory designated sites and habitats of principal importance.

3.7.34. In terms of minimise disturbance to species and habitats the applicant states where possible it has routed the connection corridors utilise existing infrastructure and established pipeline corridors north and south of the River Tees. This includes using the extensive existing network of pipeline racks, to minimise excavations and construction activities.

3.7.35. Where the H_2 Pipeline crosses watercourses, such as the River Tees and Greatham Creek, the applicant has committed to using trenchless construction methods to avoid disturbance within the channel and harm to bankside habitats. The applicant advises trenchless technologies would be used where possible to minimise effects on habitats and species, including in relation to other connection corridors where crossings or new infrastructure are required.

3.7.36. The applicant has set out the key embedded measures within its framework CEMP ([REP8-003] APV/ [REP8-042] WCBAV) with those measures to be secured in a

Final CEMP secured by requirement 15 (CEMP) of the dDCO. In addition, the applicant has confirmed an Environmental or Ecological Clerk of Works (ECoW) would be present during proposed development construction as appropriate to supervise and instruct implementation of impact avoidance commitments. This is as detailed in the Outline Landscape and Biodiversity Management Plan (OLBMP).

3.7.37. During operation, the applicant advises the H_2 Production Facility would require an EP and would comply with this under the Environmental Permitting (England and Wales) Regulations 2016. Furthermore, the applicant points out the proposed development would be operated in line with appropriate standards, whilst the operator would implement and maintain an environment management system that would be attested to International Standards Organisation (ISO) 14001 (International Organisation for Standardisation, 2015).

3.7.38. In terms of air quality impacts on designated sites, the applicant modelled theses from the H_2 Production Facility alone, and in combination with other known cumulative plans and projects and set out its findings in chapter 8 (Air Quality) [APP-060], with the impacts on international wildlife sites presented in the Report to Inform Appropriate Assessment [REP6a-010]. In summary, the applicant found no significant air quality effects were expected on any international wildlife site. Note issues related to HRA are dealt with in chapter 4 of this report).

3.7.39. With regard to impacts on Teesmouth & Cleveland Coast SSSI, the applicant confirms this designation is for its calcareous dune habitats in addition to its bird interest. The applicant's assessment confirms impacts on bird interest are identical to that for the Teesmouth & Cleveland Coast SPA and Ramsar site and reaches a conclusion of no likely significant effect for the same reasons.

3.7.40. The applicant states impacts on the SSSI dune habitat at Coatham Dunes have been modelled both alone and in combination with other projects and plans and notes whilst the '1% of the critical level' screening threshold for NO_X is exceeded, the predicted environmental concentration is not forecast to exceed the critical level for NO_X even when the proposed development is considered 'in combination' with other projects and plans. Using a critical load of 10 kilograms of Nitrogen, per hectare, per year (kgN/ha/yr), as the Teesmouth & Cleveland Coast are calcareous dunes, the modelling shows nitrogen deposition from the proposed development does not exceed 1% of the critical load at any location. Furthermore, the maximum PC of the proposed development is 0.06 kgN/ha/yr at Coatham Dunes/ Sands (receptors OE_1, OE_2 and OE_6) which is 0.6% of the critical load of 10 kgN/ha/yr.

3.7.41. Irrespective of this, at receptors OE_1, OE_2, OE_3, OE_6 (Coatham Sands/Dunes) and OE_5 (North Gare Sands) the 'in combination' nitrogen deposition has been noted as exceeding 1% of the 10 kgN/ha/yr critical load for calcareous dunes. The predicted environmental concentration would also exceed the critical load at these five locations being a maximum of 12.99 kgN/ha/yr at Coatham Sands/Dunes and 13.89 kgN/ha/yr at North Gare Sands. This is due to the fact that current nitrogen deposition exceeds the critical load. However, the applicant points out the SSSI was designated in 2015 when the background nitrogen dose to short vegetation according to APIS (Air Pollution Information System) was 13.07 to 13.53 kgN/ha/yr at Coatham Sands/Dunes and North Gare Sands.

3.7.42. The applicant argues APIS (Air Pollution Information System) shows that in the years prior to 2015 (prior to designation) the background nitrogen deposition dose to

short vegetation was higher; for example being 14.69 to 14.77 kgN/ha/yr in 2003 at Coatham Sands/Dunes and North Gare Sands. It points out that the calcareous dune habitat has therefore developed and persisted in close proximity to an operational steel works and other industrial facilities when nitrogen deposition rates were considerably higher than the lower critical load of 10 kgN/ha/yr, or than is forecast to be the case under the 'in combination' assessment (13.89 kgN/ha/yr maximum). The applicant argues since total nitrogen deposition is forecast to remain on an improving trend even when growth is considered 'in combination' and would therefore remain below historic nitrogen deposition rates under which the habitat in question developed. As such it considers no significant effect on the SSSI is expected.

3.7.43. The applicant modelled nitrogen deposition impacts at other SSSIs, but in all cases found the effect of the proposed development to be imperceptible with nitrogen deposition. It also modelled the impacts on Eston Pumping Station LWS but these fell well below the 1% of the critical load criterion being a maximum of 0.01 kgN/ha/yr (0.1% of the critical load) and considered not significant.

3.7.44. In terms of decommissioning the applicant assesses the impacts to be limited and the same or similar to the construction impacts. It proposes a DEMP that would consider the potential environmental risks and contain guidance on how those risks can be removed, mitigated or managed. The applicant advises the DEMP would also include details of how ecology should be managed at the proposed development site during decommissioning and demolition works. The DEMP is to be secured by requirement 28 (Decommissioning) of the dDCO.

3.7.45. The likely impacts and effects of the proposed development during construction, operation and decommissioning respectively on relevant ecological features in the absence of embedded and additional mitigation are set out in Tables 12-6 to 12-8 of ES chapter 12 [APP-064]. However, Tables 12-9, 12-10 and 12-11 of ES chapter 12 [APP-064] provide a summary of residual effects during construction, operation and decommissioning of the proposed development.

3.7.46. The proposed and the residual effect/ significance with the mitigation and show all potential effects have reduced with mitigation, with the majority of residual effects being categorised as Not Significant (Negligible). The applicant argues this indicates the proposed mitigation measures, which includes enhancement measures embedded in the design of the development and those outlined in the framework CEMP ([REP8-003] APV/ [REP8-042] WCBAV) and as secured through requirement 15 (CEMP) and requirement 28 (Decommissioning) of the dDCO, are expected to address and minimise adverse impacts.

Marine Ecology

3.7.47. ES chapter 14 [APP-067] identifies the potential impacts and effects on marine ecology during the construction, operation and decommissioning phases of the proposed development. The marine environment is defined as any area seaward of the MHWS mark of any tidally influenced water body, with terrestrial and aquatic designations, habitats, and species located above MHWS considered as part of ES chapter 12 [APP-064] and not as part of marine ecology. The applicant states it assessment of marine ecology, based on a study area defined by a ZoI of 10 km, has been undertaken in accordance with best practice guidance and professional judgement. Applying the Rochdale Envelope the applicant considers it has considered the worst-case scenario for all impact pathways.

3.7.48. This chapter of the ES is supported by figures: 14-1 Study Area [APP-154]; 14-2 Designated Sites with Marine Ecological Features [APP-155]; 14-3 Teesside Offshore Wind Farm and NZT EUNIS SBS and Sediment Class [APP-156]; 14-4 Important Intertidal and Subtidal Habitats Benthic Habitats [APP-157]; 14-5 Mean percentage of at-sea population of harbour seals from haulouts in the British Isles [APP-158]; 14-6 Mean percentage of at-sea population of grey seals from haulouts in the British Isles [APP-159]; and 14-7 Airborne Noise Modelling Locations for Seals [APP-160].

3.7.49. In terms of baseline conditions, the proposed development site is situated within the Teesmouth and Cleveland Coast SPA / Ramsar / SSSI and the Teesmouth NNR, as shown on Figure 14-2 [APP-155] and listed in Table 14-6 of chapter 14 [APP-067]. There are also several European designated sites within the study area and the wider North Sea. These are designated sites and their proximity to the proposed development site and a summary of their designated features relevant to marine ecology can be seen in the table below:

Table 3: National and European Designated Sites of Relevance to Marine Receptors

Designated/ Protected Site	Approximate Distance from Study Area	Designated Features Relevant to this Assessment
European Sites		
Teesmouth and Cleveland Coast SPA/ Ramsar	0 km	Breeding and non-breeding wetland birds and supporting habitats (intertidal sand and mudflats, rocky shore, saltmarsh, freshwater marsh and sand dunes)
Berwickshire and North Northumberland Coast SAC	85.6 km	Grey seal
Southern North Sea SAC	100.5 km	Harbour porpoise
National Sites		
Teesmouth and Cleveland Coast SSSI	0 km	Breeding population of harbour seals
Teesmouth National Nature Reserve (NNR)	0 km	Protected habitats, birds and seals

3.7.50. The Southern North Sea SAC, which is designated for harbour porpoise, is located over 100km away from the proposed development and was scoped out from further assessment, as there is considered to be no pathway for effect to this designated site. Additionally, the applicant points out there are no sites within the study area designated for the protection of fish species, but notes there are fish species present in the Teesmouth and Cleveland Coast SPA / Ramsar site and Teesmouth and Cleveland Coast SSSI that provide an important food source to the protected features of those sites.

3.7.51. In terms of baseline conditions for benthic habitats and species, intertidal benthic ecology, subtidal benthic ecology, protected habitats and species, INNS, fish and

shellfish and marine mammals the applicant's sets these out in paragraphs 14.4.1 to 14.4.71 of ES chapter 14 [APP-067] and these are summarised below:

Benthic Habitats and Species

3.7.52. In terms of benthic habitats and species the applicant's assessment was informed from habitat mapping undertaken by a number of sources, as set out in paragraphs 14.4.5 and 14.5.6 of ES chapter 14 [APP-067]. These sources together with data provided from the phase I and II intertidal benthic survey undertaken in September 2019 as part of the NZT Project provided a good understanding of the existing benthic ecology and focus on the habitats at potential impact from the proposed development. The applicant advised that due to the use of trenchless technologies in the marine environment that result in avoidance of most impact pathways to the benthic environment, the requirement for further surveys to be conducted was negated, as agreed at the scoping stage with regulators.

Intertidal Benthic Ecology

3.7.53. The applicant sets out the marine habitats around Greatham Creek and Seal Sands, as well as the River Tees and the Tees Bay. It identifies important intertidal and subtidal benthic habitats, as outlined in ES Figure 14-4 [APP-157] and describes these habitats in section 14.4 of ES chapter 14 [APP-067]. It also details the biotopes present in the intertidal zones of the River Tees and Tees Bay.

Subtidal Benthic Ecology

3.7.54. In terms of the marine habitat at Greatham Creek and Seal Sands, River Tees and Tees Bay, these are identified in ES Figure 14-4 [APP-157] with section 14.4 of ES chapter 14 [APP-067] identifying the biotopes in located in the respective parts of the water environment.

Protected Habitats and Species

3.7.55. The applicant notes the saltmarsh habitat that exists in Greatham Creek and Seal Sands is a designating feature of the Teesmouth and Cleveland Coast SSSI.

Invasive Non-Native Species

3.7.56. One INNS of seaweed (Undaria pinnatifida) was found during an intertidal and subtidal benthic survey conducted in the study area, by AECOM, in 2019. It was observed in the intertidal habitat around South Gare breakwater with a sporadic distribution. However, the applicant notes no INNS were observed in the subtidal habitat.

Fish and Shellfish

3.7.57. The applicant notes the baseline conditions related to fish communities, including spawning and nursery ground, in the Teesside Region (including the River Tees, Tees Estuary, and Greatham Creek) at paragraphs 14.4.25 to 14.4.32 of ES chapter 14 [APP-157]. In terms of migratory fish the baseline conditions are set out at paragraphs 14.4.33 to 14.4.47 of ES chapter 14 [APP-157]. In terms of protected fish species Table 14-8 of ES chapter 14 [APP-157] lists all the fish species known to be present in the study area that are protected under national and international conservation legislation. With the exception of sand eel and the migratory fish, all species listed are also considered to be of commercial importance within the study

area. Additionally, no shellfish species afforded conservation protection were known to be present in the study area.

Marine Mammals

3.7.58. In terms of baseline conditions for Marine Mammals, the applicant has identified Cetaceans, Pinnipeds, Harbour Seal, Grey Seal and discusses the baseline conditions for these at paragraphs 14.4.50 to 14.4.71 of ES chapter 14 [APP-067].

Future Baseline

3.7.59. In terms of future baseline, the applicant notes the River Tees and Estuary has had a long industrial and urbanised history, during which time disturbance to the marine environment has been high. It notes historically, human activities have led to a range of impacts including increased water pollution and reduced access to upstream environments that, along with other well documented ecological effects, including a decline in the abundance of migratory fish species and seals within the Tees Estuary.

3.7.60. In recent years, the applicant notes conservation and management efforts have seen an improvement in environmental conditions and a recovery in some species' populations, with several species, such as harbour seal, are generally increasing. However, the applicant notes others, such as Atlantic salmon remain at risk, although future management measures can be expected to facilitate improvements in species populations.

3.7.61. Irrespective of this the applicant notes, from October 2021 and continuing periodically through 2022, large numbers of dead and dying crustaceans have been washed up on the north-east England coastline, including Teesside, with the most likely cause of death considered to be a novel pathogen.

3.7.62. Other factors which pose a risk to marine ecological receptors include the prevalence of disease and climate change, although the latter is not expected to have an impact on the future baseline of the study area within the relatively short timeframe of the proposed development.

3.7.63. Whilst the applicant notes changes in sea temperature may have a small effect on the abundance and distribution of certain species, it again considers these changes are unlikely to be detectable in the short term of the construction phase of the proposed development. Indeed, changes due to sea temperature increase are more likely to occur during the operational or decommissioning phases, although the applicant anticipates impacts during decommissioning would be similar to those during construction and changes in the baseline are not likely to be significant.

3.7.64. In terms of the proposed developments design and impact avoidance the applicant advises these would be inherent/ embedded measures incorporated into its design and construction. During construction the applicant points out its Framework CEMP ([REP8-003] APV/ [REP8-042] WCBAV) sets out the key measures to be employed during the construction of the proposed development, to control and minimise the impacts on the environment. The Framework CEMP ([REP8-003] APV/ [REP8-042] WCBAV) also sets out how impacts upon marine ecology receptors would be managed during construction, pointing to such measures as the use of trenchless technologies for pipeline crossings.

3.7.65. The applicant has also set out in paragraphs 14.5.4 to 14.5.19 of ES chapter 14 [APP-067] the embedded measures to control and minimise the impacts on the environment which are to be secured via the CEMP, including in relation to the management of construction surface water runoff and marine water quality, the management of construction vessels and accidental spillages, the construction of the H_2 pipeline corridor using trenchless crossings and the management of construction lighting and working hours. A final CEMP, securing the content of the Framework CEMP is secured by requirements 15 (CEMP) of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV).

3.7.66. During operation, the applicant has considered the management of construction surface water runoff and marine water quality would provide adequate mitigation measures. It also considers adequate mitigation related to operational lighting can be provided though a lighting strategy that accords with the indicative lighting strategy (operation) submitted with the application [APP-038]. In terms of NO_x and the management of nitrogen depositions, the applicant advises the proposed development would be designed so that all process emissions to the air would comply with the Emissions Limit Value agreed in the EP. It also advises an ECoW would be present during proposed development construction to ensure compliance with the OLBMP.

3.7.67. With regard to decommissioning the applicant states this would be undertaken in accordance with a DEMP that is to be secured by requirement 28 (Decommissioning) of the dDCO. The applicant states the DEMP would consider in detail all potential environmental risks on the proposed development site and contain guidance on how risks can be removed or mitigated. This would include details of how surface water drainage should be managed during decommissioning and demolition.

3.7.68. Impacts and likely significant effects of the proposed development during construction, operation and decommissioning on relevant marine ecological features in the absence of embedded and additional mitigation are set out in section 14.6 and Table 14-9 of ES chapter 14 [APP-067]. With the implementation of appropriate design and good practise measures the applicant considers any changes in marine water quality during construction, including surface water runoff, would be negligible. However, both the Tees Estuary and Greatham Creek feed into the Tees Transitional Water Framework Directive (WFD) Waterbody resulting in a Slight Adverse (Not Significant) impact but no long-term effect is expected.

3.7.69. Greatham Creek, the Tees River, and Tees Bay are considered to have a highly dynamic nature and in the unlikely event that pollutants or contaminants were accidently released, the applicant considers these would be rapidly dispersed and diluted. This would mean that any indirect effects to benthic ecology and other marine receptors would be highly localised to the discharge point, temporary, and short-term. Furthermore, the applicant considers mobile receptors such as fish and marine mammals (including seals) are expected to move away from any affected area, and thus effects to these receptors would be limited.

3.7.70. Considering the nature of the impact, any significant effect to the abundance, distribution or functioning of habitats and species populations beyond the local level is considered unlikely. Therefore, the magnitude of indirect effects to marine ecology receptors from changes in marine water quality during the construction of the proposed development is assessed as very low and the effects are predicted to be Negligible (Not Significant).

3.7.71. In terms of changes in water quality from accidental spills of vessel fuels and oils, the applicant considers any significant effect to marine ecology receptors is unlikely and the magnitude assessed as very low. Therefore, effects to marine ecology receptors due to changes in water quality from accidental spills are predicted to be Negligible (Not Significant).

3.7.72. With regard to collision risk between proposed development vessels and marine mammals the applicant assesses this risk in paragraphs 14.6.19 to 14.6.26 of ES chapter 14 [APP-067]. Overall it considered the likelihood of vessel collision with marine mammals to be low due to the highly mobile nature of marine mammals, their ability to exhibit avoidance behaviour, and the likely slow vessel operation speeds. The applicant also pointed out the Tees estuary is already characterised by a high-level of shipping traffic. As such, although marine mammals have a high sensitivity to vessel collision, the applicant considered the magnitude of impact to be very low, and therefore the overall impact is assessed as Negligible (Not Significant).

3.7.73. In addition to the above, the applicant considered the impact of marine and land-based construction activities associated with the proposed development and whether these would create airborne sound that has the potential to disturb seals that are hauled-out nearby or have surfaced whilst in the water.

3.7.74. To inform the assessment of changes in the airborne soundscape, the applicant undertook baseline ambient sound measurements. It used indicative predictions of construction sound levels to determine the impacts of construction activities on sensitive ecological receptors, including seals, for both the main site (location 1) and the location of HDD near Greatham Creek, providing figure 14-7: Airborne Noise Modelling Locations for Seals [APP-160], with the construction activities and estimated sound pressure levels outlined in ES chapter 14 [APP-067] at table 14-10.

3.7.75. The applicant explained in paragraph 14.6.32 how it converted the data to a phocid-weighted sound pressure level to enable comparison between LA_{eq} value and the temporary threshold shifts and permanent threshold shifts thresholds for seals. Indeed, ES chapter 14 [APP-067] at tables 14-11 and 14-12 provides further comparison of disturbance effects, compared to background levels, the predicted ambient unweighted Sound Exposure Level (SEL) and total combined unweighted SEL and concluded for the main site no significant overall change would occur. However, for the HDD activities to Greatham Creek and Seal Sands, which whilst predicted only to occur for a duration of 10 weeks, the applicant notes some disturbance effects may occur as a result of the 2 dB increase in SEL above ambient. Given the high importance of seals at Seal Sands and the potential for minor disturbance the applicant has assessed the magnitude of impact as moderate and the effect to this receptor is predicted to be Moderate Adverse (Significant).

3.7.76. In terms of changes in visual stimuli, including from artificial lighting, the applicant has considered this in ES chapter 14 [APP-067] at paragraphs 14.6.39 to 14.6.51 (inclusive). In terms of fish and shellfish (migratory fish) it assessed the magnitude of impact as very low and with any effects to fish and shellfish predicted to be Negligible (Not Significant); whilst in terms of marine mammals (seals) it assesses the magnitude of impact as low and the effect to marine mammals, including harbour seals, predicted to be Negligible (Not Significant).

3.7.77. ES chapter 14 [APP-067] table 14-13 provides a summary of effects on marine ecological features during construction of the proposed development with the

significance of likely effects taken account of embedded mitigation stated to be Negligible (Not Significant) in all cases, except in relation to marine mammals as a result of changes to the airborne soundscape during construction, which is Moderate Adverse (Significant).

3.7.78. In regard to the effects of the proposed development on marine ecology during operation, the applicant considered: changes in the airborne soundscape during operation; deposition of airborne pollutants, including nitrogen; nutrient and chemical effects from the dispersion and discharge of treated effluent; thermal effects from treated effluent discharge, with a summary of those effects set out in ES chapter 14 [APP-067] table 14-16. This table shows the significance of likely effects with embedded mitigation to range from Negligible to Negligible (Not Significant), with a residual effect of Negligible (Not Significant) in all cases.

3.7.79. With regard to decommissioning, the applicant advises all above ground structures on the main site are to be removed, and the ground remediated as required by the EP to facilitate future re-use. The applicant states there would be no change to the trenchless crossings and no activities such as HDD would occur. As such it considers there to be no likely effects to marine ecology features resulting from the decommissioning phase of the proposed development.

3.7.80. Additionally, the applicant notes the effects during decommissioning are generally considered to be less than or equal to those during construction where no likely significant effects have been identified. Furthermore, the applicant points out a DEMP, which would be secured through a requirement in the dDCO, would contain guidance on removing or mitigating risks, including managing surface water drainage. Therefore, the applicant considers the effects arising out of decommissioning would be Negligible to Minor Adverse (Not Significant).

3.7.81. In terms of essential mitigation and enhanced measures, the applicant in section 14.7 of ES chapter 14 [APP-067] advises no significant adverse impacts to marine ecology during the operational or decommissioning phases of the proposed development. However, to minimise the effects of airborne sound during construction, resulting from the use of trenchless technologies for the proposed development at the Venator site, on seals hauled-out at Seal Sands and using habitat within Greatham Creek, the applicant proposes essential mitigation. This proposed mitigation is the use of noise abatement barriers (such as close-board acoustic fencing or other barriers), which are to be installed around the Venator Site. The applicant considers the noise abatement barriers would reduce the amount of perceptible change in airborne sound to any seals using habitat at Seal Sands or within Greatham Creek resulting from the HDD activities and the residual effect using this essential mitigation would reduce the likely significant impact from Moderate Adverse (Significant) to Minor Adverse (Not Significant).

3.7.82. The applicant argues with the embedded and proposed mitigation measures, which includes the use of noise abatement barriers, as those embedded in the design of the development, and those outlined in the framework CEMP ([REP8-003] APV/ [REP8-042] WCBAV) and as secured through requirement 15 (CEMP) and requirement 28 (Decommissioning) of the dDCO, are expected to address and minimise the adverse impacts identified.

Ornithology

3.7.83. ES chapter 13 (Ornithology) [APP-065] identifies the likely impacts and effects on ornithological features. The assessment has been undertaken in accordance with best practice guidance published by CIEEM (CIEEM, 2022).

3.7.84. This ES chapter is supported by figures and an appendix containing surveys, baseline data and detailed appraisals and are: Appendix 13A (Ornithology Baseline Report) [APP-208] (Redacted); and Figures 13-1 Study Area [APP-149]; 13-2 Survey Area [APP-150]; 13-3 Net Zero Teesside Breeding Bird Survey Areas [APP-151]; 13-4 Statutory Designated Sites with Ornithological Features [APP-152]; and 13-5 Non-Statutory Designated Sites with Ornithological Features [APP-153].

3.7.85. Relevant ornithological features have been identified (including nature conservation designations, habitats and protected or notable bird species) in proximity of the proposed development, with each being assigned a nature conservation value. Additionally, the assessment identifies the proposed development's potential direct and indirect impacts and effects on ornithological features and their conservation status, interrelationships, and their value/ sensitivity as a contributor to local biodiversity. The assessment also considers impact avoidance design measures and management activities (embedded mitigation) when determining the potential for significant effects and whether further (essential) mitigation and/ or enhancement measures are required in terms of is the assessment of residual effects.

3.7.86. In terms of statutorily designated sites with ornithological features within the study area, the applicant has provided a summary of the reasons for notification of their designation in ES chapter 13 [APP-065] at table 13-6, as well as their spatial relationship to the proposed development site. The study area is shown in Figures 13-1 [APP-149].

3.7.87. Of the nearby statutorily designated sites with ornithological features there are three SPAs, two Ramsar sites, three SSSIs and three NNRs within15km of the proposed development site. Additionally, there are four LNR within 2km of the proposed development site. Also within 2km of the proposed development site are a number of non-statutory designated ornithological sites. These consist of eleven LWSs and one Royal Society for the Protection of Birds (RSPB) Reserve within 2km of the proposed development site. The statutorily designated sites with ornithological features are shown on Figure 13-4 [APP-152]; whilst the non-statutory designated sites with ornithological features are shown in figure 13-5 [APP-153].

3.7.88. The applicant summarises the relevant species recorded up to and including December 2023 and provided a detailed descriptions of the species records from the sources listed in its Ornithology Baseline Report (Appendix 13A [APP-208]). A description of the key areas or locations for birds is provided by the applicant in ES chapter 13 [APP-065] at table 13-7, which summarises the relevant bird species features identified to date and their spatial relationship to the proposed development site.

3.7.89. Furthermore, a summary of key locations for birds is also set out in section 13.4 of ES chapter 13 [APP-065]. However, irrespective of the presence of any designated sites, the applicant notes the entirety of the Teesside coast can be considered to support significant populations of non-breeding birds during the autumn and spring migratory periods and over winter. As such the applicants baseline data presented in its Ornithology Baseline Report (Appendix 13A [APP-208]) also identifying some locations or broad areas that are of potentially greater sensitivity. This Appendix also defines the three broad survey areas, being the main site, Seal Sands and the North Tees Marshes.

3.7.90. The applicant noted the terrestrial habitats within the industrialised land around Wilton International, the Teesport estate and the North Tees, through which various connection corridors are proposed, are of relatively low risk in terms of the potential for: wetland birds associated with the various designated sites across Teesside; and for other species at any time of year by virtue of the relatively high disturbance levels, the presence of active industry, and the limited availability of suitable habitats in these areas.

3.7.91. A summary of the species identified to date is set out in ES chapter 13 [APP-065] at table 13-7. The applicant states it includes all relevant species and species assemblages and provides a provisional ecological value of the ornithological features identified in accordance with CIEEM guidance (2022).

3.7.92. The applicant sets out its consideration of a future baseline for all phases of the prosed development in paragraphs 13.4.14 to 13.4.27. During construction, the applicant notes demolition and site remediation works would be completed, with bare ground present where buildings and structures have been removed. It also noted significant earthworks have resulted in the complete removal of all semi-natural vegetation in this area and considers if unmanaged these areas would become colonised with vegetation.

3.7.93. In the wider area, the applicant notes semi-natural habitats, including within the connection corridors and considers these are unlikely to change over the short term where they are not subject to management. As such the applicant considers all existing habitats are likely to remain, although some minor changes in habitat extent, composition and structure are expected to occur due to ecological succession. As such the applicant considers the ornithological habitats and species present are very unlikely to undergo significant change prior to construction of the proposed development.

3.7.94. The applicant also anticipates managed habitats within the proposed development site would continue to be subject to management and there would be no significant changes in habitat extent, type or species composition. It also considers semi-natural and natural habitats are also unlikely to change significantly, although changes in the distribution of some species would likely occur, as habitats develop in line with changes in habitats. However, over the short term the applicant considers any such changes would be relatively minor.

3.7.95. With regard to habitat enhancements, the applicant notes such works have been carried out across the non-tidal marshes west of the A178, where these lie within the overlapping designations of Teesmouth and Cleveland Coast SPA / SSSI and RSPB Saltholme Reserve. It states these activities have coincided with the period of baseline data gathering and proposed development design. It also expects these habitat enhancements to yield long term habitat improvements.

3.7.96. In terms of operation, the applicant considered the future baseline over the anticipated operational life of the proposed development to decommissioning. It notes there are no grounds to expect there would be any marked change in local land management practices and the habitats by the time of the commencement of operations.

3.7.97. The applicant notes there are a variety of nature conservation designations in the vicinity of the proposed development site and considers it difficult in most cases to state with certainty how the nature conservation value of these designations might change over the medium to long term operational period. The applicant also notes

habitat improvement plans have been put in place by the RSPB within its Saltholme Reserve across the farmland and marshy grasslands south of Cowpen Bewley and the A1185. However, it also notes the timescale over which these works are likely to occur is currently unknown, but assumed in its assessment any changes to the baseline arising from these management actions would not yield tangible results until some point during the operational phase of the proposed development.

3.7.98. Additionally in terms of future baseline during operation, the applicant considered it likely that current and former industrial land within the STDC and the surrounding area would be released for new development. As a result it noted the extent of ecologically valuable open mosaic habitat and grassland habitats may decrease. To counter this, the applicant notes the implementation of planning policy and legal requirements may mean that future adjacent developments incorporate features of value for biodiversity resulting in small to moderate improvements in the future baseline over the operational life of the proposed development. Again, the applicant notes changes in the distribution of some species would be likely to occur as habitats develop in line with changes expected because of ecological succession or other natural processes.

3.7.99. With regard to decommissioning, the applicant recognises the raise in sea level may have an influence on the sensitivity of habitat and species features present at the proposed development site. However, given the scale of predicted sea level rise, as outlined in the applicant's Flood Risk Assessment (FRA) [REP5-022] and, bearing in mind the context of other likely changes in the future baseline, the applicant considers the implications for terrestrial ecology to be minor.

3.7.100. Furthermore, the applicant considers the decommissioning baseline would be strongly influenced by future land-use and nature conservation regimes affecting adjacent land. The applicant has also assumed that decommissioning activities would involve the removal of above ground infrastructure and would primarily be located within the built footprint of the proposed development site, rather than within areas of vegetation. As such it considers there would be less adverse impact on ornithological features during this phase of the proposed development.

3.7.101. Additionally, the applicant notes decommissioning activities would be conducted in accordance with the appropriate guidance and legislation at the time of the proposed developments closure and that ecological surveys would be commissioned, as appropriate, at that time to inform the scope of the decommissioning works.

3.7.102. Turning to the proposed developments design and impact avoidance the applicant considers these matters in section 13.5 of ES chapter 13 [APP-065]. The applicant notes it would have to comply with all relevant protected species legislation. Furthermore, in considering all phases of the proposed development, the applicant stated it would be seeking to incorporate measures that aim to avoid, prevent, reduce or offset potential environmental effects through the design and construction of the proposed development. The applicant advises that such embedded measures would be incorporated into the design or are standard construction or operational practices. This section of the ES also sets out embedded measures considered in relation to habitats (paragraph 13.5.10), birds (at all times of the year) (paragraphs 13.5.11 to 13.5.13), breeding birds (paragrapohs13.5.14 to 13.5.17) and notes the OLBMP [REP7-021] (APV)/ [REP8-039] (WCBAV) outlines the enhancement measures proposed to enhance biodiversity within the proposed development site.

3.7.103. In terms of construction the applicant's Framework CEMP ([REP8-003] APV/ [REP8-042] WCBAV) sets out the key embedded measures to be employed during the construction of the proposed development, which are aimed at controlling and minimising the impacts on the environment, including how impacts upon ornithological features would be managed during construction. A Final CEMP would be secured by a requirement 15 (CEMP) of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV).

3.7.104. In addition to the above, the applicant advises:

- it has sought to avoid nature conservation designations, as far as reasonably practicable, and refined its routing options since the scoping stage in order to avoid or minimise adverse environmental effects. Indeed, it notes habitats such as mudflats and saltmarsh have been avoided.
- routed the connection corridors, as far as possible, to utilise existing infrastructure and established pipeline corridors north and south of the River Tees, in order to minimise excavations and construction activities and therefore minimise disturbance to species and habitats present.
- use trenchless construction methods where the H_2 pipeline crosses major watercourses, such as the River Tees and Greatham Creek, and has set out in the Framework CEMP such methods would be used to avoid disturbance within the channel and harm to bankside habitats. It also confirms where the other connection corridors require crossings or new infrastructure the same approach would be applied and that post-construction reinstatement of pipeline routes, as close to its original state as possible, as secured through the OLBMP would ensure permanent habitat losses associated with pipelines would be minimised.

3.7.105. During operation, the applicant notes the H_2 Production Facility would be subject to an EP and required to comply with it and the Environmental Permitting (England and Wales) Regulations (2016). It advises the proposed development would be operated in line with appropriate standards and operated in accordance with an Environment Management System (EMS) attested to International Standards Organisation (ISO) 14001 (International Organisation for Standardisation, 2015.

3.7.106. The applicant argues the final stack height for the proposed development has been optimised to minimise ground-level air quality (including nitrogen emissions) impacts on relevant ornithological features, such that deposition significance thresholds for habitats that support relevant ornithology features are not exceeded by the operational H_2 Production Facility. It also confirms these parameters are secured through a requirement in the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV).

3.7.107. The applicant is not proposing lighting across the connecting corridors. However, in term of the main site the applicant considers its Indicative Lighting Strategy (Operation) [APP-038] demonstrates how lighting impacts on sensitive ornithological features, including birds, have been considered and addressed in the development design.

3.7.108. In terms of effluent discharges arising from the proposed development the applicant notes that development discharges of nitrogen into the Teesmouth and Cleveland Coast SPA/ Ramsar are required by NE to be nutrient neutral. The applicant also points out conservation and WFD objectives for the estuary and Teesmouth and Cleveland Coast Ramsar / SPA sites also require nitrogen loading of the estuary to be reduced. As such the applicant notes the modelling undertaken for the proposed development indicates discharges from the proposed NZT outfall would not be carried into the estuary by the tides, and therefore would not contribute nutrients to

the designated sites. (Also see the applicant's Nutrient Neutrality Screening Assessment [APP-047]).

3.7.109. In terms of drainage the applicant advises this would follow the principles of the Indicative Surface Water Drainage Plan [APP-018] to ensure that impacts on surface waters are eliminated or minimised and that a detailed strategy would be developed at the detailed design stage for the proposed development. Drainage is a requirement within Schedule 2 of the dDCO ([REP7a-003] (APV)/ [REP7a-006] (WCBAV)).

3.7.110. Turning to decommissioning the applicant considers this would be smaller than the previous phases of the development and likely only to involve the removal of above ground infrastructure within the built footprint of the proposed development. It also stresses a DEMP would be produced pursuant to a DCO requirement and it would consider in detail all potential environmental risks and contain guidance on how risks can be removed, mitigated or managed.

3.7.111. The applicant confirms this would include details of how ecology should be managed at the proposed development site during decommissioning and demolition works and that the decommissioning phase would apply similar design and mitigation measures as the construction phase. It also states standard pollution prevention and construction best practices would be adopted to mitigate potential impacts upon ornithological features, where required and reasonably practicable, with any necessary surveys or other baseline gathering activities to confirm the presence/ likely absence of protected or notable species being completed approximately one year prior to decommissioning to inform the DEMP.

3.7.112. The likely impacts and effects of the proposed development during construction, operation and decommissioning respectively on relevant ecological features in the absence of embedded and additional mitigation are set out in tables 13-8 to 13-10 of ES chapter 13 [APP-065]. However, tables 13-11 to 13-13 of ES chapter 13 [APP-065] provide a summary of residual effects during construction, operation and decommissioning of the proposed development.

3.7.113. In terms of the construction phase, the applicant is proposing a number of essential and enhancement measures. In order to reduce noise and visual effects in sensitive locations the applicant is looking to use one or more of the following measures:

- Fully screening barriers (so the construction noise sources are not visible from the receptor locations) this is potentially all of the construction.
- HDD drilling within an acoustic shed.
- All hydraulic and electric tools fit with muffler or sound reduction equipment to reduce noise.
- All pumps, generators and compressors within acoustic enclosures.
- All earthworks plant to be fit with exhaust silencers.
- Super silenced plant to be selected.

3.7.114. Additionally, the applicant is proposing the use of closed board acoustic fencing to reduce noise levels experienced by ornithological receptors by 10dB, as well as providing visual screening between working areas and adjacent ornithological features. The applicant considers this measure to be required at the main site; the Redcar Bulk Terminal and River Tees compounds and the northern edge of the track between these compounds; the Navigator Terminals HDD and site compound area; and at all compounds and HDD locations across Brinefields, north of Greatham Creek (within a potential off-taker) and Cowpen Bewley.

3.7.115. Furthermore, the applicant is proposing the use of some or all of the additional measures for works alongside Dabholm Gut/ Bran Sands Lagoon, the HDD location north of Greatham Creek and all works areas and construction compounds across Brinefields.

3.7.116. The applicant states in all locations the package of noise mitigation measures would meet the commitment to reduce noise associated with the proposed development would result in no significant effects.

3.7.117. The applicant also confirms at Greatham Creek the timing of works within and adjacent to the SPA will be completed between September and the end of November inclusive to avoid the most sensitive periods for breeding and wintering birds.

3.7.118. In term of open cut pipeline installation (including site clearance, all other preparatory works, installation of pipelines and reinstatement of habitats) across Brinefields and Cowpen Bewley, the applicant states this would be carried out across a single breeding season, between mid-March and mid-September, to avoid the most sensitive period for non-breeding SPA, Ramsar and SSSI qualifying bird species.

3.7.119. These measures together with the noise and visual mitigation measures, presence of an on-site ECoW and nesting bird checks in place would lead to reducing impacts on breeding birds to an acceptable level in these areas. The applicant advises the same restrictions would be applied to installation of the pipeline along existing pipe racking between Saltholme Substation and Cowpen Bewley Road. It also points out where these commitments are made to install connections within a single season, those works are regarded, for the purposes of assessment, as short-term.

3.7.120. In terms of the key locations identified by the applicant for restrictions duration of works and the provision of closed board acoustic and visual screening barriers, it has identified these in Figures 14a and 14b of the HRA Report [REP6a-010].

3.7.121. The applicant also points out a plot of land has been set aside immediately to the north-west of Cowpen Bewley Woodland Park LNR and LWS and within the boundary of the proposed development, for habitat creation to compensate for woodland habitat losses within Cowpen Bewley Woodland Park on a minimum like for like basis. The details of this plot and the specification of habitat creation within it are included in section 5.2 of the OLBMP [REP7-021] (APV)/ [REP8-039] (WCBAV)

3.7.122. The applicant confirms that habitat creation within this plot of land would be initiated during the construction phase of the proposed development, as early works and argues this habitat would compensate for habitat losses that are predicted to occur on a long term basis for the duration of the operational phase of the proposed development.

3.7.123. In conclusion the applicant argues not all impact pathways are likely to occur equally but has identified the potential residual effects on each ornithological feature during construction. It has identified these separately for the main site and the connection corridors and these are set out in table 13-11 of ES chapter 13 [APP-065]. This table demonstrates that with the mitigation measures mentioned above, and identified in the table, the potential residual effects reduce down to Not Significant (Minor Adverse) or Not Significant (Negligible).

3.7.124. The applicant also concludes during operation there are expected to be no residual impacts arising from the connection corridors and the decommissioning phase is assumed to be the same or less than the construction phase impacts. Therefore the assessment of residual operational and decommissioning impacts and effects consider only those ornithological features that occur in the environs of the main site; and only those impact pathways likely to occur as a result of operation and decommissioning of the main site. Table 13-12 of ES chapter 13 [APP-065] demonstrates that with embedded mitigation the potential effects are reduced to or maintained at either Not Significant (Minor Adverse) or Not Significant (Negligible).

3.7.125. During decommissioning table 13-13 of ES chapter 13 [APP-065] demonstrates that with mitigation measures related to the use of noise abatement/ reduction measures (such as close-board acoustic fencing) to reduce noise and visual disturbance, the potential effects are reduced below significant thresholds to or maintained at either Not Significant (Minor Adverse) or Not Significant (Negligible).

Biodiversity Net Gain

3.7.126. In terms of BNG the applicant points to the fact that the provisions in the Environment Act 2021 related to BNG are not yet in force in regard to NSIP developments under the Planning Act 2008. Indeed, the applicant notes such provisions are not expected to come into force until at least November 2025 and considers the delay, at a national level, reflects the need for the complexities of infrastructure projects and its interaction with the BNG metric to be fully understood by NE and project promoters.

3.7.127. The applicant considers this to be particularly true for a project such as the proposed development, with its numerous corridors involving a mix of above and underground land requirements for different types of pipelines, but which are also surrounded by a number of existing assets, necessitating differing limits of deviation. It also stresses infrastructure also have a range of 'temporary' land requirements that are shown in the red line boundary but may not in fact involve habitat loss. As such, the true 'loss' of habitats to the proposed development would be much less than would actually be the case than simply assuming that the loss includes the entirety of the Order limits.

3.7.128. Pointing to a specific additional complexity for the proposed development is the fact that the main site is the subject of extensive demolition works of the old Teesworks steel plant and infrastructure; and subject to extensive remediation activities. The former works are subject to restoration and habitat establishment requirements, and the applicant considers this would apply to the remediation works. As such, the applicant argues the ecological baseline position of the site now would, for BNG purposes, be unrealistic in terms of establishing what the 'pre-development' habitat condition should be considered to be for the main site.

3.7.129. The applicant advises it is committed to ensuring that the ecological impacts of the proposed development are fully mitigated, and where possible given the constraints of the Order limits and the Teesworks site more generally, deliver enhancements. ES chapter 12 [APP-064] and the applicant's OLBMP [REP7-021] (APV)/ [REP8-039] (WCBAV) sets out the applicants position in this regard. The applicant advises the measures in the latter will be developed into a full Landscape and Biodiversity Management Plan to reflect the detailed design (and impacts) of the proposed development, in substantial accordance with that OLBMP, secured through the dDCO. Through these measures, the applicant considers it would be able to deliver a commitment to no net loss, as a minimum.

3.7.130. The applicant also stresses that through its use of trenchless technologies, the effects on habitats and species would be further minimised. It also advises permanent habitat losses associated with pipelines would also be minimised through post-construction reinstatement of pipeline routes as close to its original state as possible. It argues whilst this does not remove the construction impact, it does provide (except for irreplaceable habitats) certainty of reinstatement of habitats back to an appropriate end condition, as a well as a beneficial reduction in the duration and magnitude of the construction effect on habitats and species.

3.7.131. In addition to the above the applicant advises the Framework CEMP sets out mitigation proposals required for relevant locations/ habitats and that the potential effects on ecology during construction would be managed through the implementation of the measures that would be set out in the Landscape and Biodiversity Management Plan and the final CEMP secured by requirements 4 and 15 of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV). It also points out an ECoWs would be present during construction, as appropriate, to supervise and instruct the implementation of the mitigation measures in the CEMP.

3.7.132. Furthermore, the applicant advises detailed proposals for biodiversity enhancement relating to the proposed development would be set out in the Landscape and Biodiversity Management Plan (also secured by requirement 4 of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV).

VIEWS OF INTERESTED PARTIES

3.7.133. RCBC confirmed in its LIR [REP1-043] the application is supported by a comprehensive assessment of the impact of the development in terms of ecology. It advised it accepts the approach taken in the relevant components of the ES in terms of the methodology of assessment is acceptable and overall accepts the general conclusions of the ES in terms of ecology. As such RCBC confirmed no conflict arises in respect of RCLP planning policy N4 (Biodiversity and Geological Conservation).

3.7.134. STBC in its LIR [REP1-045] notes the proposed development has been designed use existing pipeline corridors where possible with a view to avoid impacting the designated sites and/ or protected species, where possible. STBC also recognises the applicant has also chosen construction methods which would minimise disturbance of habitats and species.

3.7.135. Irrespective of the above, STBC recognise significant effects are predicted for Cowpen Bewley Woodland Park LWS due to impacts on the woodland caused by construction work. However, it notes replacement land has been identified as mitigation for the loss of woodland planting in the Woodland Park and a new area of woodland creation within the replacement land would be implemented as enhancement to the area of woodland lost. Furthermore, STBC confirm the applicant is to work alongside it to agree the layout and planting of this land.

3.7.136. In its LIR [REP1-045], STBC advise it considered that the biodiversity and mitigation measures, including the provision of a CEMP (as set out within the ES) in relation to the aspects of work that fall within its administrative boundary are acceptable and that discussions regarding the replacement land are ongoing.

3.7.137. In terms of the replacement land the Applicant's completed SoCG with STBC [REP8-027] confirmed *"The principle of providing replacement open space land on the replacement land proposed in the DCO Application is agreed…"* Being mindful

of paragraph 5.11.32 of the NPS EN-1 the SoCG also agreed although *"…the existing area of Cowpen Bewley Woodland Park is not 'surplus to requirements' as open space within the Borough, the benefits of the Proposed Development (including need), outweigh the potential loss of such facilities…"* and that "…*taking into account the positive proposals made by the Applicant to provide compensatory land, which means that there is no overall net loss of open space to the Borough."*

3.7.138. The EA in its RR [RR-009] raised a number of matters concerning the applicant's ES chapter 12 [APP-064] and the Framework CEMP as originally submitted. With regard to ecology and nature conservation, including ornithology and marine ecology, these concerns included the use of Phase 1 rather than UK Habitat Classification System; identification of habitats and/ or insufficient habitat; the Habitat and Statutory Site Linkages; Inconsistency between documents & weak assessment of value; and insufficient information being provided that fully mitigates against INNS. In regard to the Framework CEMP, the EA raised concerns in regard to considerations set out in Table 7-5 related to otter and water vole. The EA also commented on opportunities for habitat enhancement contributing to achievement of WFD objectives in the Tees estuary area.

3.7.139. The MMO made observations in its RR [RR-021] concerning ES chapter 14 (Marine Ecology) and the applicant's preferred route for the H_2 Pipeline Corridor at Greatham Creek by creating a new trenchless crossing. The MMO notes the use of trenchless techniques, including the applicant stating a risk assessment related to 'frac-out', being the unwanted release of drilling fluids to the surface during HDD, will be undertaken. In regard to such assessment the MMO sought clarification as to whether the risk of Bentonite breakout has been assessed within the ES and advised it would welcome an Outline Marine and Intertidal Pollution Contingency Plan and an Outline Bentonite Management Plan for review.

3.7.140. NE in its WR [REP2-072] and [REP5a-015] advised there is no fundamental reason of principle why the project should not be permitted. However, it considers insufficient evidence had been provided and, as such, it was not satisfied its issues had been resolved. The issues raised by NE in relation to Internationally and nationally designated sites included:

- Proposed mitigation for impacts from 'HDD collapse' (SPA land) – Construction.
- Impacts from loss of Functionally Linked Land - Construction and Operation.
- Impacts from noise and visual disturbance – Construction.
- In-combination disturbance impacts from multiple projects over multiple years – Construction.
- Impacts from amines and clarification of processes – Operation.
- Impacts from nitrogen deposition – Operation.
- Impacts from acid deposition – Operation.
- In combination impacts of deposition from aerial emissions - Construction and Operation.
- Impacts from nutrients in discharged effluent (water quality) – Operation.

3.7.141. In addition NE noted information remained outstanding on a number of matters, including in relation to ornithology. As a result it advised it did not yet fully understand the impacts of the proposed development on the designated site (although it did not specify which designated site was being referenced). NE also provided detailed advice concerning protected species and sought further information to determine the proposed development will not adversely affect bat species and water vole.

3.7.142. NE also advised in its WR [REP2-072] and [REP5a-015], subject to the completion of agreed revisions to the HRA for internationally designated sites issues and subject always to the appropriate requirements being adequately secured, the following matters had been resolved:

- Air quality - Assessment of aerial emissions (Construction traffic/machinery) - Teesmouth & Cleveland Coast SPA/ Ramsar Site and SSSI.
- Air quality - Nitrogen deposition impacts on qualifying species of the Northumbria Coast SPA/ Ramsar Site and SSSI.
- Water Quality - Evidence base for assessment of the Teesmouth & Cleveland Coast SPA/ Ramsar Site and SSSI.
- Water quality - Surface water run off impacts – Teesmouth & Cleveland Coast SPA/ Ramsar Site and SSSI.
- Disturbance - Disturbance to migratory fish designated as features of the River Tweed SAC and Tweed Estuary SAC.

THE EXAMINATION

3.7.143. The IAPI, attached as Annex C to the ExA's Rule 6 letter [PD-005] identified the following matters for further examination in regard to biodiversity, ecology and nature conservation, including ornithology and marine ecology:

- The potential effects on the ecological value of species and habitats (including ornithology) in the terrestrial and aquatic/ marine environments.
- The effect on the integrity of European sites.
- Implications for designated sites, including European sites; nationally designated sites; regionally and locally designated sites; and habitats of nature conservation importance. Specifically,
    - *- Teesmouth and Cleveland Coast SPA/ Ramsar and features of interest of the Teesmouth and Cleveland Coast SSSI.*
    - *- North York Moors SPA/ SAC.*
    - *- Northumbria Coast SPA/ Ramsar.*
    - *- Durham Coast SAC*
- Potential cumulative and in-combination impacts.
- Adequacy of proposed mitigation, monitoring and management and how it is to be secured in the DCO.
- Opportunities for the conservation and enhancement of biodiversity.

3.7.144. The ExA asked a number of questions concerning the HRA, as well as biodiversity, ecology and nature conservation, including ornithology and marine ecology, in both ExQ1 [PD-008] and ExQ2 [PD-015]. The applicant responded to ExQ1 and ExQ2 in its DL2 and DL5 submissions ([REP2-022] and [REP5-042] respectively. Those matters related to the HRA are considered in chapter 4 of this report.

3.7.145. RCBC confirmed in its LIR [REP1-043] it was generally supportive of the ES in relation to ecology, including it assessment methodology, advising overall it accepted the general conclusions of the ES in this regard. We also note RCBC confirmed no conflict arises in respect of RCLP planning policy N4 (Biodiversity and Geological Conservation). However, whilst there were no matters outstanding to be agreed in the applicant's completed SoCG with RCBC [REP5-057], the ExA notes it was agreed between the parties RCBC relies on national and local nature conservation consultees in regard to advised in regard to terrestrial ecology and nature conservation, including ornithology and to the same consultees in regard to impact on marine ecology.

3.7.146. In addition to the above, STBC in its LIR [REP1-045] advised it considered that the biodiversity and mitigation measures, including the provision of a CEMP (as set out within the ES) in relation to the aspects of work that fall within its administrative boundary, are acceptable and that discussions regarding the replacement land are ongoing. This position was repeated in the applicant's completed SoCG with STBC [REP8-027], although it is noted within the same document STBC deferred to NE with regard to the conclusions of the Report to Inform the HRA and the proposed mitigation measures.

3.7.147. With regard to HBC, the applicant's completed SoCG with HBC [REP8-025] notes ecology and nature conservation, as well as ornithology, as matters to be agreed. However, the applicant also points out in the SoCG HBC's position as set out in its consultation response on 24 October 2023, where it confirmed it had no concerns regarding due process and the ecology work done to date is thorough. It also confirmed it supported the non-technical summary findings in the PEIR at sections 7.6 (Ecology and Nature Conservation including Aquatic Ecology); 7.7 (Marine Ecology) and 7.8 (Ornithology). The ExA notes HBC did not engage with it further during the examination.

3.7.148. The applicant engaged with the MMO during the examination. At DL5a [REP5a-013], the MMO confirmed it was satisfied that the launch and reception pit locations related to the trenchless drilling proposed are above MHWS and its concerns regarding distances to marine receptors had been resolved. It also confirmed it was satisfied in regard risk of bentonite breakout and the commitments outlined by the applicant in terms a site-specific Hydraulic Fracture Risk Assessment, Pollution Prevention Plan and an Emergency Response Plan being secured through a final CEMP makes the risk of bentonite breakout to be minimal. As such the MMO confirmed it considered these matters as agreed.

3.7.149. The position of the MMO, as set out above, was repeated in the applicant's completed SoCG with the MMO [REP7-031], wherein it agreed the risk of bentonite breakout has been adequately considered within the ES and welcoming the applicant's commitments on this matter to be included within the Final CEMP. The SoCG also agreed the proposed locations of entry and exit pits for the two trenchless crossings are above MHWS.

3.7.150. With regard to the submissions of the EA, the applicant engaged with the EA during the examination with a view to addressing its concerns. The applicant submitted a completed SoCG with the EA at DL8 [REP8-024], where it agreed the use of the Phase 1 habitat survey classification was suitable; and the issues raised by the EA regarding INNS, otter and water vole are being addressed appropriately following the production of an amended Framework CEMP (current version [REP8-003] APV/ [REP8-041] WCBAV);

3.7.151. In terms of the EA's comment regarding an opportunity to secure habitat enhancement, contributing to achieve WFD objectives in the Tees estuary area, this matter is addressed in section 3.14 of this report.

3.7.152. In terms of NE's submissions, again the applicant sought to resolve these during the course of the examination. Indeed, at DL7 the applicant submitted a 'Report to Inform Assessment of Air Quality Impacts on Teesmouth and Cleveland Coast SSSI' [REP7-027]. In summary it highlighted:

- The Forecast nitrogen deposition: The predicted nitrogen dose at the point of maximum impact within the SSSI is 1.1% of the critical load, marginally

exceeding the 1% insignificance threshold. The applicant stresses regulatory guidance from the EA and NE accepts that impacts below 1% are likely to be insignificant. (The ExA noted NE in its response at DL8 [REP8-044] commented its advice on the use of thresholds has since changed and any future projects would need to take account of changed thresholds).

- Interpretation of Thresholds: The Institute of Air Quality Management clarifies that the 1% threshold should be interpreted to the nearest whole number, supporting the conclusion that the predicted impact is effectively insignificant. Whilst the predicted environmental concentration exceeds the critical load, being a maximum of 12.99 kgN/ha/yr at Coatham Sands/Dunes and 13.89 kgN/ha/yr at North Gare Sands, this is due to the fact that the current nitrogen deposition exceeds the critical load due to elevated existing background levels (see 'Background Conditions at Designation' below).
- Background Conditions at Designation: The SSSI was designated in 2015 when the background nitrogen dose to short vegetation according to the Air Pollution Information System was 13.07 to 13.53 kgN/ha/yr at Coatham Sands/ Dunes and North Gare Sands. Moreover, the Air Pollution Information System shows that in the years prior to 2015 (prior to designation) the background nitrogen deposition dose to short vegetation was higher; for example, being 14.69 to 14.77 kgN/ha/yr in 2003 at Coatham Sands/Dunes and North Gare Sands. The calcareous dune habitat has thus developed and persisted in close proximity to an operational steel works and other industrial facilities when nitrogen deposition rates were considerably higher than the lower critical load of 10 kgN/ha/yr, or than is forecast to be the case under the 'in combination' assessment (13.89 kgN/ha/yr maximum).
- Improving Trend in deposition: Total nitrogen deposition is expected to continue to decrease over time. Even when cumulative impacts are considered, forecasted deposition will remain below historical levels, under which the dune habitats developed and persisted.
- Historic Industrial Context: Much of the dune habitat, particularly at Coatham Dunes, formed on historic slag deposits in an industrial setting, where nitrogen levels were significantly higher than current or forecasted levels. National nitrogen deposition has also decreased substantially since the 1990s.

3.7.153. The applicant concluded in [REP7-027] no likely significant effect would arise on Teesmouth and Cleveland Coast SSSI, based on the small contribution of the proposed development, due to the fact that nitrogen deposition is modelled to remain below historic levels (thus denoting a net improvement even when cumulative deposition is considered) and the fact that much of the dune interest developed when pollution levels were higher than at present.

3.7.154. Additionally, it maintains its view the total nitrogen deposition rate would remain lower with the proposed development consented (even allowing for other plans and projects) than it has been historically. It also argues the SSSI vegetation interest generally developed during the period when the nitrogen deposition rates were higher. With these two factors being taken into account the applicant does not consider it can be argued the scheme would harm the interest of the SSSI and contends this is particularly the case given the contribution of the proposed development is at the '1% of the upper critical load' level for being dismissed as imperceptible and therefore is not a significant contributor to overall nitrogen deposition.

3.7.155. Furthermore, the applicant argues other factors, such as management of recreational pressure are likely to be having a greater effect on limiting potential for restoration of the dune vegetation than air quality.

3.7.156. In terms of mitigation of nitrogen deposition from the proposed development the applicant confirms it has been embedded in the design, including controlling emissions through process design and selection of appropriate stack heights to deliver effective dispersion of residual emissions.

3.7.157. The applicant confirmed its understanding of NE's concern being cumulative emissions of a range of developments around Teesside rather than just the emissions of the proposed development itself. In the light of this, it points out even if NE do not agree, no likely significant effect can be concluded, the contribution of the proposed development to a cumulative impact would be so small as to be imperceptible. As such, the applicant states it would not be appropriate for any additional mitigation to be applied to address any residual effects of the proposed development.

3.7.158. Whilst the applicant maintains its position in [REP7-027] that no additional mitigation is required, it also notes NE's broader comments regarding strategic discussions with key stakeholders to support long-term understanding and resilience of the dune habitats in the context of regional industrial decarbonisation efforts. However, it does not consider it appropriate or necessary to secure such strategic mitigation through the DCO.

3.7.159. The ExA notes that by the close of the examination all matters had been resolved, with the exception of NE's concern regarding air quality impact of pollutants on Teesmouth and Cleveland Coast SSSI during construction and operation (NE's key points: NE29 and NE31).

3.7.160. In regard to NE's continued concern regarding these matters, the ExA sought further information from both the applicant and NE on 19 February 2025 [PD-022]. In response NE, in its DL8 submission [REP8-044], provided comments with regard to operational impacts of the proposed development on the Teesmouth and Cleveland Coast SSSI. Whilst NE accepted an ammonia critical level of 3ug/m^3 for this project, as well as the use of the critical load of 10 kg/N/yr for nitrogen deposition in this case; it also highlighted NE's advice on the use of thresholds has since changed and any future projects would need to take account of changed thresholds.

3.7.161. Whilst NE advised it accepted no adverse effect on integrity on the Teesmouth and Cleveland Coast SPA, it also stated it does not agree that the applicant's assessment excludes harm from air pollution impacts on the Teesmouth and Cleveland Coast SSSI due to the impact on the vegetated designated features cumulatively with other plans and projects.

3.7.162. NE noted the project alone would add 1.1% of the critical load for nitrogen deposition (0.11kgN/ha/yr) and 10.1% (1kgN/ha/yr) in-combination and, at present no mitigation has been secured for this impact. As such NE did not consider the project has provided evidence that harm on the SSSI can be ruled out. Therefore, NE argues the project requires mitigation for its cumulative effect with regards to nitrogen deposition on Teesmouth and Cleveland Coast SSSI.

3.7.163. Additionally, NE advised it had provided advice to the applicant on potential mitigation options, with the applicant suggesting strategic action could be taken to address these issues. However, NE noted no such approach had been established yet and therefore cannot be used to deliver or secure mitigation at the present time for this project.

3.7.164. In response to the ExA's request for further information on the above matters [PD-022] the applicant in [REP8-021] referred to its Environmental Position Statement [REP8-019]. The ExA also sought further information from the applicant in regard to NE's DL8 submission [REP8-044] in its procedural decision dated 25 February 2025 [PD-023]. Responding at DL9 [AS-054] the applicant advised it cannot commit to refining or limiting the stack location, as the detailed design of the main site is on-going and would be primarily guided by process safety considerations (particularly given the presence of the NZT infrastructure to the east of the proposed development).

3.7.165. Irrespective of this, the applicant points out variations in the main site layout, including Phase 1 and Phase 2 building locations, were assessed through sensitivity testing (see Appendix 8B: Air Quality – Operational Phase [APP-191]). The results of that testing indicated that stack position and the presence of buildings have a lesser impact on predicted process contributions than meteorological data. Additionally, the applicant states the effect of buildings on pollutant dispersal is greatest in the immediate area within the site and whilst the inclusion of buildings and adjustments to stack position do slightly influence the model outcomes, the sensitivity testing confirmed that variations in individual parameters would not lead to material differences in effects to ecological receptors and this includes the SSSI.

3.7.166. The applicant also stressed it will need to design the proposed development in accordance with BAT, in accordance with European BAT Reference documents, building on the EA's Hydrogen Production with Carbon Capture: Emerging Techniques (2023), in order to obtain an EP. The applicant states as part of this, the EA would expect the applicant to include measures to minimise emissions to air, including in regard to NO_x and the management of nitrogen deposition. In this regard the ExA is satisfied that this matter will be adequately addressed through the environmental permitting process and notes NPS EN-1 paragraph 4.12.10 regarding working on the assumption that the relevant pollution control regime and other environmental regulatory regimes will be properly applied and enforced by the relevant regulator and advising such controls should not be duplicated.

3.7.167. Whilst the applicant noted the mitigation examples given by NE demonstrate how any response to the cumulative impacts to the SSSI needs to be a strategic one, it argues it would not be appropriate for a DCO requirement to require the applicant to modify the design of another parties' facility, as that can only be done by those parties. In concluding it's response the applicant repeated its previous position, as set out in its Environmental Position Statement [REP8-019], confirming its willingness to support strategic approaches, but considered this to be a matter for outside of the DCO determination.

3.7.168. The ExA finds the evidence submitted by the applicant, as summarised above, to be persuasive. Whilst the predicted nitrogen dose at the point of maximum impact within the SSSI is 1.1% of the critical load, marginally exceeding the 1% insignificance threshold, the Institute of Air Quality Management has clarified the 1% threshold should be interpreted to the nearest whole number.

3.7.169. The ExA further notes the background conditions when the SSSI was designated were clearly higher than they are currently and even though nitrogen deposition rates have been shown to be higher than the lower critical load of 10kgN/ha/yr, it is clear that there is a downward trend and the total nitrogen deposition is expected to continue to decrease over time. Indeed, even when cumulative impacts are considered, forecasted deposition will remain below historical levels.

3.7.170. In consideration of these points, the ExA finds in favour of the applicant's conclusions on this matter that the predicted impact is effectively insignificant.

3.7.171. Turning to the matter of BNG, the applicant's case sets out its position in this regard. It argues with the ecological mitigation and enhancement as set out in ES chapter 12 [APP-064] and in its OBLMP ([REP7-021] APV/ [REP8-039] WCBAV) will enable the development of a full Landscape and Biodiversity Management Plan. It considers this would reflect the detailed design (and impacts) of the proposed development, in substantial accordance with the OLBMP. A full Landscape and Biodiversity Management Plan would be secured by requirement 4 of the dDCO ([REP7a-003] (APV)/ [REP7a-006] (WCBAV)).

3.7.172. Through these measures, the ExA is satisfied the applicant will be able to deliver a commitment to no net loss, as a minimum. Additionally, the ExA noted the applicant is keen to secure enhancements in the wider Teesside area off-site from the proposed Order limits, as allowed for by NPS EN-1 (paragraph 4.6.11) and is working with stakeholders such as NE, EA and the RSPB to develop proposals in this regard. However, as the provisions in the Environment Act 2021 related to BNG are not yet in force in regard to NSIP developments under the Planning Act 2008, the ExA does not consider this matter can be secured through either requirement or legal agreement at this time, as to do so would not meet the relevant tests for their imposition/ use.

3.7.173. With the exception of the issues raised above, no other matters that haven't been resolved during the examination concerning biodiversity, ecology and nature conservation (including ornithology and marine ecology) have been identified. Bearing all the evidence submitted during the examination in mind the ExA finds ES chapters 12 (Ecology and Nature Conservation (including aquatic ecology)) [APP-064], 13 (Ornithology) [APP-065] and 14 (Marine Ecology) [APP-067], as supported by information from several other chapters, together with their related appendices and figures to be robust and sound.

3.7.174. Therefore, the assessments undertaken in regard to ecology and nature conservation (including aquatic ecology), ornithology and marine ecology are considered appropriate for the scale, nature and location of the proposed development and make appropriate recommendations for mitigation, which are included in requirement 4 (Landscape and biodiversity management plan), requirement 10 (Drainage), requirement 14 (Protected species), requirement 15 (CEMP), requirement 19 (Construction hours), requirement 20 (Control of Noise – Construction), requirement 21 (Piling and penetrative foundation design) and requirement 28 (Decommissioning) of the dDCO (current version [REP7a-003] (APV)/ [REP7a-006] (WCBAV).

3.7.175. From the evidence before the ExA, we are satisfied that the proposed development is acceptable in terms of its location and in regard to all matters related to ecology and nature conservation (including ornithology and marine ecology).

CUMULATIVE AND COMBINED EFFECTS

3.7.176. The applicant's cumulative and combined effects assessment [APP-076] was updated during the course of the examination [REP5-015]. In respect of terrestrial ecology, cumulative moderate adverse construction effects have been identified in respect of eight other developments on the shortlist due to potential effects on open mosaic habitat, ephemeral habitats and invertebrates.

3.7.177. Additionally, potential cumulative minor adverse operational effects have been identified due to nitrogen deposition upon the Teesmouth and Cleveland Coast SSSI. However, the applicant maintains that this would not be significant, and no additional mitigation would be required beyond those measures identified in ES chapter 12 [APP-064]. Indeed, the ExA notes by the close of the examination, all but two of NE's concerns had been successfully resolved leaving its concerns regarding air quality impact of pollutants at SSSIs during construction and operation outstanding.

3.7.178. In its DL8 submission [REP8-044], NE are of the opinion that mitigation is required in respect of the operational cumulative effects of nitrogen deposition on the Teesmouth and Cleveland Coast SSSI. This is because the project alone would contribute 1.1% of the critical nitrogen deposition load. NE flag that a strategic approach to mitigation is mentioned in the report but is not yet established, so it cannot be relied upon for this project.

3.7.179. The applicant, in taking a contrary position, provided a technical note at DL7 [REP7-027] entitled Report to Inform Assessment of Air Quality Impacts on Teesmouth and Cleveland Coast SSSI. It concludes: *"...following consideration of mitigation designed into the plant to reduce emissions, there would be no likely significant residual effect from the Proposed Development on Teesmouth and Cleveland Coast SSSI either alone or cumulatively with other projects. This is because:*

- *the residual contribution of H2Teesside to any cumulative nitrogen deposition impact is negligible and therefore directly addressing the residual contribution would likely convey a similarly negligible benefit to the SSSI;*
- *the SSSI vegetation developed at a time when nitrogen deposition rates were higher than they would be even with the Proposed Development in operation; and*
- *because the dunes at the most affected location (Coatham Dunes) are very significantly affected by recreational disturbance, and any benefit conveyed by reducing nitrogen deposition to the very small extent required to address the residual impact of the Proposed Development would likely be more than offset by the damage caused by continuing recreational disturbance and trampling."*

3.7.180. This position was maintained in the applicant's subsequent submissions at DL8 [REP8-019] and DL9 [AS-054].

3.7.181. In respect of ornithology interests in the area, minor adverse effects are predicted [REP5-015] during construction due to noise and visual disturbance. However, the applicant has incorporated mitigation measures into the OLBMP ([REP7-021] APV/ [REP8-039] WCBAV) to minimise such effects, to ensure sensitive lighting strategies and to control the timing of vegetation clearance works to avoid impacts on breeding birds.

3.7.182. For marine ecology, the applicant predicted several of the potential impact pathways for cumulative effects would be avoided or reduced to negligible through the use of BPM and industry standard proposed design. The MMO confirmed [REP5a-013] that all concerns raised had been addressed by the applicant, and based on the applicant's submission the dDCO did not require a Deemed Marine Licence (DML) to be incorporated within it, provided the conditions set out in Article 35 (Bored Tunnels exemption) within the Marine Licensing (Exempted Activities) Order 2011 are complied with. The ExA has concluded elsewhere in this report that it is satisfied the applicant satisfies these conditions.

3.7.183. The ExA consider the cumulative effects assessment to be robust and to draw reasonable conclusions in respect of ornithology and marine ecology matters. In respect of the outstanding dispute regarding terrestrial ecology and nitrogen deposition, the ExA considers the SSSI vegetation has colonised and grown in testing conditions that would not be replicated by the proposed development.

3.7.184. The ExA, whilst acknowledging the position of NE, does not agree with it on the basis of the evidence submitted. Alternatively, the ExA considers the applicant has provided sound and robust evidence on the matter and has provided suitable justification for not adopting any additional mitigation over and above ecological mitigation and enhancement as set out in ES chapter 12 [APP-064] and in its OBLMP ([REP7-021] APV/ [REP8-039] WCBAV), which will enable the development of a full Landscape and Biodiversity Management Plan to reflect the detailed design (and impacts) of the proposed development, in substantial accordance with the OLBMP, as secured by requirement 4 of the dDCO ([REP7a-003] (APV)/ [REP7a-006] (WCBAV)).

3.7.185. On the basis of the above, the ExA finds that the cumulative impacts would be acceptable and would not lead to a degradation or worsening of the quality of the SSSI.

CONCLUSIONS

3.7.186. The policies relating to ecology and nature conservation (including ornithology and marine ecology), as set out in NPS EN-1, NPS EN-4 and NPS EN-5 have been followed by the applicants. These policies are consistent with the aims of the MPS and NEMP, section 15 (Conserving and enhancing the natural environment) of the NPPF and the relevant Development Plans, including the RCBP and the HLP. The ES has clearly set out the effects on designated sites, protected species and on habitats and other species of principal importance.

3.7.187. Whilst the ExA notes the effects related to the Cowpen Bewley Woodland Park, it also notes replacement land has been identified as mitigation for that loss and a new area of woodland creation, within that replacement land, is proposed as enhancement to the area of woodland lost. This would be adequately secured through Article 29 of the APV of the dDCO [REP7a-003]. In terms of the open space impacted at Coatham Marsh it is noted that this would be restored to its original state at the end of the construction phase. This would be adequately secured through Article 29 and requirement 22 (Restoration of land used temporarily for construction) of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV). In terms of ecology and nature conservation, the ExA is satisfied, in both cases, resultant effects would be appropriately mitigated.

3.7.188. Overall, the ExA agrees that significant harm to ecology and nature conservation (including ornithology and marine ecology) would be avoided, and appropriate mitigation and monitoring measures are secured via articles and requirements in the dDCO, including the CEMP.

3.7.189. The applicant has demonstrated to the satisfaction of the ExA that activities are confined to the minimum areas required during construction and that best practice would be followed, with habitats restored after construction, where practicable. The ExA is also satisfied the applicant considered whether there were opportunities for environmental and BNG enhancements in accordance with paragraph 4.6.1 of NPS EN-1 and is satisfied, in terms of BNG, the applicant's commitment to no net loss, as a minimum, is adequate.

3.7.190. Although NE maintained its concerns regarding air quality impact of pollutants on Teesmouth and Cleveland Coast SSSI during construction and operation, the ExA is satisfied on the basis of the evidence submitted into the examination the applicant's conclusion, that the predicted impact is effectively insignificant, is sound and robust.

3.7.191. The ExA also noted the EA and the MMO confirmed they have no outstanding concerns regarding ecology and nature conservation.

3.7.192. Consequently, the ExA is satisfied all our questions raised during the examination have been answered satisfactorily and overall, there would be no significant adverse effects in terms of ecology and nature conservation (including ornithology and marine ecology), either alone or cumulatively with other developments. As such these matters do not weigh against the Order being made and are of neutral weight in the planning balance, neither weighing for nor against the proposed development.

3.8. GEOLOGY, HYDROGEOLOGY AND CONTAMINATED LAND

INTRODUCTION

3.8.1. ES chapter 10 (GHCL) [APP-062], considers the potential impacts of the construction, operation and decommissioning of the proposed development on GHLC.

3.8.2. The ExA's IAPI, as set out in the ExA's Rule 6 letter [PD-005], at annex C, highlighted several key issues related to GHCL. These include the timing, scope and responsibility for ground investigation, the impact on safeguarded mineral deposits, contamination risks during all phases of the proposed development and whether there is sufficient information to demonstrate risk to the water environment were effectively mitigated.

POLICY BACKGROUND

3.8.3. NPS EN-1 at section 4.12, sets out the implications of pollution control and other environmental regulatory regimes in energy infrastructure projects. It considers the impacts of discharges or emissions from a proposed project that leads to other direct or indirect impacts on terrestrial, freshwater, marine, onshore, and offshore environments that may be subject to separate regulatory regimes.

3.8.4. NPS EN-1 paragraph 5.11.15, states developments should contribute to and enhance the natural and local environment by preventing new and existing developments from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability.

3.8.5. Additionally, paragraph 5.11.17 of NPS EN-1 advises applicants should ensure that a site is suitable for its proposed use, taking account of ground conditions and any risks arising from land instability and contamination risks. Whilst paragraph 5.11.18 of the same NPS emphasises that for developments on previously developed land, applicants should ensure that they have considered the risk posed by land contamination, and where contamination is present, applicants should consider opportunities for remediation where possible.

3.8.6. NPS EN-1, paragraph 5.11.19, requires the applicants to safeguard any mineral resources on the proposed site as far as possible, taking into account the long-term potential of the land use after any future decommissioning has taken place.

3.8.7. National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines (NPS EN-4) outlines important considerations for GHCL in relation to pipeline infrastructure and advises such development should be considered in conjunction with the relevant sections of NPS EN-1.

3.8.8. NPS EN-4 at paragraphs 2.21.42 to 2.21.50 addresses assessments by applicants in terms of soil and geology and stress the importance understanding the impacts of the proposed development on water quality, resources, soils, and geology. paragraph 2.21.48 states where the applicant proposes to use HDD, as the means of installing a pipeline under designated sites and mitigating the impacts, the assessment should cover whether the geological conditions are suitable for HDD.

3.8.9. NPS EN-4, section 2.22 outlines mitigation measures for soil and geology including treating soil according to sustainable practices (including Soil Management Plans) and protecting water quality by avoiding vulnerable groundwater areas, carefully storing excavated material. Additionally, paragraph 2.22.14 states where HDD is proposed, the applicant should provide an alternative plan for installing the pipeline if HDD fails.

3.8.10. The National Policy Statement for Electricity Networks Infrastructure (NPS EN-5) does not specifically address GHCL.

3.8.11. The NPPF sets out the government's planning policies for England and their application. While the NPPF does not set specific policies for NSIPs, its policies may be important and relevant considerations. The NPPF includes policies relevant to the effective use of land, as well as in terms of geology, hydrogeology and land contamination.

3.8.12. Section 11 of the NPPF refers to 'Making effective use of land' advising *"Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions…." (paragraph 124).* Indeed, paragraph 125 sets out a number of qualified criteria that policies and decisions should meet including give substantial weight to the value of using suitable brownfield land.

3.8.13. In terms of conserving and enhancing the natural environment, paragraph 187 f) of the NPPF states planning policies and decisions should contribute to and enhance the natural and local environment by *"remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate."*

3.8.14. Paragraph 196 of the NPPF states planning policies and decisions should ensure that: a) a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination. This includes risks arising from natural hazards or former activities such as mining, and any proposals for mitigation including land remediation (as well as potential impacts on the natural environment arising from that remediation); b) after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990; and c) adequate site investigation information, prepared by a competent person, is available to inform these assessments.'

THE APPLICANT'S CASE

3.8.15. ES chapter 10 (GHCL) [APP-062] considers the effects of the proposed development in respect of GHCL during construction, operation and decommissioning.

3.8.16. The principle supporting documents include a conceptual site model, (appendix 10B [APP-195]), a Contaminated Land Assessment (appendix 10C [APP-196]), and the Geotechnical Risk Register (appendix 10D [APP-197]). These documents were supported by Figures 10-1 to 10-23, [APP-110] to [APP-141], respectively.

3.8.17. ES chapter 10 (GHCL) [APP-062] identifies the majority of the impacts relating to GHCL that are expected to arise as a result of the proposed development are anticipated to occur during the construction works.

3.8.18. ES chapter 10 (GHCL) [APP-062], indicates that the Order land has been extensively industrialised since before 1854, with ongoing potential contaminative uses. Appendix 10A [APP-194] details historical development of the proposed site and historical land uses are presented in Figures 10-6 to 10-9 [APP-115] to [APP-122]. ES chapter 10 (GHCL) [APP-062], table 10-6, summarises the ecological designations within the proposed development.

3.8.19. The assessment study area includes the Order land and a 250m buffer zone to identify potential impacts from off-site contamination sources. Additionally, a 1km buffer zone is used to evaluate impacts on controlled waters, designated sites, groundwater abstractions, and groundwater source protection zones. ES chapter 10 (GHCL) [APP-062] states that the study area is defined to include the potential direct and indirect impacts of the proposed development during all phases of the proposed development, including maintenance.

3.8.20. Table 10-8 of ES chapter 10 (GHCL) [APP-062] provides a summary of the Agricultural Land Classifications (ALC) for each part of the proposed development and identifies the H_2 pipeline corridor (North of the River Tees) extends across urban, Grade 5, Grade 4 and Grade 3 agricultural land. This is detailed below:

- Cowpen Bewley: Grade 4.
- Cowpen Bewley Woodland Park replacement land: Classified as Grade 3 (approximately 1 ha) is assumed to be Best and Most Versatile (BMV) land and Grade 3a land as the worse-case scenario.
- grade 5 Land: Adjacent to the end of the Urban Classification from the end of Greatham Creek and moving west to encompass Swallow Fleet, Holme Fleet, Greatham Creek, and the surrounding land.
- Land adjacent to Billingham Cemetery (Grade 3 land) - This area of land has not been considered in the assessment as it comprises an existing road.

3.8.21. ES chapter 10 (GHCL) [APP-062] identifies 10 dormant mineral sites, including an anhydrite mine at Billingham which has had new conditions approved for mineral extraction. Seven of the remaining sites are unlikely to resume extraction due to recent development or other uses, while two may require new planning permission to re-open. There is one active salt production site near Seal Sands, along with two existing brinefield sites with permissions and two brinefield cavities at Wilton used for gas storage.

3.8.22. Additionally, planning permission was granted in 2009 for natural gas extraction from limestone beneath Kirkleatham. The local Mineral Safeguarding Area includes salt, potash, and gypsum/ anhydrite, extending below the proposed development

and service corridors. Safeguarded marine dredged sand and gravel are present at Tees Dock, which is identified as a Safeguarded Wharf, along with Billingham Reach Industrial Estate.

3.8.23. ES chapter 10 (GHCL) [APP-062] states that during the construction phase a final CEMP, secured by requirement 15 of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV), that accords with the Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV), would minimise the impact of the proposed development on GHCL including rainfall runoff from areas where there is a risk of contamination. Additionally, the final CEMP requires various plans, secured through the Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV), to be approved by the relevant Planning Authority including:

- Site Waste Management Plan.
- Material Management Plan.
- Hazardous Materials Management Plan.
- Asbestos Management Plan.
- Soil Management Plan.
- HDD Clean-up Plan setting out measures to control contamination.

3.8.24. ES chapter 10 (GHCL) [APP-062] identifies the final CEMP, secured by requirement 15 of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV), which in accordance with the Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV), would include measures to ensure prior to the detailed design and construction of the proposed development confirmatory ground investigations would be undertaken. The applicant advises such an investigation would be undertaken to assess whether and to what extent contamination is present at the main site. The applicant advised the ground investigations findings would feed into the detailed design process so appropriate measures can be undertaken, if necessary.

3.8.25. The applicant also highlights requirement 3 (Design) of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV) secures the detailed design of the proposed development subject to the approval of the relevant planning authority, following consultation with the STDC and other relevant parties.

3.8.26. In addition to the above the applicant sets out in ES chapter 10 (GHCL) [APP-062], the final CEMP would include measures to mitigate and control the impact of remediation works undertaken. It also contains provisions which would require the applicant to review the need for any additional remediation, following completion or in place of the remediation undertaken by STDC, as well as a strategy to deal with unexpected contamination.

3.8.27. The applicant acknowledges in paragraph 10.6.7 of ES chapter 10 (GHCL) [APP-062], that the quality of the ground and ground water could be affected by dewatering and earthworks. Additionally, piling risks may impact the ground and controlled waters. As such the applicant advises a Construction Dewatering Strategy, as detailed in the Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV), that would accord with a Groundwater Risk Assessment to be developed post consent, would be provided. Furthermore, requirement 21 (Piling) of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV) would secure a piling and penetrative foundation design method statement.

3.8.28. The potential for any contamination of underlying superficial and bedrock aquifers in the proximity of the proposed development would be managed via the preparation of a Foundation Works Risk Assessment, prepared as part of the Framework CEMP

([REP8-003] APV/ [REP8-041] WCBAV). ES chapter 10 (GHCL) [APP-062] states that best practices would be adopted during construction to prevent or reduce, as far as reasonably practicable, spillage risk and spillage effects, with such measures being set out in the Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV).

3.8.29. The Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV), also addresses the management of concrete batching, concrete usage and accidental spillage relating to foundation and building construction. Additionally, the Framework CEMP confirms that rainfall runoff from areas of low contamination risk would be captured and stored in settlement ponds for reuse where reasonably practicable to reduce consumptive water use.

3.8.30. Paragraph 10.5.21 of the ES chapter 10 (GHCL) [APP-062], identifies the use of trenchless techniques, including HDD, for major crossings beneath the River Tees and the Teesmouth SPA and Ramsar sites, with the latter HDD required in order to mitigate against habitat loss. ES chapter 10 (GHCL) [APP-062], highlights potential also exists for habitat loss to occur as a result of HDD collapse or leakage of drilling fluid to the surface, known as 'breakout', during construction.

3.8.31. The measures to mitigate and reduce the impact of habitat loss is identified in paragraph 10.5.21 of ES chapter 10 (GHCL) [APP-062]. Paragraph 10.5.22 further details measures in the Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV), which would be employed to avoid the risk of habitat loss. The Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV) secured by requirement 15 of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV), includes the need for a drilling method statement and producing a Code of Construction Practice that would specify measures designed to minimise the risk of collapse of any HDD crossing.

3.8.32. In terms of the operational phase, ES chapter 10 (GHCL) [APP-062], states that the H_2 production facility of the proposed development would require an EP [REP5-009] to ensure compliance with the regulatory regime.

3.8.33. The ES chapter 10 [APP-062], identifies that during decommissioning a DEMP, would be secured by requirement 28 of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV), requiring the approval of the relevant planning authority. However, given the proposed long design life of the facility, specific decommissioning requirements have not yet been defined. Decommissioning would involve removing above-ground structures and sealing underground infrastructure. The impact of the proposed development during decommissioning is expected to be similar to those during construction, with additional focus on recycling bulk waste from demolition.

3.8.34. Table 10-12 of ES chapter 10 (GHCL) [APP-062], summarises the geological, hydrogeological and contaminated land impacts and LSE's during all phases of the proposed development with embedded mitigation. These range from Slight Adverse (Not Significant) to Slight Beneficial (Not Significant).

3.8.35. The assessment considers that no additional mitigation and enhancement measures outside those set out in section 10.5 of ES chapter 10 (GHCL) [APP-062] and outlined in the preceding paragraphs above are required. The residual effects are therefore considered the same as the impacts and LSE's discussed above. Tables 10-13, 10-14 and 10-15 of ES chapter 10 (GHCL) [APP-062], provide a summary of residual effects during construction, operation and decommissioning. The assessment concludes in section 10.8 of ES chapter 10 (GHCL) [APP-062] that the residual impact during all phases of the proposed development on the geological, hydrogeological and contaminated land (inclusive of embedded

mitigation) range from slight adverse (not significant) to slight beneficial (not significant).

VIEWS OF INTERESTED PARTIES

3.8.36. The LIRs from RCBC [REP1-043], and STBC [REP1-045], do not raise concerns regarding GHCL. STBC, in [AS-033], also confirm they are in agreement in respect of the applicant's assessment of mineral sites. Further, the applicant's final SoCG with HBC and RCBC [REP8-025] and [REP5-057] respectively, records agreement that the proposed development aligns with the Tees Valley Joint Minerals and Waste Strategy.

3.8.37. The EA in its RR [RR-009] raised concerns that a section of the proposed pipeline corridor adjacent to land (NGR NZ 51767 24084) is being investigated under Part 2A of the Environmental Protection Act 1990. This site was previously known as Seal Sands Chemicals Company (SSCC). The EA also raised concerns that this area of the former SSCC is heavily impacted by previous chemical manufacturing activities, which disposed of waste to land, affecting shallow groundwater.

3.8.38. NE in [RR-026], raised issues relating to HDD and in particular the risk of HDD collapse and leakage. The MMO in its DL4 and DL5 submissions [REP4-026] and [REP5-067], raised concerns in regard to the adequacy of provisions within the Framework CEMP. This was especially in regard to the management of pollution events in the Framework CEMP, including the reporting of chemical or fuel spillages, and whether the Framework CEMP contained adequate measures to deal with the risk of bentonite breakout during HDD.

3.8.39. The MMO in [REP4-026] also raise a concern regarding potential licence implications for works below MHWS as the applicant considered a DML would not be necessary for activities in connection with the proposed development.

THE EXAMINATION

The Change Requests and its impact on GHCL Assessment

3.8.40. The applicant submitted two CRs during the examination. CR1 [CR1-044] was made on 16 October 2024, with CR2 [REP7-011] being submitted at DL7. In regard to both CR1 and CR2 the applicant's CR Reports ([CR1-044] and [REP7-011]) concluded the proposed changes would not affect the outcomes of the assessment in ES chapter 10 (GHCL) [APP-062].

The ExA's considerations on the Change Requests and its impact on GHCL assessment

3.8.41. Having considered the details of these CRs, the ExA agreed with the applicant's position set out above and accepted both CR1 and CR2 into the examination. The proposed changes were not considered individually or cumulatively to lead to the proposed development being different in nature or substance to the original application.

Clarification of potential overlap between the proposed development and land investigated under Part IIA Environmental Protection Act 1990

3.8.42. The EA in [RR-009] requested clarification from the applicant on whether land formerly owned by SSCC is located adjacent to a section of the proposed pipeline being investigated by STBC under Part IIA of the Environmental Protection Act 1990. The EA in [REP3-010] clarified an error in [RR-009] regarding the location of

land adjacent to the relevant section of the proposed pipeline. The EA provided the correct grid reference in its DL3 submission [REP3-010], whilst also confirming the land was located adjacent to Work No. 6A.1 and not within the Order land.

3.8.43. The ExA sought clarification from the applicant in ExQ2, Q2.10.1 [PD-015] on potential overlap between the Order land and former SSCC land. The applicant at DL5 in [REP5-046] confirmed no overlap, and provided a plan [REP5-046] (appendix 1) illustrating the Order land limits and which was agreed upon in the applicant's completed SoCG with the EA [REP8-024].

3.8.44. At DL6, the EA in [REP6-008] requested further clarification on whether works proposed near the former SSCC land, involved the breaking of ground. If affirmative the EA considered further site investigation and assessment of the risks to the proposed development would be required. The ExA also sought clarification from the applicant on this issue at ISH3 [REP6a-017]. The applicant responded in ISH3 with a detailed response on the scope of works near the former SSCC land, noting that the activities were unlikely to involve ground-breaking but this could not currently be confirmed. Irrespective of this, the applicant and the EA in the submitted SoCG [REP8-024] agreed requirement 12 (Contaminated Land and Ground Water) of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV) would be adequate to control and mitigate the pollution control risks of intrusive works, with the EA being a consultee in regard to the discharge of this requirement. The parties agreed in the SoCG that separate site investigation and assessment would not therefore be required.

The ExA's considerations on the potential overlap between the proposed development and land investigated under Part IIA Environmental Protection Act 1990

3.8.45. The ExA is satisfied that the detailed response provided by the applicant at DL2 [REP2-028], together with its oral submission at ISH3 [REP6a-019], specifically relating to Part IIA land at the former SSCC), addresses the concerns regarding the overlap of the proposed development and the former SSCC land.

Securing adequate intrusive Ground Investigation

3.8.46. The ExA in ExQ1, Q1.10.1 [PD-008], sought clarification from the applicant on the mechanism for adequately securing the timetable for intrusive ground investigation. The applicant provided a detailed response at DL2 [REP2-028], setting out the details of the timetable for such investigations and stated these measures were set out in the Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV), the details of which would be secured through requirement 15 (CEMP) of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV). Additionally, requirement 12 (Contaminated Land and Groundwater) of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV) requires a pre-commencement scheme to manage contaminated risks to be approved by the relevant Planning Authority following consultation with STDC, the EA and other relevant parties.

3.8.47. The SoCG completed with STBC [REP8-027]) confirms that they agree most impacts relating to GHCL are anticipated to occur during construction and it is satisfied such impacts would be adequately managed through the Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV).

The ExA's considerations on securing adequate intrusive Ground Investigation

3.8.48. The ExA is satisfied the Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV secured through requirement 15 (CEMP) and requirement 12 (Contaminated Land and Groundwater) of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV) contain adequate ground investigation and associated measures to ensure that the necessary ground investigation and assessments are conducted before construction begins to control and minimise potential environmental impacts.

Safeguarding of minerals resources

3.8.49. The ExA in ExQ1, Q1.10.13 [PD-008], sought clarification from the relevant local authorities on the applicant's assessment of mineral sites as set out in ES chapter 10 (GHCL) [APP-062]. The ExA also explored the applicant's approach to the Tees Valley Joint Minerals and Waste Strategy in regard to minerals, as set out in ES chapter 10 (GHCL) [APP-062] and whether it was agreed the proposed development would not result in the loss of safeguarded mineral deposits.

3.8.50. The applicant provided a detailed response at DL2 [REP2-028] and STBC in its response [AS-033] agreed with the applicant's assessment of mineral sites. They further confirmed that the mineral sites would accord with safeguarding of such deposits in its development plan and result in no loss of access to the safeguarded sites. RCBC in its response REP2-044 to ExQ1 stated it was not aware of any mineral sites that would be impacted by the proposed development and there was no current mineral extraction operations in its area. Furthermore, the applicant in its final SoCG with RCBC [REP5-057] records agreement that the proposed development is compliant with the Tees Valley Joint Minerals and Waste Strategy with regards to minerals. The applicant's final SoCG [REP8-025] records that HBC agrees there is no conflict between the proposed development in principle and the Tees Valley Joint Minerals and Waste Strategy.

The ExA's considerations on safeguarding of minerals resources

3.8.51. The ExA were content the applicant had provided sufficient evidence to support its conclusions in relation to the safeguarding of minerals.

Additional remediation measures for unexpected contamination

3.8.52. At ExQ1, Q1.10.7 [PD-008], it was requested that the applicant identify the requirement in the dDCO that secured the need for the applicant to undertake further risk assessments, and implementing any additional remedial measures identified, which would arise from contamination not previously identified being found during construction. The applicant's response at DL2 [REP2-028] confirmed the Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV) and requirement 12(2)(e) of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV) set out the scheme for managing contamination and how the risks of unexpected contamination would be dealt with. This includes the approach to risk assessment and any remedial activities required. However, the applicant qualified its response by advising the management of such risks should be seen in the broader context of the wider programme of dealing with contamination across the site.

The ExA's considerations on additional remediation measures for unexpected contamination

3.8.53. The ExA is also satisfied the measures within the Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV) and requirement 12 (Contaminated land and ground water) of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV) adequately secure adequate investigations and remediations necessary.

Concerns raised by NE regarding HDD collapse and drilling fluid leakage

3.8.54. NE in [RR-026], raised concerns about HDD collapse/ leakage of drilling fluid as a result of measures designed to avoid the direct loss of habitat within the SPA and Ramsar site boundaries outlined in ES chapter 10 (GHCL) [APP-062]. NE highlight the risk of HDD collapse/ leakage of drilling fluid was considered during the examination of the NZT Project DCO and requested similar measures should be included in the Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV) to address the risks posed by HDD. The applicant in [AS-039] confirmed that the Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV) updated at DL2 included the NE's recommended measures. NE and the applicant agree that requirement 15 (CEMP) of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV), as documented in the signed SoCG provided adequate measures to address NE's concerns.

The ExA's considerations on the concerns raised by NE regarding HDD collapse and drilling fluid leakage

3.8.55. The ExA reviewed the Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV) and notes the HDD related measures in section 2.3 and table 8-2 relating to HDD and a clean-up plan. The ExA considers these mitigation measures regarding HDD collapse and drilling fluid leakage to be adequate and will be secured by requirement 15 (CEMP) of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV).

Concerns raised by the MMO

3.8.56. The MMO in [REP5-067] noted the risk of bentonite breakout during HDD operations and that measures to reduce the risk of hydraulic fracture and bentonite breakout are detailed in tables 8-2 and 8-7 of the Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV). These measures include the need for a Hydraulic Fracture Risk Assessment, which is secured within the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV) under requirement 15 (CEMP). The completed SoCG [REP7-037] with the MMO records agreement that the risk of bentonite breakout had been adequately considered in ES chapter 10 (GHCL) [APP-062] and the Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV) secure by requirement 15 (CEMP) of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV) would be adequate to deal with this issue.

3.8.57. The MMO in its DL4 submission [REP4-026], requested that any remedial action required below MHWS, would need to be communicated to the MMO. Further, the MMO advised that a Pollution Prevention Plan and an Emergency Response Plan would need to ensure spills would be appropriately recorded and managed to minimise risk to sensitive receptors and the marine environment and specifically include the provision: **"***Any oil, fuel or chemical spill within the marine environment must be reported to the MMO Marine Pollution Response Team within 12 hours…".*

3.8.58. At ExQ2, Q2.10.5 [PD-015] the ExA sought clarification from the applicant on how current measures in the Pollution Prevention Plan and an Emergency Response Plan, as secured through the Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV), would address the concerns of the MMO in terms of the reporting of oil fuel and chemical spills and the securing of appropriate licences in absence of a DML. In response, the applicant confirmed at DL5 [REP5-046] that the Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV) had been updated at DL5 in response to the matter and specifically at table 4-1. The ExA considered the content of the Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV) and is satisfied in this regard.

3.8.59. The MMO at [REP4-026] also raised concerns about the potential licence implications for works below MHWS as the applicant considered the activities in connection with the proposed development did not require a DML. The MMO requested clarification from the applicant on how they planned to address the identification of potential licences required in the absence of a DML. At ExQ2, Q2.10.5 [PD-015] the ExA sought clarification from the applicant on this issue. The applicant at DL5 [REP5-046] referred to the Marine Licensing (Exempted Activities) Order 2011, specifically the exemption for Bored Tunnels, which enables certain activities, including bored tunnels, to be exempt from requiring a DML Licence, if specific conditions are met.

3.8.60. The applicant's completed SoCG with the MMO [REP7-031] states as agreed the activities within the dDCO do not require a DML subject to the condition specified in Article 35 of the Marine Licensing (Exempted Activities) Order 2011 (Condition 1 (notice of intention to carry out the activity) and condition 2 (the activity must not significantly adversely affect any part of the environment of the UK marine area or living area it supports). Additionally, in the SoCG the MMO agrees that the applicant must notify them of their intention to rely on an exemption via the Marine Management Case System, before carrying out the activity. The applicant states in the completed SoCG [REP7-031] it is confident that the conditions of the exemption can be met by the proposed development and that if there are any changes, the MMO must be notified.

The ExA's considerations on concerns raised by the MMO

3.8.61. The ExA is satisfied that the applicant has adequately addressed the concerns of the MMO in relation to exempted activities under the Marine Licensing (Exempted Activities) Order 2011. Further, from the evidence submitted during the examination, the ExA is satisfied notice of the intention to carry on the activity will be given to the licensing authority before the activity is carried on and that the activity will not significantly adversely affect any part of the environment of the UK marine area or the living resources that it supports. Therefore, the ExA is satisfied the proposed development would meet the conditions/ exemptions related to bored tunnels as set out in Article 35 of the Marine Licence (Exempt Activities) Order 2011.

3.8.62. The ExA notes that the Pollution Prevention Plan and an Emergency Response Plan, as secured through the Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV), adequately addresses the concerns of the MMO in terms of the reporting of oil fuel and chemical spills. It also notes the potential need to secure appropriate licences from the MMO in absence of a DML

3.8.63. The ExA having considered the dDCO is content that the risk of bentonite breakout had been adequately considered in ES chapter 10 (GHCL) [APP-062] and the Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV) and considers requirement 15 (CEMP) of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV) would be adequate to deal with this issue.

CUMULATIVE AND COMBINED EFFECTS

3.8.64. The applicant's cumulative and combined effects assessment [APP-076] was updated during the course of the examination [REP5-015], which included specific technical appendices in respect of GHLC effects. Technical appendix [REP5-030] provides an assessment of the potential for cumulative effects upon GHLC during the construction phase of the proposed development, with table 23D-4 identifying only one slight adverse cumulative effect. This is in regard to soil resources located

between the proposed development and the Greatham Flood Alleviation Scheme, due to the loss of BMV land. No cumulative effects during operation were identified.

The ExA's considerations on Cumulative and Combined effects

3.8.65. The ExA considers the cumulative and combined effects assessment, together with its technical appendices to have properly identified the risk of such an effect and is satisfied the applicant's suite of management plans would work to mitigate that risk to an appropriate level, which are secured through requirement 15 (CEMP) of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV). The ExA is satisfied in regard to the applicant's cumulative and combined effects assessment and has no concerns regarding the residual cumulative effects in this instance.

CONCLUSIONS

3.8.66. The ExA is satisfied the applicant has adequately considered and addressed the impact of the proposed development in respect of GHCL, including in terms of cumulative and combined effects. Adequate embedded mitigations are detailed in the ES and secured within the rDCO, which contains appropriate articles and schedules, including requirements, to avoid adverse impacts arising. The ExA is satisfied that the Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV) secured by requirement 15 of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV) include key measures to mitigate the impact of the proposed development on geology, hydrogeology and contaminated land. These include a Site Waste Management Plan (SWMP) to monitor and manage waste generated during construction; a Materials Management Plan to ensure that materials are managed during construction; and a Hazardous Materials Management Plan that includes an Asbestos Management Plan to ensure that hazardous materials are managed safely to prevent contamination. Additionally, the DEMP would be secured by requirement 28 (Decommissioning) of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV). Both the CEMP and the DEMP would require consultation with and approval from the relevant Planning Authority(s) should the DCO be made.

3.8.67. In addition to the above, the ExA is satisfied the Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV) contains adequate ground investigation and associated measures to ensure that the necessary ground investigations and assessments are conducted before construction begins, in order to control and minimise potential environmental impacts. Requirement 12 (Contaminated Land and Groundwater), together with requirement 15 (CEMP) of the dDCO (REP7a-003] (APV)/ [REP7a-006] (WCBAV)) adequately secures the ground investigations and associated measures.

3.8.68. Furthermore, the ExA is satisfied requirement 21 (Piling) of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV) would appropriately minimise pilling risks that may impact the ground and controlled water, by securing a piling and penetrative foundation design method statement. Additionally, the ExA is satisfied a Construction Dewatering Strategy, development in accordance with a Groundwater Risk Assessment, would satisfactorily address any dewatering issues arising from construction activities. It is also satisfied both the Groundwater Risk Assessment and the Construction Dewatering Strategy, as set out in the Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV), would be appropriately secured by requirement 15 (CEMP) of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV).

3.8.69. Finally, the ExA is satisfied that the Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV) contains adequate contingency plans to mitigate any potential impacts arising from HDD and bentonite breakout and that these would be

appropriately secure by requirement 15 (CEMP) of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV) should the DCO be made.

3.8.70. Taking these matters into consideration, the ExA is satisfied that the proposed development would therefore accord with relevant legislation and policy requirements, including NPS EN-1, NPS EN-4 and the NPPF. As such, the ExA concludes the impact of the proposed development regarding GHCL is neutral in the planning balance.

3.9. HUMAN HEALTH AND MAJOR ACCIDENTS AND DISASTERS

INTRODUCTION

3.9.1. ES chapter 22 (Human Health) [APP-075] assesses the potential Human Health (HH) effects of the proposed development and addresses the applicant's proposed mitigation to control these impacts, whilst ES chapter 20 [APP-073] assesses potential Major Accidents and Disasters (MA&Ds) impacts that could arise as a result of the proposed development and sets out the applicants position in regard to the effectiveness of the proposed mitigation measures. ES chapter 22 (Human Health) [APP-075] relies on findings from the technical assessments in ES chapter 20 (MA&D) [APP-073], which are relevant to human health and have therefore been examined by the ExA in conjunction with each other.

3.9.2. The ExA's IAPI, as set out in its Rule 6 letter [PD-005] at annex C identified HH impacts including the extent to which the proposed development would create any public health risks, including in relation to the proposed AGIs. It also identified MA&D issues, including the Control of Major Accident Hazards (COMAH) designation, impacts on any COMAH sites located in the vicinity of the proposed development, potential effects on the safety and monitoring of surrounding sites and the suitability of management and mitigation plans.

POLICY BACKGROUND

3.9.3. With regard to MA&D, NPS EN-1 at paragraph 4.13 notes that some energy infrastructure will be subject to the COMAH Regulations 2015. These Regulations aim to prevent major accidents involving dangerous substances and limiting their impact on people and the environment.

3.9.4. Paragraph 4.12.10 of NPS EN-1 emphasises that decision-makers should assume these regulatory regimes will be properly applied and enforced by the relevant authorities. The main regulatory frameworks include:

- The Hazardous Substances Act 1990.
- The (Planning) Hazardous Substances Regulations 2015.
- The Pipelines Safety Regulations 1996.
- The Health and Safety at Work Act 1974 (as amended) and associated regulations that provide a regulatory framework to ensure the provision of a safe working environment.
- The Environmental Permitting (England) Regulations 2016.
- The COMAH Regulations 2015.

3.9.5. NPS EN-4 is the NPS for Gas Supply Infrastructure and Gas and Oil Pipelines. It addresses major accidents in section 2.6, referencing the COMAH and cross references to section 4.13 of NPS EN-1 (The overarching NPS for Energy

Infrastructure). Additionally, section 2.20 and paragraph 2.20.9 highlights that the Health and Safety Executive (HSE) enforces the Pipeline Safety Regulations, which is the principal legislation governing the safety of pipelines and require that pipelines be designed, constructed, and operated so that the risks are As Low As Reasonably Practicable (ALARP).

3.9.6. NPS EN-5 for electricity networks makes no reference in regard to MA&D but provides guidance on the assessment and mitigation of impacts from electricity networks. It is clear it is to be considered alongside NPS EN-1, as the primary policy for decisions on energy infrastructure applications.

3.9.7. In terms of HH, NPS EN-1 section 4.4 requires the applicant to undertake an assessment of all relevant human health impacts, including direct effects from: increased traffic; air or water pollution; dust; odour; hazardous waste and substances; and noise. Furthermore, paragraph 4.4.3 notes that new energy infrastructure may also affect the composition and size of the local population, potentially leading to indirect health impacts. For example, it may affect access to key public services, transport and/ or the use of open space for recreation and physical activity.

3.9.8. NPS EN-4 is clear it is to be considered alongside NPS EN-1, as the primary policy for decisions on applications for natural gas supply infrastructure and gas and oil pipelines. In regard to HH, it advises developments should follow the considerations on gas emissions outlined in NPS EN-1, particularly those set out in section 5.2 that address the effects of emissions on air quality and their implications for HH.

3.9.9. In terms of Electricity Networks, paragraphs 2.9.46 and 2.9.47 of NPS EN-5 outlines the impact of electromagnetic fields (EMF) from electricity networks on health. They highlight that overhead power lines produce EMFs, which are strongest directly under the line and decrease with distance. This NPS is clear that while putting cables underground eliminates the electric field, they still produce magnetic fields that are highest directly above the cable. It also noted EMFs can have both direct and indirect effects on HH.

THE APPLICANT'S CASE

Human Health

3.9.10. ES chapter 22 (HH) [APP-075], considers the potential HH impacts during all phases of the proposed development, including air quality, noise and vibration, traffic, socio-economics and land use, climate change and cumulative impacts of the proposed development in conjunction with other nearby consented and proposed developments. The detailed technical assessment in relation to these matters are presented elsewhere in the applicant's ES and the ExA's findings and conclusions related to these areas of consideration (air quality, noise and vibration, traffic and transport, socioeconomics and land use, climate change and cumulative and combined effects) are set out within those sub-chapters relevant to those headings of this report and not repeated here, so as to avoid duplication.

3.9.11. In terms of the construction and decommissioning phases of the proposed development, ES chapter 22 [APP-075] Table 22-1 summarises the residual effects following mitigation, where relevant, on each of the 14 health determinants listed. The sensitivity of the population ranges from low, medium to high depending on the health determinant. The table shows the magnitude of impact on these health determinants during the construction and decommissioning phase of the development to be either negligible or low; with the residual effects as:

- Minor adverse (not significant) in relation to risk taking behaviour; open space, leisure and play; transport modes, access and connections; community safety; community identity, culture, resilience and influence; housing; health and social care services; climate change and adaptation; air quality; and noise and vibration.
- Negligible (not significant) in relation to radiation – EMFs.
- Minor beneficial (not significant) in relation to social participation, interaction and support; and education and training.
- Moderate beneficial (significant) in relation to employment and income.

3.9.12. ES chapter 22 [APP-075] concludes in connection with the impact of construction and decommissioning phases of the proposed development on human health most of the residual effects are assessed as Minor adverse (not significant). Employment and income are the only health determinants assessed as having a moderate beneficial (significant) effect.

3.9.13. In terms of the operational stage of the proposed development Table 22-9 ES chapter 22 [APP-075] summarises the residual effects following mitigation and list 13 health determinants. The sensitivity of the population ranges from very low, medium to high depending on the health determinant. The assessment concludes the magnitude of impact on these health determinants during the construction and decommissioning phase of the development to be either negligible or low. The residual effects during operation is assessed as:

- Minor adverse (not significant) in relation to: community safety; air quality; and Radiation – EMFs.
- Negligible (not significant) in relation to: risk taking behaviour; transport modes, access and connections; social participation, interaction and support; housing; health and social care services; and noise and vibration.
- Minor beneficial (not significant) in relation to: community identity, culture, resilience and influence; employment and income; education and training; and climate change and adaptation.

3.9.14. ES chapter 22 [APP-075] concludes in connection with the impact of the operational phase of the proposed development on HH, most residual impacts are assessed as negligible (not significant). Community identity, culture, resilience, and influence, as well as employment and income, education and training and climate change adaption are assessed as having minor beneficial (not significant) effects.

3.9.15. ES chapter 22 [APP-075] identifies the potential health effects associated with the electrical connection corridor and the exposure of local residents to EMF radiation. Additionally, the assessment identifies that residents within the study area suffer from slightly worse health when compared with England as a whole. Linked to this finding the assessment recognises that concerns by local residents both actual and perceived regarding exposure to major electrical infrastructure can also lead to mental health impacts. The assessment considers that during construction of the electrical connections corridor no EMF will be produced, as it will not be operational and the impact on HH during this phase is negligible (not significant). Overall, the applicant considered the likely effect on HH arising from potential exposure to EMFs during the construction phase to be negligible (not significant).

3.9.16. ES chapter 22 [APP-075] points out no new overhead transmission lines are proposed as part of the proposed development and it is likely that all electrical and control system cables will be installed below ground or at ground level. The applicant confirms such electrical cables are not located beneath buildings and will

not be installed directly below or near to residential properties and due to the location of the electrical connection corridor and its distance from residential areas.

3.9.17. In relation to HH, the applicant highlights requirement 15 (CEMP) of the DCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV) secures a final CEMP, which secures the mitigations outlined in the Framework CEMP [REP8-003] APV/ [REP8-041] WCBAV). The Framework CEMP contains measures to ensure EMF on HH would be mitigated though the application of electromagnetic compatibility industry accepted practice and in accordance with safety management principles from the Electromagnetic Compatibility Directive (European Commission). Risks due to EMF, from relevant sources, including the substation and Electrical Connection Corridor, will be reduced using the 'as low as reasonably practicable' (ALARP) principle leading to a conclusion in ES chapter 22 [APP-075] that the impact on HH from EMF during the operational phase is considered to be Minor Adverse (Not Significant).

Major Accidents and Disasters

3.9.18. ES chapter 20 (MA&D) [APP-073] assesses the risk of the proposed development in regard to MA&D, including impact of such risks on HH and the environment during all phases (construction, operation and decommissioning). It covers, but is not limited to, the potential risk of fire, explosion, release of harmful gases, fire and explosion of natural gas or H_2 and domino effects onto neighbouring COMAH sites that may arise from natural and/ or accidental causes. The assessment is accompanied by ES figure 20-1 (MA&D study area) [APP-178], appendix 20A (Long List of MA&D Risk Events) [APP-217], appendix 20B (Hazardous Substances Consent Flowchart) [APP-218] and appendix 20C (COMAH Flow Chart) [APP-219].

3.9.19. Paragraph 20.2.19 of ES chapter 20 [APP-073] explains there is no specific guidance setting out an approach for conducting an assessment of the risks from MA&D and therefore relies on best practice guidance.

3.9.20. The assessment identifies the proposed development will be an upper tier installation under the COMAH Regulations. Using professional judgement, it defines the ZoI as a 5km radius around the proposed development site, accounting for potential "domino" effects with neighbouring COMAH infrastructure and Major Accident Hazard pipelines. ES figure 20-1 [APP-178] shows the study area based on ZoI.

3.9.21. Paragraph 20.4.9 of ES chapter 20 [APP-073], states that there are 32 COMAH regulated installations within the study area based on a search of HSE Public Register forming a domino group as described within the COMAH Regulations.

3.9.22. ES chapter 20 [APP-073] also identifies potential accidents during the construction phase, including release of diesel used on the main site for vehicles and mobile generators; dust; and the use of acetylene contained in compressed gas cylinders. Additionally during this phase the proposed development may potentially be vulnerable to the events such as ground instability, structural collapse, impact with gas pipelines or unexploded ordnance, potential risk of fire/ explosion, release of harmful gases, existing ground contamination and extreme weather. A list of credible scenarios related to the construction of the proposed development is located in ES chapter 20 at table 20-3. This list sets out the scenario, the potential impact, details if the embedded mitigation, as well as the tolerability of the risk in the light of the embedded mitigation identified.

3.9.23. In terms of the operation of the proposed development, the key hazardous substances are identified in ES chapter 20 [APP-073] at table 20-4. The table list the substances, provides a description of use, how they will be stored and transported, potential hazards, and potential effects. The substances specified are:

- Process gases, such as: H_2; natural gas comprising a mix of hydrocarbons (primarily CH_4; Syngas (Synthesis Gas) comprising a mixture of H_2, CO and CO_2; O_2 (in both gaseous and liquid forms); nitrogen (in both gaseous and liquid forms); and CO_2.
- Process materials, including: hydrogenation catalyst (solid); sulphur removal catalyst (solid) and ultra purification sulphur removal catalyst (solid); pre-reforming catalyst; auto thermal reforming catalyst; selective catalytic reduction catalyst; aqueous NH_3; isothermal shift catalyst; low and high temperature shift catalysts; methanation catalyst; and unsaturated alcohol amine.
- Fuels listing diesel.
- Utilities and service chemicals, including sodium hypochlorite; bromine; sulphuric acid; carbohydrazide; and morpholine.

3.9.24. ES chapter 20 [APP-073], table 20-5 identifies a list of credible scenarios related to the operation of the proposed development. This list sets out the scenario, the potential impact, details if the embedded mitigation, as well as the tolerability of the risk in the light of the embedded mitigation identified. Credible scenarios detailed, include: flooding; accidental vehicle impact; failure of electricity supply; extreme meteorological events; aircraft/ drone impact; nuclear event; domino effects; fire and/ or explosion related to natural gas, H_2 and/ or O_2; toxic gas release (CO); and/ or asphyxiant gas release (CO_2).

3.9.25. Table 20-3 and table 20-5 of ES [APP-073] details the embedded mitigation measures to control the potential events that could impact on the vulnerability of the proposed development to MA&D during both its construction and operational phases. Specifically, assessment identifies that requirement 15 of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV) secures a final CEMP [REP8-041] to control the potential impacts of construction together with a number of other plans including SWMP, an Emergency Response Plan and an Unexploded Ordnance Emergency Response Plan. Additionally, the applicant states a Major Accident Prevention Plan will be required to inform the application for the COMAH Licence, taking account of potential domino effects and risks that will be managed to ALARP levels.

3.9.26. In all instances related to the credible scenarios related to the construction and operation of the proposed development, as set out in tables 20-3 to 20-5 of ES chapter 20 [APP-073], the tolerability has been found to be either Tolerable (not significant) or tolerable – if ALARP (not significant).

3.9.27. Specifically in terms of operation, the assessment considers adequate mitigation is embedded in the design and layout of the proposed development, including in relation to the provisions for isolation, emergency shutdown and, if required, depressurisation. Additionally, the H_2 production facility will be regulated by an EP, requiring the use of BAT for managing accidents and emergencies. Hazardous Substances Consent (HSC) will be obtained from the relevant Planning Authority, and the proposed development's Upper Tier COMAH status will be reviewed with the HSE and EA.

3.9.28. ES chapter 20 [APP-073] assesses the potential MA&D impacts during decommissioning at table 20.6. It sets out credible scenarios, the potential impacts, details if embedded mitigation and tolerability of the risk in the light of the embedded mitigation identified. The MA&D impacts identified include: fire and/ or explosion arising from demolition activity that results in a loss of containment of gas, as a result of failure to empty, clean and purge process systems, and is ignited by an unrestricted source; and/ or exposure to toxic catalyst material as a result of the failure to empty and clean process systems prior to demolition. In all instances the tolerability of these impacts during decommissioning has been found to be tolerable (not significant).

3.9.29. ES chapter 20 [APP-073] at table 20-6 specifies embedded mitigation that would take place during all decommissioning and demolition activities. This chapter of the ES also identifies that requirement 28 of the dDCO secures a DEMP, which will outline the program of works related to decommissioning and includes the need for strategies for managing MA&D impacts during the decommissioning and demolition phase of the proposed development.

VIEWS OF INTERESTED PARTIES

3.9.30. Several IPs commented on COMAH safety and the potential impact of the proposed development to surrounding upper tier COMAH facilities, including accumulated risks if their access to existing pipelines is compromised and the potential “domino effect.” Additionally, STG expressed concern in its DL7 submission [REP7a-074] that COMAH designation and HSC for the proposed development could limit future use of their retained land by establishing restrictive consultation zones. The STG argued that the HSE's "inner zone" for the H_2 production facility would encroach on its land, potentially sterilising it. These concerns regarding COMAH Designations and HSE are considered by the ExA in chapter 6 of the report to avoid duplication.

3.9.31. STBC in its LIR [REP1-045] noted that the proposed development would follow measures to minimise risks to ALARP, as required by the HSE and EA. Further, STBC commented that the H_2 plant would need an EP and be regulated as a COMAH site. RCBC [REP1-043] had no comments on health and safety or major accidents. The applicant’s completed SoCG with HBC [REP8-025], RCBC [REP5-057] and STBC [REP8-027] confirmed there were no concerns regarding the impact of the proposed development on HH and MA&D.

THE EXAMINATION

Human Health

3.9.32. During the course of the examination, the ExA through written and oral questions sought clarification on matters relating to most of the HH determinants identified and assessed in the ES (Chapter 22) [APP-075]. The ExA noted that no significant matters of concerns were raised by IPs in RRs, LIRs or WRs in respect of HH matters. The IPs were content with the conclusion of ES chapter 22 [APP-075] of no significant effects of all phases of the proposed development on HH and that the mitigation measures included in the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV), including requirement 15 which secures a final CEMP with provisions to minimise and control potential health effects associated with the electrical connection corridor and the exposure of local residents to EMF radiation was adequate.

3.9.33. Having considered the responses from the applicant and relevant IPs the ExA is satisfied that ES chapter 22 [APP-075] has adequately addressed the HH matters and there are no outstanding concerns.

ExA considerations on HH

3.9.34. The ExA is satisfied the ES has adequately addressed and considered HH matters relating to the proposed development and that necessary mitigation to avoid adverse effects in this regard would be appropriately secured through relevant requirements of the rDCO, [REP7a-003] (APV)/ [REP7a-006] (WCBAV) including requirement 15, which secures a final CEMP, as set out in the rDCO at appendix D of this report.

3.9.35. Further, the ExA is satisfied that the applicant has provided detailed information and adequately assessed how risks associated with the proposed development would be managed to ALARP in the context of EMF and that requirement 15 of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV), which secures the final CEMP that would contain adequate measures to ensure EMF on HH identified and mitigated.

Major Accidents and Disasters

3.9.36. The ExA posed several questions in ExQ1 [PD-008], with a view to clarifying how the proposed development would manage impacts arising from MA&D during all phases. Specifically, the ExA sought clarification from the applicant in Q1.14.8 on whether the mitigation measures embedded in the design for this "First of its Kind" development would be sufficient to prevent and control MA&D. It also sought clarification in ExQ1, Q1.14.6 in regard to the measures to ensure appropriate modelling and safe distances to keep risks ALARP, particularly to mitigate any potential domino effects.

3.9.37. The applicant in response [REP2-032] confirmed that the proposed development would be subject to COMAH Regulations, which aim to prevent and mitigate the effects of major accidents involving hazardous substances, including any domino effect with neighbouring COMAH installations. Furthermore, the applicant reiterated these Regulations would ensure that the necessary safety and control systems are embedded in any process, whether it is a novel or a well-established design. Additionally, as part of the COMAH process, the applicant advised it would be required to produce a COMAH Safety Report to demonstrate that all risks have been reduced to ALARP. It also advised the COMAH Safety Report is required to consider the risks to and from other COMAH sites nearby.

3.9.38. Furthermore, the ExA notes the applicant's completed SoCG with the HSE [REP7a-044), which identifies and agrees the information necessary to be submitted as part of the COMAH notification process. The SoCG also confirmed that the HSE would be consulted on any HSC following submission of such an application to the relevant Planning Authority.

3.9.39. The ExA also notes the Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV) at table 8.13 of includes measures to mitigate the impact of MA&D, with the submission of a final CEMP that incorporates the measures set out in the Framework CEMP secured by requirement 15 (CEMP) of the dDCO, which is considered to be acceptable in terms of MA&D in light of the applicant's completed SoCG with the UKHSA (REP7-035], STBC [REP8-027] and RCBC [REP5-057].

3.9.40. It should be noted that whilst the final SoCG with the UKHSA is unsigned, the applicant advised in its DL7 covering letter [REP7-001] this SoCG was as finally

agreed with the UKHSA. However, it also commented *"The UKHSA advises it does not sign third party SoCG documents but has confirmed its agreement to the SOCG."* In response to this the ExA issued a R17 asking the applicant to provide evidence of the UKHSA confirmation of its agreement (annex B, Question 14). The applicant in response to the above mentioned request for further information provided satisfactory evidence in the form of an e-mail from the UKHSA, dated 6 February 2025, confirming its agreement to the SoCG (see [REP7a-040] applicant's response to question 13).

ExA considerations on Major Accidents and Disasters

3.9.41. The ExA considers the ALARP principles, along with the associated management plans secured by requirement 15 (CEMP) and requirement 28 (DEMP) will address MA&D impacts of the proposed development and provide appropriate levels of mitigation during all phases of the proposed development. Additionally, the ExA is satisfied that ES chapter 20 (MA&D) [APP-073], assessed the implications of COMAH in relation to the proposed development and neighbouring installations regulated by COMAH and the domino effect which is a requirement under COMAH. The ExA notes that as part of the COMAH process, the applicant would be required to produce a COMAH Safety Report to demonstrate that all risks have been reduced to ALARP.

3.9.42. The ExA notes that the proposed development will be subject to controls and mitigation measures set out in other regulatory regimes, such as the COMAH Regulations, the Environmental Permitting Regulations, the Planning Hazardous Substances Act 1990, the Planning Hazardous Substances Regulations 2015, and the Pipeline Safety Regulations 1996.

CUMULATIVE AND COMBINED EFFECTS

3.9.43. The applicant's cumulative and combined effects assessment [APP-076] was updated during the course of the examination [REP5-015]. When considered in conjunction with other developments, as set out in table 23E-14, it identified limited impacts to General Practitioner access due to small proportion of construction workers who may move into the area. This was assessed as having a cumulative magnitude impact assessed as low in terms of the number of employees, with medium cumulative sensitivity due to the current ratio of patients per General Practitioner and the levels of poor health among the local population being higher than average. As such the overall impact of cumulative effect on demand for GP surgeries is minor adverse (not significant).

3.9.44. In terms of cumulative impact during the operational phase of the development this is set out in table 23E-19 of ES chapter 23 [REP5-015]. It identified limited impacts to General Practitioner access due to small proportion of operation workers who may move into the area as having a cumulative magnitude impact of very low, a cumulative sensitivity of Medium and an overall impact of cumulative effect on demand for GP surgeries as Negligible (Not Significant). As such, the applicant does not consider additional mitigation measures during construction or operation are required.

The ExA considerations on Cumulative and Combined Effects

3.9.45. The ExA are content that the cumulative and combined effects have been sufficiently considered by the applicant and that the up-to-date information provided [REP5-032] represents a realistic worst-case scenario. The ExA note there are no outstanding concerns from any IPs for this particular topic from a cumulative impact

perspective. As such the ExA is also satisfied the applicants cumulative and combined effects assessment, ES chapter 23 [APP-076], as updated in [REP5-015] has been conducted in a proportionate and reasonable way. At the close of the examination the ExA did not have any concerns regarding the applicant's conclusion in regard to cumulative and combined effects in terms of HH or MA&D.

CONCLUSIONS

3.9.46. The ExA is satisfied that ES chapter 20 (MA&D) [APP-073] and chapter 22 (HH) [APP-075] adequately addressed and consider the impacts of the proposed development regarding HH and MA&D and that the applicant has provided adequate information to demonstrate ALARP has been assessed.

3.9.47. The proposed development would be subject to stringent safety standards under appropriate legislation including COMAH and the Pipeline Regulations 1996. There would be additional controls during construction and decommissioning secured by the dDCO, [REP7a-003] (APV)/ [REP7a-006] (WCBAV), including requirement 15 (CEMP) and requirement 28 (DEMP) to minimise any adverse impacts arising from HH and MA&D. The ExA is satisfied that the applicant has demonstrated that the inherent features of the design would be sufficient to prevent, control and mitigate HH and MA&D.

3.9.48. In terms of cumulative and combined effects in regard to HH and MA&D, the ExA is satisfied the applicant's assessment, ES chapter 23 [APP-076], as updated in [REP5-015] has been conducted in a proportionate and reasonable way and do not have any concerns in regard to the applicant's conclusion in this regard.

3.9.49. Taking all of these matters into account the ExA considers the proposed development is acceptable in terms of HH and MA&D, and accords with NPS EN-1, NPS EN-4, NPS EN-5 and all relevant policies, including those in the RCBC and STBC Local Development Plan. There are no disbenefits, which weigh against the proposed development in this regard, especially as the operation of the proposed development would be regulated by the EA through an EP to control emissions from the proposed development using BAT and would be subject to the COMAH Regulations. As such HH and MA&D effects are a neutral consideration in the planning balance, neither weighing for or against the proposed development.

3.10. LANDSCAPE AND VISUAL AMENITY

INTRODUCTION

3.10.1. ES chapter 16 (Landscape and Visual Amenity) [APP-069] assessed the landscape and visual amenity impacts of the proposed development and sets out the applicant's views regarding the effectiveness of proposed mitigation measures.

3.10.2. The ExA's IAPI, as set out in annex C of its Rule 6 letter [PD-005], identified Landscape and Visual Amenity issues, including the methodology, effects on landscape character (including national and local designations), visual effects on the landscape and impacts on sensitive receptors as matters for further examination.

POLICY BACKGROUND

3.10.3. Section 4.7 of NPS EN-1 establishes the criteria for good design for energy infrastructure. The section emphasises that good design for energy infrastructure projects should balance functionality, sustainability, and visual integration with the landscape. Effective design can help mitigate adverse impacts, and applicants

should incorporate design considerations early in the project. While physical appearance may be constrained for some projects, there are opportunities to align siting with landscape character and vegetation, with the applicant demonstrating its design process to ensure a well-planned development.

3.10.4. Paragraphs 4.7.10 to 4.7.13 of NPS EN-1 state the SoS needs to be satisfied that energy infrastructure developments are sustainable and, having regard to regulatory and other constraints, are as attractive, durable and adaptable as they can be. The SoS needs to be satisfied that the applicant has considered both functionality (including fitness for purpose and sustainability) and aesthetics (including its contribution to the quality of the area in which it would be located, any potential amenity benefits, and visual impacts on the landscape as far as possible). The ultimate purpose of the infrastructure and operational, safety, and security requirements which the design must satisfy should be borne in mind.

3.10.5. Section 5.10 of NPS EN-1 sets out the criteria relevant to landscape and visual amenity, with paragraphs 5.10.1 to 5.10.5 noting the landscape and visual effects of energy projects will vary on a case by case basis according to the type of development, its location and the landscape setting of the proposed development. Among the features common to a number of different thermal combustion technologies, cooling towers and exhaust stacks and their plumes are described as having the most obvious impact on landscape and visual amenity. This section of NPS EN-1 recognises virtually all nationally significant energy infrastructure projects will have adverse effects on the landscape, but there may also be beneficial landscape character impacts arising from mitigation.

3.10.6. Paragraph 5.10.16 of NPS EN-1 states that the applicant should carry out a landscape and visual impact assessment, with the matters to be included identified in paragraphs 5.10.17 and 5.10.19 to 5.10.21. The NPS is also clear that such assessments should include the visibility and conspicuousness of the proposed development during construction and operation, and potential impacts on the landscape component and character, including views and visual amenity. This should include light pollution effects, including on dark skies, local amenity, and nature conservation.

3.10.7. In addition to the above, paragraphs 5.10.26 to 5.10.28 of NPS EN-1 recognises that reducing the scale of a project can mitigate its visual and landscape effects but this may lead to significant operational constraints and reduced functionality. These paragraphs also recognise adverse landscape and visual effects may be minimised through appropriate siting of infrastructure within its development site and wider setting and careful consideration of colours and materials will support the delivery of a well-designed scheme. It also states sympathetic landscaping and management of immediate surroundings can also mitigate impacts.

3.10.8. Paragraphs 2.21.24 to 2.21.26 of NSP EN-4, for Gas Supply Infrastructure and Gas and Oil Pipelines identifies that the construction of such infrastructure without mitigation can have an impact on visual amenity, particularly affecting specific landscape elements, such as field boundaries, watercourses, etc. Indeed, it recognises temporary visual and landscape impact may result from the need to access the working corridor and to remove flora and soil.

3.10.9. Paragraphs 2.21.29 to 2.21.32 of this NPS recognise any potential long-term impacts of pipeline infrastructure on the landscape are likely to be limited, as once operational the main infrastructure is usually buried. These impacts are likely to include limitations on the ability to replant landscape features such as hedgerows or

deep-rooted trees over or adjacent to the parts of the pipeline which are proposed to be buried. It should be noted that whilst parts of the pipeline infrastructure will be buried, significant portions of the proposed pipelines will be within above ground pipe racks already located within or alongside existing above ground pipeline routes, many of which are located in industrialised areas.

3.10.10. NPS EN-5 for electrical networks also includes a number of considerations relevant to landscape and visual impacts of electrical network infrastructure, with paragraph 2.9.9 identifying AGIs, including connections may give rise to adverse landscape and visual impacts. However, paragraph 2.9.11 recognises reconfiguring, rationalising, or undergrounding existing electricity network infrastructure can lead to landscape and visual benefits.

3.10.11. In terms of the MPS, this is referred to above in section 2.3 of this report. It provides a framework for taking decisions affecting the marine environment, which includes the tidal River Tees. Policy NE-SCP-1 of the NEMP seeks to ensure proposals are compatible with their surroundings and states they should not have a significant adverse impact on the character and visual resource of the seascape and landscape of the area. This policy notes that where it is not possible to mitigate impact on character and visual resource, the public benefits for proceeding with the proposal must outweigh significant adverse impacts to the seascape and landscape of the area.

3.10.12. In addition to the above, policy NE-CUSS-3 is also of relevance in that it supports proposals associated with the deployment of low carbon infrastructure for industrial clusters, such as that being advanced on Teesside as part of the NEP.

THE APPLICANT'S CASE

3.10.13. ES chapter 16 (Landscape and Visual Amenity) [APP-069] assessed the landscape and visual effects during all phases of the proposed development. Other documents relevant to landscape and visual amenity include: the DAS [APP-034]; Indicative H_2 Production Facility and AGI Plan [AS-028]; and the Indicative Natural Gas Connection and AGI Plan [AS-007].

3.10.14. The study area was defined by the Zone of Theoretical Visibility analysis (ES figure 16.3 [APP-167]) and professional judgement, using the maximum flare stack height and the post-development platform construction site elevation, as a worst-case scenario, of 108m above ordnance datum (AOD). This resulted in the applicant concluding it was highly unlikely significant effects would be experienced further than 10km from the main site and 2km for the connection corridors.

3.10.15. The study areas for the main site and the connection corridors overlap to the north, east, and south as shown in ES figure 16-1 (Landscape Context) [PDA-012]. The assessment largely focuses on potential landscape and visual impacts during daytime. However, the impact of proposed lighting at night is also considered during all phases of the proposed development (ES chapter 16 [APP-069], paragraph 16.3.10).

3.10.16. The study area includes the following National Character Areas: National Character Area (NCA) Profile 15 (Durham Magnesian Limestone Plateau); NCA Profile 23 (Tees Lowlands); and NCA Profile 25 (North York Moors and Cleveland Hills). In terms of the marine environment, the study area includes the North East Marine Character Area. The proposed development site and study area are not covered by

any regional Landscape Character Assessments (LCA), although the following local LCAs are relevant:

- The Stockton and Tees LCA (2011), which includes the East Billingham to Teesmouth Local Character Area and the Thorpe and Billingham Beck Valley Local Character Area.
- The Redcar and Cleveland Landscape Character SPD (2010), which includes the East Cleveland Plateau Landscape Character Tract (LCTr), the Eston Hills LCTr, the Guisborough Lowland LCTr and the Redcar Flats LCTr; and
- The Hartlepool Landscape Assessment (2000), which includes the following Landscape Character Types: Coastal; Estuarine; Rural Fringe; and Undulating Farmland.

3.10.17. The key characteristic of the NCAs, North East Marine Character Area and LCAs is set out in ES appendix 16B (Landscape Character) [APP-212] and their location in proximity to the proposed development is detailed in ES figure 16-2 (Landscape Character) [APP-166].

3.10.18. Paragraph 16.3.29 of ES [APP-069] explains that the viewpoint photographs for the assessment were undertaken in accordance with best practice guidelines. Consultation was also undertaken with the relevant stakeholders listed in ES chapter 16 [APP-069] in table 16-1. A total of 15 viewpoints considered by the applicant to illustrate typical views of the proposed development are detailed in ES chapter 16 [APP-069] in table 16-3. This chapter of the ES also provides a description of the baseline views from each viewpoint. These representative viewpoints include Teesmouth NNR (3), North Gare Sands (4), King Charles III Coastal Path (7), South Gare Breakwater and Cowpen Bewley Woodland Park (15). With regard to the King Charles III Coastal Path, this was originally referred to by the applicant, as the England Coastal Path, Warrenby, but was corrected by the applicant's Errata document [PDA-021].

3.10.19. In addition to the above, the landscape and visual assessment included Figures 16-6-1a to 16-6-15a (Winter Viewpoint Photography [PDA-013]), Figures 16-6-1b to 16-6-14b (Summer Viewpoint Photography [PDA-014]) and Photomontages (Figures 16-7-1a to 16-7-4f [CR1-042]). Paragraph 16.3.30 states the winter survey and viewpoint photography were carried out between February and April 2023, with the summer survey and viewpoint photography being carried out in July 2023.

3.10.20. The Redcar Flats Landscape Character LCTr, the Easton Hills LCTr, the East Billingham to Teesmouth Landscape Character Area and Coastal Fringe Local Character Type (LCT) were predicted to be subject to minor adverse cumulative effects during construction and operation [APP-076], as updated in [REP5-015]. The Estuarine LCT was predicted to be a minor adverse cumulative effect during construction.

3.10.21. During the construction and decommissioning phases of the proposed development potential landscape impacts were assessed to include both direct and physical changes to the landscape, bearing in mind the visibility of proposed structures would be both permanent and temporary. Paragraph 16.5.3 sets out the potential landscape effects during construction including building construction, new stacks, clearance of vegetation within the main site and connection corridors and temporary external lighting.

3.10.22. During the construction phase the applicant assesses the magnitude of impact from 13 of the viewpoint locations as very low for viewpoints 1, 3, 6, 10, 11, 12, 13, 14

and 15 and as low for viewpoints 2, 4, 5 and 9. The significance of effect on these viewpoints during construction, as set out in ES chapter 16 [APP-069] was noted as negligible adverse (not significant) to minor adverse (not significant). The exceptions were viewpoints 7 and 8 where the magnitude of impact during construction was assessed as medium with the significance of effect being identified as moderate adverse (significant). This was due to impact on recreational users at viewpoint 7 (King Charles III Coastal Path) during construction activities including visible lighting and the use of high-level cranes. In terms of viewpoint 8 (Redcar Seafront) the assessment identified potential impact on recreational users during construction activities being visible from the beach and seafront.

3.10.23. During the operational phase the magnitude of impact from the following viewpoints 1, 3, 6, 10, 11, 12, 13, 14 and 15 was identified as very low; whilst low at viewpoints 2, 4, 5, 8 and 9. The significance of effect on these viewpoints during construction was noted as negligible adverse (not significant) to minor adverse (not significant). The exception was at viewpoint 7, where the magnitude of impact during construction was noted as medium with the significant effects being noted as moderate adverse (significant). This is due to effects resulting from, amongst others, lighting, as well as stacks and flares being highly visible from this location.

3.10.24. Paragraph 16.5.17 of ES chapter 16 [APP-069] states the impacts on visual amenity arising as a result of decommissioning of the proposed development are considered (using professional judgement) to be similar to those identified at the construction stage. This is as a result of the visibility of decommissioning and demolition activities not being prominent from the majority of viewpoints as a result of long-distance views and intervening vegetation.

3.10.25. The applicant concluded the potential impact on the proposed development during construction on the landscape (ES chapter 16 [APP-069] in table 16-5) was assessed as low (minor adverse) to very low (negligible adverse) and during operation very low (minor adverse). This is as a result of the scale and nature of the proposed development, which would occur in an area of existing large scale industrial development. Using professional judgement, the applicant also considers during the decommissioning phase any potential impacts would be similar to that of construction. This is due to the scale and nature of the proposed development in relation to the existing industrial structures/ complexes within the wider landscape context.

3.10.26. In terms of mitigation and enhancement measures, ES chapter 16 [APP-069] concludes there would be no significant effects on landscape receptors during the construction and operation of the proposed development. However, it identified significant adverse visual effects for representative Viewpoint 7 (King Charles III Coastal Path) during construction and operation and Viewpoint 8 (Redcar Seafront) during construction. Whilst the applicant considered the scope for further mitigation measures, such as screen planting, it concluded that due to the combination of operational constraints, development proximity and scale of the proposed development there is no opportunity to deliver additional mitigation to reduce the significant visual effects for these viewpoints.

3.10.27. Irrespective of this, the applicant considers the Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV) secured by requirement 15 of the dDCO [REP7a-003] would provide adequate design embedded mitigation measures. These include, but are not limited to, the routing options for the above ground pipelines, buried pipelines where routing does not make use of existing infrastructure, and HDD to avoid sensitive features and existing vegetation. The applicant considers that

mitigations such as these would reduce the effects on landscape and visual receptors.

3.10.28. The applicant states in ES chapter 16 [APP-069] (paragraph 16.4.3) that at Cowpen Bewley Woodland Park there would be a line of trees between the railway and the AGI which will be left intact throughout construction, providing some visual screening of the activities north of the railway. An OLBMP ([REP7-021] APV/ [REP8-039] WCBAV) provides a framework of securing and implementation of planting and biodiversity measures and includes an outline for the establishment and long-term maintenance of those components.

Design

3.10.29. A DAS [APP-034], setting out the applicant's approach to layout in terms of design and access arrangements, was included as part of the applicant's submission. The DAS seeks to demonstrate how regard has been had to the surrounding context, as well as good design principles, as required by national and local policy. It explains the design parameters used for the purposes of the applicant's assessment and how the design information can be controlled and secured through the dDCO.

3.10.30. The applicant proposes to locate the H_2 Production Facility, together with its carbon capture and compression plant on the main site of the proposed development. The CO_2 would be compressed to a medium pressure and transported off-site to NZT, located on an adjoining site where it will be repressurised to high pressure and transported offshore for storage via the NEP infrastructure. The applicant proposes that other infrastructure, which largely comprises existing connection pipeline corridors, temporary construction and laydown areas with limited access and highway works.

3.10.31. Paragraph 1.1.19 of the DAS [APP-034] states due to the proposed development being a 'first of its kind' in nature a degree of flexibility in its design and layout, to take account of technological advancement and to allow for optionality, has been assumed. The DAS [APP-034] at section 5 explains the need to incorporate flexibility in the design, whilst section 6 sets out the applicant's design principles. The primary focus of the DAS [APP-034] is the main site, which will primarily accommodate the H_2 Production Facility and main buildings, while the other infrastructure comprising cables and pipeline will largely be located within existing infrastructure corridors. The Indicative H_2 Production Facility and AGI Plan [AS-028] and Indicative Natural Gas Connection and AGI Plan [AS-007] illustrates the layout of the main site together with the Works Plans [REP7-005] with the Cowpen Bewley Arm and [REP8-032] excluding the Cowpen Bewley Arm).

3.10.32. The DAS identifies that the controls over the design of the proposed development would be secured by the dDCO, including Article 4 (Development Consent etc. granted by this Order), which restricts the proposed development to the Order limits and numbered areas within the Work Plan, as well as requirement 3 (Detailed Design) requiring the prior approval of the relevant Local Planning Authority for certain specified works), and requirement 4 (Landscape and Biodiversity Management Plan).

VIEWS OF INTERESTED PARTIES

3.10.33. Specific concerns directly relating to landscape, visual amenity and design, arising as a result of the proposed development were not raised as an area of concern by IPs. Additionally, the LIRs from RCBC and STBC, did not raise concerns regarding this matter. RCBC's position is summarised in its LIR [REP1-043] (paragraph 7.23)

and acknowledges the applicant's assessment as a robust and comprehensive analysis of the development's landscape impact. This position is repeated in the applicant's completed SoCG with RCBC [REP5-057] in table 3.1 (Number 25).

3.10.34. Additionally, RCBC also recognises that there would be an indirect impact on the coastal area at the eastern boundary of the proposed development, identified as a sensitive landscape area, but confirms that it is satisfied that the dDCO includes appropriate mitigation to minimise these impacts. Consequently, RCBC confirmed in its LIR [REP1-043] that policy N1 of its Development Plan has been fully addressed in ES chapter 16 [APP-069].

3.10.35. STBC in LIR [REP1-045], also considered the potential impacts of the proposed development at the local level and raised no concerns regarding the applicant's Landscape and Visual Impact Assessment. In accepting the findings of the assessment, STBC recognised the presence of existing large-scale industrial development and above-ground pipelines within the East Billingham to Teesmouth LCA Area, and the type of construction activities being undertaken. STBC confirmed the proposed development is expected to have limited impact on the overall character and perception of the LCA Area during both day-time and night-time. This position was reaffirmed in the applicant's completed SoCG wit STBC [REP8-027], which confirmed STBCs acceptance of the assessment findings, including the assessment of cumulative landscape and visual effects.

THE EXAMINATION

3.10.36. The applicant submitted a CR Report [CR1-044], along with appendix 5A [CR1-045] detailing changes to the proposed development and the implications of those changes in regard to ES chapter 16 Landscape and Visual Amenity [APP-069]. This comprised of table 5A-1 (Assessment of landscape effects during construction and decommissioning) and table 5A-2 (Viewpoint Assessments). The ExA sought clarification on the impact of the proposed changes, as set out in the applicant's CR Report [CR1-044] on ES chapter 16 [APP-069] at ISH3.

3.10.37. The applicant explained Category A changes (Works 1,5,7 and 9) related to engineering and design development, including the addition of a second flare stack, removal of an air separation unit, updates to building dimensions, and removal of an AGI. The applicant also explained that these changes do not significantly alter the design approach and did not require any alterations to viewpoints, which remain assessed in the original ES chapter 16 [APP-069]. Indeed the applicant concluded that no additional viewpoints or alterations were needed due to the location of the changes.

3.10.38. Irrespective of this the applicant clarified that due to the location of the changes in relation to the proposed development and existing representative viewpoint locations, the photomontages, Figures 16-7-1a to 16-7-4f, accompanying the CR Report [CR1-045] at appendix A, were updated to reflect changes to the landscape as associated with the proposed development changes

3.10.39. The ExA visited publicly accessible viewpoints, as set out in table 16-13 of ES chapter 16 [APP-069], as part of the USI1 [EV1-001], USI2 [EV1-002] and USI3 [EV1-003] in order to assess the landscape and visual amenity impact of the proposed development, especially in terms of the surrounding existing landscape and industrial context. Having undertaken these USIs, the ExA is satisfied the viewpoints figures 16-6-1a to 16-6-15a (Winter Viewpoint Photography [PDA-013]), figures 16-6-1b to 16-6-14b (Summer Viewpoint Photography [PDA-014]) and

figures 16-7-1a to 4f (Photomontages) [CR1-042]), provide representative viewpoints of the site.

3.10.40. The ExA questioned in ExQ1 and ISH3 how the quality of design would be achieved in the dDCO. The applicant's response to quality of design [REP2-029] noted detailed design matters would be secured by requirement 3 (Detailed Design) of the dDCO , including external appearance and material, which must be submitted to the relevant Local Planning Authority prior to the commencement of works. This position was reaffirmed by the applicant during ISH3.

3.10.41. The applicant submitted a CR2 [REP7-011], which resulted in six changes reducing the Order limits. No other types of changes were included in this CR. The reductions in the Order limits, as included within CR2, are set out in chapter 1 of this report. In terms of landscape and visual impacts arising from CR2, the ExA notes one of the changes results in a reduction of the number of important hedgerows in the landscape being removed from five to four, as identified on plan [REP7-008]. This reduction is due to the removal of an area of land from within the Cowpen Bewley Arm of the H_2 Pipeline Corridor referred to by the applicant as 'the coffee cup handle'.

3.10.42. The ExA notes that the OLBMP ([REP7-021] APV), as secured by requirement 4 (Landscape and Biodiversity Management Plan) of the APV of the DCO [REP7a-003] makes provision for the removal and reinstatement, on a like for like basis, of these important hedgerows, with a view to ensuring minimal loss (paragraph 4.5.1). (Note: The WCBAV of the DCO, would not affect these important hedgerows, as they are only located within the Cowpen Bewley Arm of the H_2 Pipeline Corridor that is removed from that version of the dDCO [REP7a-006]).

CUMULATIVE AND COMBINED EFFECTS

3.10.43. The cumulative landscape assessment identified that the Redcar Flats LCTr, the Easton Hills LCTr, the East Billingham to Teesmouth Landscape Character Area and Coastal Fringe LCT are predicted to be subject to minor adverse cumulative effects during construction and operation [APP-076]. The Estuarine LCT is predicted to be subject to a minor adverse cumulative effect during construction.

3.10.44. Viewpoints 7 and 8 would be a moderate adverse cumulative effect as a result of views of the operation of the proposed development being concurrent with the construction and operation of a number of the identified cumulative developments. As LSEs were recorded, the scope for further mitigation measures, such as screen planting, was considered. However, it was concluded that due to the combination of operational constraints, development proximity, and scale of the proposed development there is no opportunity to deliver additional mitigation to reduce the significant visual effects for Viewpoints 7 and 8.

3.10.45. The ExA notes no concerns raised regarding the cumulative effects assessment, nor the conclusions regarding mitigation measures, within the final SoCG with any of the local authorities. The ExA has no reason to dispute the applicant's findings in this regard and is content that the applicant has undertaken a reasonable and proportionate approach to mitigation for the cumulative effects.

CONCLUSIONS

3.10.46. During the examination, the applicant satisfactorily answered all the ExA's queries in relation to landscape, visual amenity and design. The ExA further notes that the relevant Planning Authorities, including RCBC and STBC had no outstanding issues

in regard to this matter. In line with NPS EN-1, NPS EN-4 and NPS EN-5 the applicant has appraised and, where required, proposed mitigation in regard to any landscape and visual amenity impacts during construction, operation and decommissioning.

3.10.47. The ExA is satisfied that ES chapter 16 [APP-069] meets the requirements of NPS EN-1, which emphasises at paragraph 4.7.1 an applicant's assessment of landscape and visual impacts should consider both the visual appearance and the functionality and sustainability of the proposed development. Indeed the ExA notes the proposed development aligns with the existing industrial landscape.

3.10.48. In addition, the ExA notes requirement 3 (Detailed Design) of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV) contains adequate measures to control and manage the proposed development in regard to the detailed design, ensuing the requirements of paragraph 4.7.1 of NPS EN-1 would be met in terms of good design and functionality and that such details are required to be submitted to and agreed with the relevant Planning Authority.

3.10.49. Having considered the evidence presented, the industrial nature of the surrounding area, the views of relevant IPs (including RCBC and HBC), and observations from representative viewpoints, the ExA is satisfied that the proposed development is unlikely to have a significant effect on landscape or visual amenity and meets the requirements of the above mentioned NPSs. Further, the ExA is satisfied the changes to the proposed development including the additional flare stack detailed in CR Report [CR1-044], along with appendix 5A [CR1-045] does not significant alter the applicant's overall all assessment in ES chapter 16 (Landscape and Visual Amenity) [APP-069].

3.10.50. Whilst the impact on recreational users of viewpoint 7 (King Charles III Coast Path) during construction, operation, and eventual decommissioning, and viewpoint 8 (Redcar Sea Front) during construction and eventual decommissioning are noted, the ExA is satisfied that the proposed development will be seen and considered against the former industrial local character and the emerging industrial character of this location. Through careful design, the development would complement the existing nature of the site and surrounding area.

3.10.51. In terms of cumulative and combined effects in regard to landscape and visual amenity, the ExA is satisfied the applicant's assessment, ES chapter 23 [APP-076], as updated in [REP5-015] has been conducted in a proportionate and reasonable way and did not have any concerns in regard to the applicant's conclusion in this regard.

3.10.52. In addition to the above, the ExA is satisfied that requirements 3 (Detailed Design) and 4 (Landscape and Biodiversity Management Plan) of the rDCO would provide further opportunities to mitigate the visual impact of the proposed development on its surroundings. Therefore, the landscape and visual effects resulting from the proposed development are considered neutral in the planning balance, neither weighing in favour nor against the proposed development.

3.11. MATERIALS AND WASTE MANAGEMENT

INTRODUCTION

3.11.1. This section addresses the potential impacts and effects of the construction, operation (including maintenance) and decommissioning of the proposed development in terms of materials and waste management.

POLICY BACKGROUND

3.11.2. Policy on waste is intended to protect human health and the environment by producing less waste and using it as a resource. Where this is not possible, regulations ensure that waste is disposed of in a way that is least damaging to the environment and to human health (paragraph 5.15.1 of NPS EN-1).

3.11.3. Paragraph 5.15.2 of NPS EN-1 sets a waste hierarchy approach to manage waste. Paragraphs 5.15.6 to 5.15.13 state that the applicant should set out arrangements for minimising and managing any waste produced and sourcing materials sustainably.

3.11.4. Paragraph 5.15.15 of NPS EN-1 states that the SoS should be satisfied that waste is managed properly and any waste from the proposed facility can be dealt with appropriately and that adequate steps have been taken to minimise waste.

3.11.5. Paragraph 223(b) of the NPPF states that planning policies should, so far as is practicable, take account of the secondary and recycled materials and minerals waste supply before considering the extraction and use of primary materials.

THE APPLICANT'S CASE

3.11.6. ES chapter 21 (Materials and Waste Management) [APP-074] assesses the impacts of materials and waste associated with the proposed development during its construction, operation and decommissioning phases. This ES chapter has been written in accordance with established principles that set out the requirements for assessing and reporting the effects on material assets and waste.

3.11.7. The ES states that waste material volumes used in the ES assessment of the impact have been calculated based on the value of the project costs and that waste generation has been assumed to be equally proportioned across each year of the construction period. In addition the ES also states that the types and quantities of operational waste are not available at the time of the examination and a worst-case assumption has been made; the resultant volume of construction waste used in the ES assessment is 94,600m^3.

3.11.8. Inert waste is anticipated to be approximately 60% of the total construction waste with an expectation that a high proportion of this will be diverted from landfill. A worst-case position of all inert construction waste being disposed of to landfill has been used in the assessment and this would reduce the regional landfill capacity by 0.2%, resulting in a slight adverse effect which is not significant.

3.11.9. Regarding hazardous construction waste, which is assessed as being 39,255m^3, again a proportion of this is anticipated to be diverted from landfill but assuming a worst-case of all being taken to a hazardous waste landfill, the ES states that this would equate to 0.5% of the hazardous waste landfill capacity in England. This results in a moderate adverse effect which is considered significant.

3.11.10. During the operational phase, the waste generation will be primarily from offices and the H_2 production process which may be hazardous. The ES states that for both inert and hazardous waste there will be a proportion of which is diverted from landfill. However, in the worse-case of all of the waste being disposed it would

equate to <1% and for hazardous waste <0.1% of the regional and national capacity. Both result in a slight adverse effect which is not significant.

3.11.11. Mitigation of the effects of waste transfer to landfill are restricted to the construction phase where reduction in quantities of waste will be refined with further ground investigations and lowering the amount of classified hazardous waste.

3.11.12. The dDCO secures the need to produce, consult and seek approval for a Site Waste Management Plan (SWMP) in requirement 15(7)(a) to be in substantial accordance with the Outline Site Waste Management Plan (OSWMP) [APP-044].

VIEWS OF INTERESTED PARTIES

3.11.13. No RRs raised concerns relating to materials and waste management. The EA did, however, raise questions relating to disused waste sites which are addressed in section 3.9 of this report and not repeated here to avoid duplication. No local Councils, who are party to the Tees Valley Joint Minerals and Waste strategy, raised concerns relating to materials and waste in the LIRs submitted.

THE EXAMINATION

3.11.14. In terms of waste management during construction, operation and decommissioning, the IAPI identified impacts on the disposal off site on traffic flows and circulation in both the local and wider context for further examination, as well as the implications for safeguarded waste sites; this latter issue is addressed in section 3.9 of this report and not repeated here to avoid duplication.

3.11.15. No local Councils raised concerns regarding materials and waste in the submitted LIRs, this was confirmed in further questioning by the ExA its ExQ1 [PD-008]. In its response to specific questions in ExQ1 regarding materials and waste, RCBC [REP2-044] confirmed that the information contained in the ES for the proposed development accorded with the Tees Valley Joint Minerals and Waste Strategy.

3.11.16. The EA were asked in ExQs if they considered that consultation and response by the applicant in relation to the proximity of historic and operational landfills sites were satisfactory. In its response they confirmed they were satisfied and gave no further comments.

3.11.17. Remediation of the Foundry site is being undertaken by the STG. In ExQ1 [PD-008] it was asked if there was a likely residual hazardous waste scenario which would change the assumptions or impact the proposed development. The STG gave assurances [REP2-110] that, even without seeing the foundation design, overall, it concurred with the principles set out by the applicant in ES chapter 21 [APP-074] for the management of waste on and off-site. As such, the STG does not foresee any potential residual issues with any additional waste generation and disposal necessary for the final foundation design of the project, should that exceed the maximum dig depths that the STG undertakes in its remediation works for the main site.

3.11.18. Notwithstanding this, in its response to ExQ2 Q2.1.8, the STG stated that there is currently only an obligation for them to remediate land identified for Phase 1 of the proposed development and there is no agreement for the STG to remediate "…*where the Applicant has a potential interest for a Phase 2 project but where there is no firm commitment at this stage*." the STG therefore suggest that the impact of remediation work outside of the Phase 1 limits should be included in the applicant's assessment of impact. In response to the STG [REP6-006] the applicant

acknowledges this and states that a worst-case approach has been assessed and therefore the impact on materials and waste of ground remediation work being undertaken as part of the proposed development has been included in the assessment.

CUMULATIVE AND COMBINED EFFECTS

3.11.19. In terms of cumulative and combined effects arising from materials and waste management, the applicant explains that as part of its planning function, Waste Planning Authorities are required, as part of its waste management strategies need to ensure that enough land is available to accommodate facilities for the treatment of all waste arising in the area, either within the Waste Planning Authority's area, or through export to suitable facilities in other areas. It also explains a similar duty lies with the Minerals Planning Authorities. As such, with regard to materials and waste management, the applicant does not consider it necessary or feasible for each development within the region to, in effect, duplicate those functions as part of the EIA process. No concerns from any IP's were raised in regard to this approach.

ExA's CONSIDERATIONS

3.11.20. The ExA is content that the applicant has satisfactorily answered all of its questions in relation to material resources and waste management. It acknowledges the waste hierarchy in accordance with NPS EN-1 and this would be implemented and managed via the final CEMP which is secured in the rDCO in requirement 15(7)(a). The ExA is also satisfied that these controls would ensure that in all scenarios with the exception of hazardous waste from construction, the proposed development would not give risk to significant adverse effects from issues relating to material resources and waste management.

3.11.21. The ExA is satisfied that the applicant has assessed the waste generation potential at the main site, including the potential for remediating areas for which the STG currently have no obligation to do such.

3.11.22. In terms of the waste generated and materials required, the ExA is satisfied that these would not impact the local or regional capacity, although hazardous waste would equate to 0.5% of the hazardous waste land fill capacity in England, which is considered significant. Although the applicant states that this is considered a worst-case scenario and suitable mitigation may reduce the amount of hazardous waste taken to landfill, this is not suitably defined, and therefore the residual effect of hazardous landfill capacity is a moderate adverse (significant) effect.

3.11.23. Overall, the materials and waste approach detailed in the ES will be in accordance with the Tees Valley Joint Minerals and Waste Strategy.

3.11.24. The ExA is further satisfied that the provision of a SWMP is secured in the dDCO, which must be in substantial accordance with the submitted OSWMP, would accord with paragraph 5.15.15 of NPS EN-1.

CONCLUSIONS

3.11.25. The applicant has satisfactorily answered all our queries in relation to material resources and waste management. In line with NPS EN-1, the management of waste at the proposed development would be according to the waste hierarchy and will be managed properly, being implemented via the SWMP that is secured by requirement 15(7)(a) and based on the OSWMP submitted into the examination.

3.11.26. The ExA concludes that although most scenarios result in no significant residual effects, there is a possibility of a residual significant effect in relation to hazardous landfill capacity. Taking all matters into consideration we conclude that the issues relating to material resources and waste management would give rise to a LSEs and therefore we give a little negative weight against making the Order in the planning balance.

3.12. NOISE AND VIBRATION

INTRODUCTION

3.12.1. This section addresses the potential impacts and effects of the construction, operation (including maintenance) and decommissioning of the proposed development arising from noise and vibration.

3.12.2. The issue of noise and vibration was listed in the IAPI as set out in the ExA's Rule letter [PD-005] at annex C and covered the assessment of the effects on residents, businesses, recreational users and wildlife, and their mitigation, management and monitoring during all phases of the proposed development.

POLICY BACKGROUND

3.12.3. Section 5.12 of NPS EN-1 refers to the government's policy on noise and vibration as set out in the Noise Policy Statement for England, recognising that excessive noise can have wide ranging impacts on the quality of human life and health, as well as on the environment and the use and enjoyment of areas of value such as quite places and areas with high landscape quality (paragraph 5.12.1). This paragraph also recognises noise resulting from a proposed development can also have adverse impacts on wildlife and biodiversity.

3.12.4. Factors which will determine noise impact include construction, the operational noise from a development and its characteristics, the proximity of the proposed development to noise sensitive premises and the proximity to quiet places and to protected species or other wildlife, including migratory species.

3.12.5. Paragraph 5.12.6 of NPS EN-1 prescribes what applicants need to include in its noise assessment where noise impacts are likely to arise from the proposed development. These include a description of the noise generating aspects of the development proposal, as well as identifying noise sensitive receptors (NSR), a prediction of how the noise environment will change during the different phases of the proposed development, an assessment of the effect of predicted changes in the noise environment on any NSR and details of mitigation and the minimisation of potential adverse effects on health and quality of life.

3.12.6. NPS EN-1 at paragraph 5.12.7 goes on to state that the nature and extent of the noise assessment should be proportionate to the likely noise impact.

3.12.7. Paragraph 5.12.10 of NPS EN-1 also states the applicant should consult the EA and/ or the Statutory Nature Conservation Bodies (SNCB), and other relevant bodies, such as the MMO, as necessary, and in particular regarding assessment of noise on protected species or other wildlife. It also advises that the results of any noise surveys and predictions may inform the ecological assessment but notes the seasonality of potentially affected species in nearby sites may also need to be taken

into account. This paragraph also notes some noise impacts will be controlled through EPs.

3.12.8. Additionally, NPS EN-1 states projects are required to demonstrate good design through the selection of the quietest or most acceptable cost-effective plant available (taking into account any other adverse impacts that such containment might cause), containment of noise within buildings (wherever possible), optimisation of plant layout to minimise noise emissions; and, where possible, utilise landscaping, bunds or noise barriers to reduce noise transmission (paragraph 5.11.15).

3.12.9. Paragraph 5.11.17 of NPS EN-1 requires that, when determining the application, the SoS should not grant development consent unless satisfied that the proposals will:

- avoid significant adverse impacts on health and quality of life from noise;
- mitigate and minimise other adverse impacts on health and quality of life from noise; and
- where possible, contribute to improvements to health and quality of life through the effective management and control of noise.

3.12.10. NPS EN-4 deals with the noise and vibration effects of gas supply pipelines in terms of the applicant's assessment (section 2.21), mitigations (section 2.22) and SoS's decision making (section 2.23). Paragraphs 2.21.15 to 2.21.17 note the generic considerations related to noise and vibration as set out in section 5.12 of NPS EN-1 but adds specific considerations relevant to this matter which apply to gas and oil pipelines during the pre-construction and construction phases. Indeed NPS EN-4 paragraphs 2.21.18 to 2.21.20 note that there will be noise and possibly vibration effects during the pre-construction and construction stage and also possibly during commissioning as a result of drying after hydrotesting and using air compressors, with paragraph 2.21.21 noting a new gas pipeline may require an AGI.

3.12.11. In terms of mitigation, NPS EN-4 at paragraphs 2.22.3 to 2.22.5 note noise mitigation measures related to gas and oil pipelines and highlights these should be considered in regard to associated AGI. It also highlights other potential mitigation measures depending on the specific noise/ vibration issues. Ultimately, in terms of decision making, this NPS indicates that the SoS should follow the principles for decision making set out in section 5.12 of NPS EN-1 (paragraph 2.23.2).

3.12.12. NPS EN-5 for electrical networks infrastructure provides additional policy in regard to noise and vibration (paragraph 2.1.3). It identifies potential noise and vibration sources related to electricity networks infrastructure at paragraphs 2.9.26 to 2.9.38 and sets out expectations in terms of methods of assessment and interpretation, noise modelling, etc., for differing aspects of the electrical network (paragraphs 2.9.39 to 2.9.43).

3.12.13. In terms of decision making NPS EN-5 at paragraph 2.11.7 refers to evidence that appropriate assessment methodologies have been used and appropriate mitigation options have been considered and adopted. Additionally, it states where "…the applicant can demonstrate that appropriate mitigation measures will be put in place, the residual noise impacts are unlikely to be significant.".

National Planning Policy Framework

3.12.14. The NPPF does not set out policies for NSIPs (see paragraph 5 of the NPPF), but its policies may have relevance to the development of such projects. However, it does state planning should make sufficient provision for "conservation and

enhancement of the natural, built and historic environment" (paragraph 20d). Additionally, it is clear that the NPPF aims to prevent both new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of noise pollution.

3.12.15. Paragraph 187(e) of the NPPF advises planning policies and decisions should contribute to and enhance the natural and local environment by… preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability.

3.12.16. Paragraph 198 advises that new development should take account of the likely effects of pollution on health, living conditions and the natural environment and in doing so should mitigate and reduce to a minimum adverse impact resulting from noise from new development and avoid noise giving rise to significant adverse impacts on health and quality of life. In this regard the NPPF references the Noise Policy Statement for England Explanatory Note (NPSE) (DEFRA), 2010).

3.12.17. This paragraph also sets out planning policy and decision making should also seek to identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason.

National Planning Practice Guidance

3.12.18. The NPPG related to noise, which reiterates guidance on noise policy and assessment methods, notes *"The subjective nature of noise means that there is not a simple relationship between noise levels and the impact on those affected. This will depend on how various factors combine in any particular situation"* (paragraph: 006, Reference ID: 30-006-20190722).

3.12.19. It also provides guidance of what should be taken account of and considered in terms of the acoustic environment. It also references the additional concepts, as set out in the NPSE, related to Significant Observed Adverse Effect Level (SOAEL), Lowest Observed Adverse Effect Level (LOAEL) and No Observed Effect Level (NOEL) (paragraph: 003 Reference ID: 30-003-20190722).

Noise Policy Statement for England

3.12.20. The NPSE seeks to clarify the underlying principles and aims in existing policy documents, legislation and guidance that relate to noise. The NPSE applies to all forms of noise, including environmental noise, neighbour noise and neighbourhood noise. The NPSE sets out the long-term vision of the government's noise policy, which is to *"promote good health and a good quality of life through the effective management of noise within the context of policy on sustainable development"*.

3.12.21. The Explanatory Note within the NPSE provides further guidance on defining significant adverse effects and adverse effects. One such concept identifies the Lowest Observable Adverse Effect Level (LOAEL), which is defined as the level above which adverse effects on health and quality of life can be detected. Other concepts identified are: Significant Observed Adverse Effect Level (SOAEL), which is the level above which significant adverse effects on health and quality of life occur; and, No Observed Effect Level (NOEL), which is the level below which no effect can be detected. Below this level no detectable effect on health and quality of life due to noise can be established.

3.12.22. When assessing the effects of a proposed development on the noise environment, the aim should be to avoid noise levels above the SOAEL, and to take all reasonable steps to mitigate and minimise noise effects where development noise levels are between LOAEL and SOAEL.

THE APPLICANT'S CASE

3.12.23. ES chapter 11 (Noise and Vibration) [PDA-007] presents the assessment of potential noise and vibration impacts and effects of the proposed development. In particular, it considers potential impacts on identified receptors in terms of predicted noise and vibration levels during the construction and decommissioning works associated with the proposed development; predicted changes in road traffic noise levels on the local road network during the construction and decommissioning stages; and predicted noise resulting from operation of the proposed development.

3.12.24. In terms of the defined study areas the applicant confirmed for construction noise this is normally 300m, based on BS 5228-1 guidance, from the works, however in this instance it extended the construction noise study area to include the closest NSRs to the construction works from the main site and connection corridors. In terms of construction vibration the applicant confirmed the study area as NSRs within 100m, based on BS 5228-2 guidance, from the closest construction activity with the potential to generate vibration. For construction traffic the study areas vary and are based on traffic links in the transport model. They are set out in ES chapter 15 (Traffic and Transport) [APP-068] at paragraph 15.3.15. In terms of operational noise, the applicant confirms this is based on the closest NSRs to the main site.

3.12.25. In support of ES chapter 11, the following documents have been provided: Appendix 11A: Construction Noise Levels and Assumptions [PDA-015]; Appendix 11B: Operational Noise Information [APP-199]; Appendix 11C: Baseline Sound Monitoring and Survey Information [PDA-017]; Figure 11-1: Noise Sensitive Receptor and Monitoring Locations [APP-142]; Figure 11-2: Construction Noise Contours [CR1-039]; and Figure 11-3: Operational Noise Contours [APP-144].

3.12.26. Assessment of noise and related impacts on relevant ecological receptors is presented in chapter 12: Ecology and Nature Conservation, including aquatic (freshwater) ecology [APP-064], chapter 13: Ornithology [APP-065], chapter 14: Marine Ecology [APP-067] and the Report to Inform HRA Report [REP6a-010]. Those matters related to the HRA are considered in chapter 4 of this report.

3.12.27. The applicant has adopted a 'worst-case scenario' approach, with key NSR locations considered to be representative of the nearest and likely most sensitive existing receptors to the proposed development having been identified and used. Table 11 2: Key Representative NSRs, as set out in ES chapter 11 [PDA-007] provides a list and description of each NSR.

3.12.28. In terms of construction noise effects at all receptors during construction works at the main site, the applicant predicted these to be Negligible (Not Significant) during the daytime period. This is due largely to the distances between the works and the NSRs. However, the applicant has identified potential for Moderate and Major Adverse (Significant) noise effects during daytime Connection Corridor construction at the following NSRs: NSR H1 (Manor House Farm, Cowpen Bewley, Billingham) during the daytime for trenchless construction of the Buried Pipeline Construction, Trenchless Pipeline Construction and ROW Fencing; and NSR H4 (Seal Sands Office, Stockton on Tees) during the daytime for above ground Pipeline Construction, ROW Fencing and Street Works.

3.12.29. Irrespective of this, the applicant points out that the construction noise level predicted for the proposed development during construction of the pipeline will be for a short period of time thus reducing the likelihood of significant effects.

3.12.30. The applicant also highlights, in Table 11-34 (Residual Noise Effects) in ES chapter 11 [PDA-007], the residual effects on NSR H1 (Manor House Farm, Cowpen Bewley, Billingham) and NSR H4 (Seal Sands Office, Stockton on Tees) after mitigation, as secured through requirement 15 (CEMP) of the dDCO, would reduce these effects to Minor Adverse or less (Not Significant) on the basis that BS 5228 ABC noise limits are met.

3.12.31. Other than the above effects, the applicant considers all other Connection Corridor construction effects are Minor or Negligible adverse (Not Significant) during the daytime.

3.12.32. Having undertaken a comparison of the predicted daytime noise levels for construction on the main site against the construction noise limits for evening and weekend working the applicant indicates the effects will be Negligible (Not Significant) for all NSRs.

3.12.33. In terms of noise effects resulting from the Connection Corridor construction during the evening and weekend, the applicant acknowledges there is potential for Moderate and Major Adverse (Significant) noise effects at the following NSRs:

- At NSR H1 (Manor House Farm, Cowpen Bewley, Billingham) for buried pipeline construction methods, Testing and Street Works and, during Saturday 13:00 to 16:00 for ROW Fencing and preparation works; and
- At NSR H3 (Kirkleatham Village) for above ground pipeline construction methods (only Saturday 13:00 to 16:00).

3.12.34. However, Table 11-34 (Residual Noise Effects) in ES chapter 11 [PDA-007], shows the residual effect on NSR H1 (Manor House Farm, Cowpen Bewley, Billingham) and NSR H3 (Kirkleatham Village) after mitigation, as secured through requirement 15 (CEMP) of the dDCO, would reduce these effects to Minor Adverse or less (Not Significant) on the basis that BS 5228 ABC noise limits are met.

3.12.35. The applicant indicates all other Connection Corridor construction effects are either Minor or Negligible adverse (Not Significant) during the evening and weekend.

3.12.36. With regard to changes to road traffic noise due to construction, the applicant considers Table 11.28 (Changes in Road Traffic Noise due to the Construction…) of ES chapter 11 [PDA-007] demonstrates either no or very low change in such noise due to traffic flows along the construction traffic routes of the proposed development. The applicant considers this will result in Negligible Adverse (Not Significant) effects at local residential NSRs. As such the applicant considers no further specific mitigation measures in regard to road traffic noise are necessary beyond the embedded measures inherent in the design and construction of the proposed development.

3.12.37. In terms of vibration during construction, the applicant has reviewed the construction plant to identify which plant and/ or activities have the potential to cause adverse vibration impacts at sensitive receptors. Using BS 5228-2: 2009+A1:2014 indicative vibration levels have been predicted. However, given the significant distance to residential and ecological receptors, the applicant considers no significant vibration impacts are expected to result from construction on the main site. However, it does

advise construction of the connection corridors may be closer to residential and ecological receptors, and thus there is the potential for higher impacts, but this will depend on the nature of the construction with buried pipes having a greater potential for impact than above ground pipes.

3.12.38. Irrespective of the above, the applicant advises the embedded measures are to be secured through the DCO, including through the Framework CEMP ([REP8-003] APV/ [REP8-042] WCBAV). It set out a non-exhaustive list of key measures at section 11.5 of ES chapter 11 [PDA-007] to be employed during the construction of the proposed development. Together with the Framework CEMP ([REP8-003] APV/ [REP8-042] WCBAV) the applicant sets out how impacts upon NSRs will be managed during construction, as well as how it will control and minimise the impacts on the environment.

3.12.39. In terms of operational noise, the applicant points out for NSR H4, H5 and H6 there are other industrial sound sources closer than the proposed development site. It also advises the predicted sound levels produced by the H_2 Production Facility are below the existing background sound levels at NSR H4 and NSR H6 and at NSR H5 it is below the existing ambient sound levels for both day and night as shown in Table 11-31 of ES chapter 11 [PDA-007]. As such the applicant does not expected noise from operation of the H_2 Production Facility will be distinctive above the residual acoustic environment at these NSRs.

3.12.40. The applicant in considering operational vibration related to the H_2 Production Facility notes the type of equipment used during operation is unlikely to pass significant levels of vibration into the ground. In terms of the pipeline corridors it states there are no significant sources of vibration associated with the operation of those corridors. Taking these points into consideration, together with the distances between the proposed indicative location of the equipment and residential NSRs, the applicant does not anticipate that vibration levels will be significant in terms of the H_2 Production Facility and states they will not exceed the thresholds described in Table 11-8 (Construction Vibration Threshold at Residential Dwellings) of ES chapter 11 [PDA-007].

3.12.41. In terms of decommissioning, the applicant advises the full details of the decommissioning of the H_2 Production Facility are uncertain at this time. It states a preliminary assessment of decommissioning was undertaken using the same methodology as the construction assessment. It states the mitigation measures set out in section 11.5 of ES chapter 11 [PDA-007] for construction noise and vibration will also be appropriate mitigation during the decommissioning stage. Indeed, during the decommissioning of the main site, the applicant states Negligible (Not Significant) noise effects are predicted during the daytime.

3.12.42. The applicant also considers, if the decommissioning work were to be undertaken during the evening/ weekend, at the same intensity as the daytime activities, Negligible (Not Significant) effects would be expected at all NSRs. If decommissioning works were to be undertaken during the night-time, at the same intensity as the daytime activities, Minor Adverse (Not Significant) effects at NSR H5 (Marsh House Farm, Warrenby) would be expected.

3.12.43. In regard to this effect, the applicant highlights, in Table 11-34 (Residual Noise Effects) in ES chapter 11 [PDA-007], the residual effects on NSR H5 (Marsh House Farm, Warrenby), after mitigation, as secured through requirement 28 (Decommissioning) of the dDCO, would reduce these effects to Negligible Adverse

(Not Significant) on the basis that similar decommissioning techniques to those used in indicative calculations are used.

3.12.44. Overall, the applicant considers the requirement 15 (CEMP) and requirement 28 Decommissioning) secured by the dDCO, which include a number of measures to control noise and vibration effects during construction, will adequately mitigate the any noise and vibration effect that may arise during construction or decommissioning. The applicant also points out that further controls on noise and vibration are to be secured by requirement 19 (Construction hours) and requirement 20 (Control of noise – construction) of the dDCO.

VIEWS OF INTERESTED PARTIES

3.12.45. NE in its WRs [REP2-072] and [REP5a-015] sought further clarification in regard to impacts from noise and visual disturbance during construction; noise during operation; and in-combination disturbance impacts from multiple projects over multiple years during construction in regard to internationally and nationally designated sites.

3.12.46. The Marine Management Organisation in its WR [REP1-034], commenting in regard to marine ecology, observed underwater noise, including In relation to vessel movements and the proposed use of some vibratory sheet piling would be required.

3.12.47. The STG in its RR [RR-003] raised concern in regard to 'sensitive receptors' referenced in ES chapter 3 [APP-055] only relating to residential properties and ecological designations. It considered existing industrial uses within the Teesworks Masterplan area, with buildings, equipment and plant could be sensitive to vibration. The STG requested all sensitive receptors within the Teesworks' Masterplan area be considered in the ES.

3.12.48. In addition to the above, the STG in its RR [RR-003] highlighted no requirement had been included within the dDCO in regard to the control of noise during operation. This was also noted by AA in its WR [REP2-074] with it suggesting such a requirement should be inserted into the dDCO at Schedule 2. AA considered the authorised works should not be brought into use until such time as a scheme for management and mitigation of noise during operation, consistent with the principles of the ES, has been secured.

3.12.49. Sembcorp in its WR [REP2-104] raised concern regarding the safety of its existing underground river crossing assets from the proposed diagonal crossing of the applicant H_2 pipeline, which could significantly increase the asset risks and liability exposure to Sembcorp and its customers. One of Sembcorp's concerns in this regard arose from the proposed microbore/ HDD tunnelling proposed, which it considered may inadvertently collide or cause damage to its underwater river assets from vibration.

THE EXAMINATION

3.12.50. To avoid duplication of considerations, the matters raised by NE and the MMO related to noise and vibration, as outlined immediately above, are considered in the Ecology and Nature Conservation section of this report (section 3.8) and or chapters 4 related to the HRA.

3.12.51. In ExQ1 [PD-008] the ExA asked a number of questions related to noise and vibration, to which the applicant responded [REP2-031]. Responses to ExQ1,

concerning noise and vibration, were also received from RCBC [REP2-044], STBC [AS-033] and the STG [REP2-010].

3.12.52. In terms of the STGs concern regarding 'sensitive receptors' not including existing industrial uses within the Teesworks Masterplan area, the ExA considers the applicant adequately responded in [REP2-019], with the STG noting the applicant's answer in its [REP3-024] and welcoming the clarification.

3.12.53. The applicant responded to the STGs concern regarding the lack of any requirement in the dDCO concerning the control of noise during operation, in its DL1 submission [REP1-007]. It built on this response at DL3 in is submission entitled 'Applicant's response to DL2 submissions' [REP3-006] when responding to similar concerns raised by AA. In this DL3 submission, the applicant referenced back to its responses to ExQ1 [REP2-031], Q1.13.4 where it noted ES chapter 11 [PDA-007] concluded there were no LSEs for operational sound and so no mitigation is required to ensure no LSEs are felt. The applicant argues this is particularly the case given the scarcity of receptors in the area and thus limited scope for affecting health or quality of life. The applicant also points out, as operational noise will be regulated by the EA through the EP, duplicate operational controls set via requirement of the DCO are not required.

3.12.54. Sembcorp did not respond to the ExA's ExQ1 but the applicant provided a detailed response to its concerns related to vibration, as set out above, in its DL3 submission entitled 'Applicant's response to DL2 submissions [REP3-006] (table 8-1, reference Sembcorp5). Irrespective of this Sembcorp confirmed it had reached agreement with regard to PPs and a side agreement at DL9 [REP9-031] and withdrew its objection to the proposed development.

3.12.55. SoCGs were completed between the applicant and RCBC [REP5-058], STBC [REP8-027] and HBC [REP8-025]. In regard to noise and vibration RCBC confirmed the applicant ES chapter 11 presents a comprehensive and robust analysis on this matter. It also noted any outstanding matters will be covered in the examination. STBC in the completed SoCG agreed:

- the extent of the study area identified the closest receptors/ communities in regard to the proposed development, including in regard to changes in road traffic flows during the construction phase.
- the construction of the connection corridors will mainly affect sensitive receptors but mitigation and adherence to a CEMP should manage these temporary effects.
- noise complaint measures can be reviewed when the Final CEMP pursuant to requirement 15 (CEMP) of the dDCO.
- The amendments to construction hours as set out by the applicant in requirement 19 of the dDCO are consistent with the NZT Project and STBC agrees this this change on the basis these hours would still prevent construction noise at sensitive times of day.

3.12.56. With regard to HBC, the applicant's completed SoCG with HBC [REP8-025] notes noise and vibration as a "Matter to be agreed.". However, the applicant noted this is due to the fact it has not received any comments in relation to noise and vibration from HBC. Other than the applicants SoCG with HBC, the ExA notes HBC did not engage with the examination.

3.12.57. The ExA finds no reasons from the evidence entered into the examination to disagree with the applicant's assessment relating to noise and vibration and that

appropriate controls and mitigation is in place to ensure this matter is appropriately considered at the detailed design stage and suitably controlled as a result of requirements.

3.12.58. Therefore, the ExA is of the opinion that the assessments undertaken in regard to noise and vibration are appropriate for the scale, nature and location of the proposed development and makes appropriate recommendations for mitigation, which will be secured by requirement 15 (CEMP), requirement 19 (Construction hours), requirement 20 (Control of noise – construction) and requirement 28 (Decommissioning) in the DCO. Bearing in mind the above and all the evidence entered into the examination, the ExA considers ES chapter 11 [PDA-007], together with its appendices and figures, to be a comprehensive, robust and sound.

3.12.59. For these reasons, the ExA does not consider a requirement related to the control of noise during operations to meet the test of necessity, nor does it consider such a requirement to be reasonable in all other respects, especially in the light of the applicants assessment finding no LSEs for operational sound, with no mitigation being required, and the fact operational noise will be regulated by the EA through the EP. The ExA is mindful of NPS EN-1 in this regard and the fact it states it should be assumed the relevant pollution control regime and other environmental regulatory regimes will be properly applied and enforced by the relevant regulator and in decision making the SoS should act to complement but not seek to duplicate such controls.

3.12.60. As such the ExA is satisfied that the proposed development will avoid significant adverse impacts arising from noise and vibration and mitigate and minimise other adverse impacts from noise and vibration.

CUMULATIVE AND COMBINED EFFECTS

3.12.61. The applicant's cumulative and combined effects assessment [APP-076] was updated during the course of the examination [REP5-015]. In respect of cumulative effects, representations from IPs suggested the list of projects scoped into the assessment required updating. The applicant at DL5 [REP5-015] included three additional developments, and reported that some projects had been scoped out due to limited noise and vibration information submitted with those applications.

3.12.62. The resulting effects arising from the inclusion and consideration of these additional projects upon NSRs was as summarised below:

- NSRs H1, H2, H3, H4, H5 and H7 cumulative construction noise effects are the same as the predicted individual effects of the proposed development. For NSRs H1 and H4 this is Moderate Adverse (Significant), for NSRs H3 and H7 this is Minor Adverse (Not Significant) and for NSRs H2 and H5 this is Negligible Adverse (Not Significant).
- At NSR H6 effects are predicted to increase from Negligible to Moderate Adverse (Significant) with the addition of simultaneous noise from construction of the proposed development and the other developments.
- No specific mitigation is proposed as no appropriate mitigation is available beyond that which is secured in the Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV).

3.12.63. The ExA welcomes the updated cumulative effects assessment and note that NSR H6 would experience an increase in noise and vibration impacts. Given that the construction noise level predicted for the proposed development is during construction of the pipeline, which would only be close to this receptor for a short

time-limited duration, the ExA agree that no additional mitigation would be required beyond that already secured.

3.12.64. Bearing the above in mind, the ExA considers the cumulative and combined effects assessment to have properly identified the risk of such effects and is satisfied the applicant's mitigation measures, as secured through requirement 15 (CEMP) of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV), together with requirement 19 (Construction hours) and requirement 20 (Control of noise – construction), would work to mitigate that risk. The ExA is satisfied in regard to the applicant's cumulative and combined effects assessment and has no concerns regarding the residual cumulative effects in this instance.

CONCLUSIONS

3.12.65. Given the evidence presented, the ExA is satisfied that the assessments undertaken in regard to noise and vibration are appropriate for the scale, nature and location of the proposed development and make appropriate recommendations for mitigation that would be secured in the rDCO, attached at Appendix D, by virtue of the specification of authorised development as set out in Schedule 1; and the requirements detailed above and secured in Schedule 2.

3.12.66. In addition to the above, the ExA is also satisfied in regard to the applicant's cumulative and combined effects assessment and has no concerns regarding the residual cumulative effects in this instance.

3.12.67. The ExA considers noise and vibration issues have been addressed adequately and meet the requirements specified in NPS EN-1, NPS EN-4 and NPS EN-5 and comply with the NPSE. As such matters relating to noise and vibration do not weigh against the Order being made and are of neutral weight in the planning balance.

3.13. SOCIO-ECONOMICS AND LAND USE

INTRODUCTION

3.13.1. The ES chapter 18 (Socio-economics and Land Use) [APP-071] assessed the socio-economic and land use impacts of the proposed development, focusing on the impact of the proposed development on several areas including employment, housing and tourism, PRoW and recreational open space.

3.13.2. The ExA's IAPI, as set out in its Rule 6 Letter [PD-005]) (annex C) identified socio-economics, together with land use as principal issues including the extent to which the proposed development would potentially result in adverse or beneficial socio-economic effects in terms of the national, regional or local economy.

POLICY BACKGROUND

3.13.3. Paragraphs 4.3.4 and 4.3.5 of NPS EN-1 emphasises the applicant's assessment must provide information on the LSEs, social, and economic impacts of the development. They must also demonstrate how any likely significant negative effects would be avoided, reduced, mitigated, or compensated for, following the mitigation hierarchy. This consideration should cover effects arising from preconstruction, construction, operation and decommissioning phases.

3.13.4. Paragraph 5.13.2 to 5.13.4 of NPS EN-1 requires the applicant to assess the socio-economic impacts in energy infrastructure projects at local or regional levels in its ES. Specifically, the assessment should consider all relevant socio-economic impacts including job creation, training opportunities, contributions to the development of low carbon industries and the impact of a changing influx of workers during the different phases of the proposed development.

3.13.5. In relation to land use, paragraph 5.11.12 of NPS EN-1 states that applicants should aim to minimise impacts on the BMV agricultural land (as depicted by grades 1, 2, and 3a of the ALC plans) and preferably use land of poorer quality (grades 3b, 4, and 5).

3.13.6. In relation to open space, NPS EN-1 (paragraph 5.11.9) states applicants must consult the local community regarding proposals to build on existing open space and based on these consultations, they should consider providing new or additional open space to compensate for any losses in open space due to the proposals.

3.13.7. NPS EN-4 for natural gas supply infrastructure and gas and oil pipelines is relevant to the proposed development, due to it including such infrastructure. This NPS is clear it should be read in conjunction with the overarching NPS for energy infrastructure (NPS EN-1). Together these documents provide the primary policy framework for natural gas supply infrastructure and gas and oil pipelines (as defined in section 1.6 of NPS EN-4).

3.13.8. NPS EN-5 for electrical networks infrastructure is also considered relevant and is also clear it should be read in conjunction with NPS EN-1, the overarching NPS for energy infrastructure. It addresses applications for new electricity networks infrastructure, ensuring the development and maintenance of an economical and efficient network. This NPS at paragraph 2.9.25 notes the SoS should only grant consent for underground or subsea sections of a proposed line over an overhead alternative if the benefits clearly outweigh any extra economic, social, or environmental impacts, the mitigation hierarchy has been followed, and technical obstacles are surmountable.

THE APPLICANT'S CASE

3.13.9. ES chapter 18 [APP-071] assessed the socio-economic and land use impacts of the proposed development and is supported by ES figure 18-1 (Direct Impact Area and Wider Impact Area) [APP-177].

3.13.10. Paragraph 18.3.7 of ES chapter 18 [APP-071], stated that the socio economic receptors include:

- Agricultural, industrial, and development land.
- Users of PRoW.
- Private assets (including residential and business premises).
- Users of education, open space, and community facilities.
- The construction, operational, and decommissioning workforce.
- Construction and decommissioning employees using temporary accommodation.
- Demographic effects and community disruption.

Socio-Economic Impacts

3.13.11. The study area for the socio-economic impacts was defined using Office for National Statistics statistical geographies which is illustrated in ES Figure 18-1

[APP-177]. The wider impact areas include Middlesbrough and Stockton Travel to Work Area (TTWA) and England, while the direct impact area includes Redcar and Cleveland and Stockton-on-Tees Lower Layer Super Output Areas (LSOAs). LSOAs within HBC were excluded due to their minimal overlap with the proposed development boundary. A 3km radius from the Order limits boundary was used to assess impacts on various socio-economic receptors including PRoW, residential and business properties, educational and community facilities, open space, and development land.

3.13.12. The selected LSOAs represent local areas potentially impacted by the proposed development. Four out of seven LSOAs in the H2Teesside study area are in the most deprived decile nationally. The study area includes regions with significant deprivation, as Hartlepool, Redcar and Cleveland, and Stockton-on-Tees are ranked among the most deprived local authorities in England.

3.13.13. Section 18.4 of ES chapter 18 [APP-071] identifies that the local labour market in the Wider Impact Areas has 63% of the population of working age, similar to national averages and the TTWA. However, there is a higher proportion of residents with no skills or qualifications compared to regional and national levels. About 53% of the working-age population are economically active, mostly in full-time jobs with an unemployment rate around 4%, slightly higher than the national average of 3% for the TTWA. The largest industries are manufacturing and transport and storage.

Assessment of Effects Employment and Housing

Construction and Decommissioning

3.13.14. ES chapter 18 [APP-071], assumed a worst-case scenario for the construction phase with the number of workers fluctuating between 800 to 1,300 workers on site depending on the intensity of activity lasting from 2025 to 2030. The assessment assumed 60 direct jobs during operation, with a total net employment of 58 jobs, from 2025 to 2055, with potential extension beyond 25 years. The applicant points out there may be overlaps between Phase 1's operation and Phase 2's construction, with the worst-case scenario for construction and operation concurrently having been defined and assessed, resulting in Phase 1 being considered a more robust (worst-case) construction stage evaluation. The applicant highlights that due to uncertainties in future economic conditions, the employment impact during decommissioning cannot be fully assessed.

3.13.15. This chapter of the ES [APP-071] also confirmed the construction for the proposed development would start in 2025, divided into two phases, with Phase 1 until 2028 and Phase 2 until 2030. The construction phase is anticipated to create temporary jobs, boosting the local economy and positively impacting the TTWA economy through direct expenditure. The peak workforce is estimated at 1,300 workers per day, with a minimum of 800 across both phases. Most workers would be from the local area resulting in low leakage (25%), together with an estimated 200 workers from outside of the TTWA and 600 workers from within the TTWA benefiting from employment during the construction period.

3.13.16. Displacement effects are also assessed as low due to the flexibility of the construction workforce. The multiplier effect is expected to generate an additional 180 indirect jobs and induced jobs with an estimated 780 net construction jobs being generated, approximately 585 expected from the TTWA and 196 from outside the TTWA. Table 18-8 of ES [APP-071], summarises the net construction employment in the TTWA (average workers in site per year).

3.13.17. ES chapter 18 [APP-071] concludes the sensitivity of the receptors in the vicinity of the proposed development during construction is high, but the magnitude of impact is low, this results in a medium-term, temporary, moderate beneficial (significant) effect on net construction employment. The impact on employment during the decommissioning phase is expected to be similar to the construction phase.

3.13.18. ES chapter 18 [APP-071] also assessed the effects of the construction of the proposed development on the local housing market and bed and breakfast accommodation. The construction of the proposed development is anticipated to need housing for approximately 317 non-local workers. The assessment states that the local private rented housing and bed and breakfast accommodations can meet this demand based on the assumption the majority of construction workers would be sourced locally thereby limiting the number of workers requiring housing support from outside the TTWA.

3.13.19. The assessment concludes magnitude of the impact of construction employment on the local housing market and temporary accommodation is low, with medium receptor sensitivity, given the capacity of the private-rented housing and accommodation sectors to meet the worst-case potential demand for accommodation. Overall, the effect is considered minor adverse (not significant).

Operational Phase

3.13.20. ES chapter 18 [APP-071], states the operational phase is expected to create a number of long-term jobs. This phase of the proposed development is anticipated to last 25 years for both phases 1 and 2 or longer, depending on market and plant conditions. The assessment estimates around 130 operational workers per day for both phases with a minimum 60 gross direct jobs. Maintenance periods are anticipated approximately every four years for about 28 days, temporarily increasing operational employment to approximately 400 workers. The applicant considered employment during the maintenance periods temporary and sporadic in nature and its impacts have therefore not been assessed.

3.13.21. Table 18-10 of ES chapter 18 [APP-071] summarises the net operational employment in the TTWA where net employment has been estimated at 58 jobs with 44 of these from the TTWA. The assessment considered factors such as leakage, displacement, and the multipliers. The applicant concludes the sensitivity of receptor is medium, with very low magnitude resulting in long-term negligible effect (not significant).

Assessment of Effects Land Use

3.13.22. ES chapter 18 [APP-071] assessed the impact of the proposed development on land use. For the purposes of this assessment this included agricultural, industrial and development land, PRoW, open space, private assets (including resident and business premises), users of education, community facilities, demographic effects and community disruption. Table18 -9 and table 18-11 of ES [APP-071], identifies the wider socio-economic impacts and effects in the proposed development during the construction and operational phase. The assessment states due to insufficient information regarding future conditions the assessment has assumed the impact of decommissioning on the wider-socio economic receptors would be the same as that for the construction phase.

Agricultural and Industrial Land

3.13.23. ES chapter 18 [APP-071], identified that the main site, CO_2 Export Corridor, Natural Gas Connection Corridor, Water Connection Corridor, and Electrical Connection Corridor are all on urban and non-agricultural land. The H_2 pipeline corridor includes grade 5, grade 4, and grade 3 agricultural land. For grade 3 agricultural land the applicant assumed a worse-case scenario of grade 3a land. ES chapter 10 (GHCL) [APP-062] (GHLC) utilises NE ALC map for the North East Region (ALC001) (NE, 2023) to identify BMV Land. This is further discussed in section 3.9 (GHLC) of this report.

3.13.24. ES chapter 18 [APP-071], assessed the impact of the proposed development on BMV land during construction and operation. The applicant identified that the permanent acquisition of open space land at Cowpen Bewley Woodland Park would result in the loss of Grade 4 agricultural land. However, the applicant assumed the replacement land, for the loss of the open space land at Cowpen Bewley Woodland Park, to be Grade 3a agricultural land as a worst-case scenario. The applicant considered given that the total land take for the Grade 3a replacement land would be less than 1 hectare the impact of construction on BMV resources would be minimal.

3.13.25. During the construction and operational phase ES [APP-071], the applicant assessed sensitivity as medium and the magnitude of impact as low, with no residual adverse effects identified for BMV land. However, due to two residual adverse visual amenity effects identified at Viewpoint 7 (King Charles III Coastal Path) and Viewpoint 8 (Redcar Seafront) (see chapter 16 (Landscape and Visual Amenity ES [APP-069])) of the ES, the overall magnitude of impact is assessed as minor adverse (not significant) impact .

Loss of Recreational Open Space at Cowpen Bewley Woodland Park and Coatham Marsh

3.13.26. Table 18-5 of ES chapter 18 [APP-071], showed the open spaces and nature reserves within 3km of the proposed development. Table 18-9 outlines the impact of the proposed development on recreational open space during the construction. At Cowpen Bewley Woodland Park the assessment identified there would be the permanent loss of 18,615m² of land (6.2% of the total park size) due to the AGI and associated pipeline. Additionally, there would be a temporary loss of 37,531m² of land at Coatham Marsh, representing 5.8% of the open space, due to the construction within the water connection corridor.

3.13.27. Table 18-11 of ES chapter 18 [APP-071], outlines the impact of the proposed development on recreational open space during operation and identified open space land taken would be minimal, with no permanent closures or diversions of PRoW anticipated and these would reopen post-construction.

3.13.28. The applicant also identified temporary land take during construction at Coatham Marsh would be reinstated during the operational phase. In terms of visitor attractions the assessment stated there would be no significant adverse effects during the operational phase.

3.13.29. ES chapter 18 [APP-071], considered the adverse impacts of the permanent loss of open space at Cowpen Bewley Woodland Park would be mitigated by providing adjacent open space replacement land. This replacement land would be of at least the same size and quality as the open space land required for the proposed development. The assessment concluded that the compensatory replacement land would reduce the impact of the proposed development on open spaces. The

assessment identified that residents would be able to use the remainder of Cowpen Bewley Woodland Park during the construction phase, but public access to the woodland immediately surrounding the existing AGI would be limited during construction due to the nature of the work and to maintain safety. The assessment considered the disruption to the park would be minimal.

3.13.30. In terms of the open space land at Coatham Marsh, this would be restored to its original state at the end of the construction phase. The applicant points out requirement 4 of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV) secures a Landscape and Biodiversity Management Plan, which would include the mitigations identified in the outline OLBMP ([REP7-021] APV/ [REP8-039] WCBAV) and would include measures for reinstatement.

3.13.31. ES chapter 18 [APP-071], paragraphs 18.5.6 to 18.5.11 outline specific mitigation measures within the Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV), secured by requirement 15 (CEMP) of the dDCO to minimise the impact of the proposed development on Cowpen Bewley Woodland park during the construction phase. These measures include the use of trenchless methods for sections of pipeline to avoid the removal of any existing trees. Consequently, a line of trees between the railway and AGI would remain intact during construction.

3.13.32. Additionally, the Framework CEMP includes measures for the replacement of topsoil to mitigate the impact of a section of pipeline to be installed by open cut method. This installation would require a cleared route (approximately 30m wide), resulting in the removal of vegetation and trees. The total area of cleared vegetation for the open cut pipeline easement is 480m², and the AGI would cover an area of 607m². The assessment identifies that this would lead to a permanent change in the area.

3.13.33. Furthermore, requirement 4 securing the Landscape and Biodiversity Management Plan would include measures to reinstate and enhance bankside vegetation and woodland planting as compensatory habitat for the loss of public open space within Cowpen Bewley Woodland Park.

3.13.34. ES chapter 18 [APP-071], notes, there are multiple existing pipeline easements, which are cleared of large vegetation, around existing AGI that already serve as natural walking routes. The applicant states that following the completion of construction, the H_2 pipeline easement would form a similar natural walking route through Cowpen Bewley Wood Land Park.

Public Right(s) of Way

3.13.35. ES chapter 18 [APP-071], explains that there are no PRoW within the main site of the proposed development. However, footpaths and bridleways within 1 km of the proposed development boundary that could potentially be impacted by the proposed H_2 pipeline route during construction are outlined in paragraphs 18.4.14 to 18.4.16 of [APP-071], and shown on figure 3-1 [APP-080] of the ES.

3.13.36. Tables 18-9 of ES [APP-071], outlines the impact on PRoW as a result of proposed development activities relating to the temporary possession and permanent acquisition of open space land during construction. The assessment highlights the permanent loss of open space land at Cowpen Bewley Woodland Park would impact direct access to the park due to the installation of the AGI and associated pipeline. During the construction phase, two PRoW within Cowpen Bewley Park

would be closed temporarily. The assessment states these closures would not be concurrent, allowing alternative routes for park users to be maintained.

3.13.37. Additionally, at Coatham Marsh, there would be temporary disruption during construction, as outlined above. One PRoW (the England Coast Path) would be temporarily closed at two different points during construction. Another PRoW (the Teesdale Way LDR) would also be temporarily closed. The assessment states that specific PRoWs would be closed temporarily to allow the construction activities, but efforts would be made to minimise concurrent closures to maintain access to routes.

3.13.38. ES [APP-071] states that the assessment of impact of the proposed development during the operational stage on PRoW is the same as that identified for the loss of open space. The land take of open space would be minimal, with no permanent closures or diversions of PRoW. Temporary land take at Coatham Marsh during construction would be reinstated in the operational phase. There would be no significant adverse effects on visitor attractions during the operational phase.

3.13.39. Requirement 18 (Construction Traffic Management Plan (CTMP)) [REP6-002], would be implemented to control the impact of Heavy Goods Vehicles and construction workforce traffic on the local road network during construction. These plans aim to minimise disruption to access of PRoWs,

3.13.40. During the construction phase, the magnitude of effects on PRoW is assessed as low, with no significant residual effects identified. However, the assessment considered impact on open space is more substantial. The magnitude of effect on open space is assessed as medium, resulting in a Moderate Adverse (Significant) impact due to the land take at Cowpen Bewley Woodland Park and temporary possession at Coatham Marsh. The magnitude of impact during the operational phase is assessed as low with Minor Adverse (Not Significant) impact.

3.13.41. The assessment identifies the framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV) secures measures to control and minimise the impact of the proposed development including disruptions from noise and vibration (see ES chapter 11 (Noise and Vibration [APP-063]), habitat loss (see ES chapter 12 (Ecology and Nature Conservation) [APP-064]), increased traffic flows (see ES chapter 15 (Traffic and Transport) [APP-068]), landscape changes (see ES chapter 16 (Landscape and Visual Amenity) of the ES [APP-069]), and climate change effects (see ES chapter 19 (Climate Change) [APP-072]).

3.13.42. Requirement 18 (Construction Traffic Management Plan) (CTMP) [REP6-002], would be implemented to control the impact of Heavy Goods Vehicles and construction workforce traffic on the local road network during construction. The CTMP [REP6-002], and Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV) secured by requirement in the dDCO aim to minimise disruption to access of PRoWs.

3.13.43. During the construction phase, sensitivity is assessed as medium with the magnitude of impact low, no significant residual effects identified. However, due to the land take at Cowpen Bewley Woodland Park and temporary possession at Coatham Marsh the assessment considers the proposed development to have a moderate adverse (significant) effect on PRoW. In terms of the impact of the proposed development on PRoW during the operational phase, the sensitivity is medium and the magnitude of impact low leading to a minor adverse (not significant impact).

Private and Business Assets, Education and Community Facilities

3.13.44. Table 18-9 and table 18-11 of ES [APP-071] summarises the potential impact of the proposed development on private assets (including resident and business premises), education and community facilities during construction and operation. The assessment states that the proposed development has been designed to avoid any land take from residential properties, occupied private business, education and community facilities to reduce the impact of the proposed development during the construction phase.

3.13.45. The Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV) includes an Indicative Lighting Strategy to control the installation of lights in order to minimise disruption of the proposed development on private assets in the direct impact area.

3.13.46. For private assets, during construction the magnitude of effect is assessed as low. The sensitivity of these receptors is assumed to be medium, leading to an overall minor adverse (not significant) effect. This assessment is due to residual adverse visual amenity effects identified at Viewpoint 8 (Redcar Seafront) during the construction phase, which the assessment states is isolated to residents and businesses of Redcar.

3.13.47. During the operational stage, the magnitude of effect is assessed as low, with negligible (not significant) impact. Regarding education and community facilities, during construction the magnitude of effect is assessed as low. However, due to adverse significant residual effects only at Viewpoint 8 (Redcar Seafront), the magnitude of effect is considered minor adverse (not significant) and for the operational phase the magnitude of effect is low resulting in a negligible (not significant) effect.

Neighbouring Development Consent Order Development Land

3.13.48. The assessment identifies that proposed development intersects with the boundaries of other significant proposed DCO projects, including the NZT and the YPHFO. Furthermore, parts of the site lie within the boundary of the STDC area. Table 18-9 and table 18-11 of [APP-071], summarise the potential impacts of the proposed development on development land during both construction operational phases. To minimise these impacts requirement 25 (Local Liaison Group) would stablishes a local liaison group ensuring the applicant's commitment to working with the relevant Planning Authorities and promoters of other significant projects. The liaison group would facilitate communication and coordinate construction works to control and minimise the impact of the proposed development on other projects and facilities.

3.13.49. The impact on development land during construction and operation sensitivity is assessed as medium with a low magnitude of effect, resulting in a minor adverse (not significant) impact. This is due to multiple planning applications or permissions, as well as made or emerging DCOs, within proximity to the proposed development.

Demographic effects and community disruption

3.13.50. In terms of demographic effects and community disruption the sensitivity is assessed as medium with a magnitude of effect assessed as low, resulting in overall minor adverse (not significant) effect during construction.

Decommissioning Phase

3.13.51. The assessment identifies the proposed development design life is 25 years, but the operational life could be longer depending on market conditions and plant condition. At the end of its operational life, the most likely scenario is that the proposed development would be shut down, with all above-ground structures removed and the ground restored to its original condition to facilitate future re-use. Below-ground infrastructure would be left in situ. Requirement 28 (Decommissioning) secures a DEMP that would contain measures to control and minimise the impact of the decommissioning phase. Due to insufficient information regarding future conditions the assessment has assumed the impact of decommissioning would be the same as that for the construction phase.

Applicant's Conclusions

3.13.52. Section 18.5 of ES chapter 18 [APP-071], outlines the mitigation measures, within the dDCO, which the applicant considered would minimise disruption to access of PRoWs, community facilities, private assets, and open space and development land. The applicant concluded the residual effects of the proposed development on PRoW and open space is assessed to be minor adverse (not significant) but considers the proposed development would have an overall positive economic effect on the Middlesbrough and Stockton TTWA economy through the provision of employment and through associated multiplier effects. Decommissioning effects would be temporary and moderately beneficial, similar to the construction phase.

VIEWS OF INTERESTED PARTIES

3.13.53. RCBC in its LIR [REP1-043]), recognised the positive socio-economic impact of the proposed development. This included significant economic growth and job opportunities through the STDC. RCBC recognised the proposed development would support the STDC area through implementing the South Tees Area SPD and would give the area an identity and make it attractive to inward investment.

3.13.54. It also highlighted that the proposed development was located on land allocated for employment use in accordance with its Development Plan, focusing on high-skilled employment opportunities. However, in [REP2-044], RCBC raised concerns about the availability of construction workers in the Tees Valley area, given the demands of other newly consented projects including NZT.

3.13.55. STBC in LIR [REP1-045], was satisfied that the socio-economic and land use assessment adequately addressed the potential effects of the proposed development on employment, local businesses, and the local population during the construction, operation, and decommissioning phases.

3.13.56. STBC in its response to ExQ1 [AS-033], identified the need for the applicant to consult with the Stockton Employment Hub.

3.13.57. NE in [RR-026] raised concerns regarding the need to make it clear what land is required for the pipeline corridors and other infrastructure, including the area of soil to be temporarily disturbed and its Agricultural Land Classification (ALC) grade. It also advised a detailed site-specific ALC survey data would be required to determine the baseline for mitigation.

3.13.58. The applicant submitted a final SoCG [REP7-035], with the UKHSA. Whilst unsigned, the ExA is satisfied this SoCG is agreed between the parties, for the reasons set out above (paragraph 3.9.40). This final SoCG agrees the UKHSA has no concerns regarding the provision for securing a PRoW Plan within the dDCO (see requirement 5 (PRoW) of the dDCO).

3.13.59. No other IP's raised concerns in relation to socio-economics and land use.

THE EXAMINATION

3.13.60. The applicant submitted two CRs during the course of the examination. These are referred to as CR1 [CR1-044]) and CR2 [REP7-011]).The applicant stated in [CR1-044] and [REP7-011] that the CR1 and CR2 would not result in modifications to the socio-economic and land use impacts as reported in the original ES chapter 18 [APP-071]. The ExA accepted these findings.

Clarification on data used to estimate job numbers

3.13.61. The applicant provided further clarification on job numbers and worst-case scenarios in its response to ExQ1 [REP2-032]. The ExA is satisfied that the applicant's detailed response in [REP2-032], adequately addressed its concerns on these issues.

3.13.62. The ExA in ExQ1, Q1.14.18 [PD-008] sought clarification from the relevant Local Authorities and any other relevant body on whether they considered the applicant's assessment of the minimum number of gross direct jobs during Phases 1 and 2 to be adequate. STBC in [AS-033] recommended that the applicant engage with Stockton Employment and Training Hub with regards to future employment.

3.13.63. In its final SoCG [REP8-027]), STBC and the applicant agreed that ES chapter 18 [APP-071] satisfactorily addressed the potential effects on employment, local businesses, and the local population during all phases of the proposed development. The assessment highlighted significant beneficial effects resulting from all phases of the proposed development. STBC and the applicant agreed the Employment, Skills and Training Plan secured by requirement 26 of the dDCO submitted at DL7a provides an adequate mechanism for creating employment, skills and training opportunities for local residents. The applicant also expressed a commitment to working with STBC and other bodies and agencies to develop the Employment and Training Plan.

3.13.64. RCBC, in its response to ExQ1 [REP2-044], raised concerns about the availability of construction workers in the Tees Valley area, given the demands of other newly consented projects including NZT. In the submitted final SoCG [REP5-057], RCBC and the applicant agreed that ES chapter 18 [APP-071] together with requirement 26 (Employment, Skills and Training Plan) of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV) adequately addressed this issue. The applicant noted in the final SoCG [REP5-057], with RCBC the significant uncertainty in the timing and sequencing of various consented and unconsented developments in the Tees Valley area, but stated it would engage with other projects.

3.13.65. The ExA asked questions in ExQ1 [PD-008], ExQ2 [PD-015] and during ISH3 [EV9-002] to [EV9-009] with a view to clarifying several issues relating to the assessment of socio-economic and land use and the effectiveness of mitigation measures. The ExA is satisfied that the applicant's detailed response in [REP2-032] and [REP5-048] adequately addressed these issues. The ExA is also satisfied that appropriate mitigations in regard to this matter are secured through requirement 15 (CEMP) and requirement 26 (Employment Skills and Training Plan) of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV), which includes the provision of a skills and employment strategy to further support meeting the employment numbers identified and promote employment skills training for local residents.

The ExA's considerations on data used to estimate job numbers

3.13.66. The ExA is satisfied that the applicant's detailed responses in [REP2-032] and [REP5-048] adequately addressed its concerns in relation to job numbers and the worse-case scenario. The ExA is satisfied that requirement 26 (Employment Skills and Training Plan) of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV) would ensure job creation, training opportunities, and ongoing engagement with relevant bodies to manage any related impacts. The ExA notes requirement 26 (Employment Skills and Training Plan) of the dDCO aligns with paragraph 5.13.12 of NPS EN-1 and would be submitted to the relevant planning authorities for approval. Additionally, requirement 25 (Local liaison Group) of the dDCO secures engagement and communication through a local liaison group with the local residents and other organisations, including developments such as NZT.

Loss of Best and Most Versatile Land

3.13.67. ES chapter 18 [APP-071], identified the loss of open space at Cowpen Bewley Woodland Park, which is Grade 4 land as defined by the ALC. It also identified the replacement open space land, compensating for this loss, would be Grade 3a BMV as defined by the ALC land. Irrespective of this, the ExA notes the total area of Grade 3a ALC land lost would be less than 1 hectare. The applicant concluded the impact on BMV land would be minimal and not significant, especially given the small area of replacement open space land proposed.

3.13.68. The loss of BMV Land was considered by the ExA in ExQ1 [PD-008] and during ISH3 [EV9-002] to [EV9-009]. This was primarily in regard to NE's RR [RR-026], as set out above, concerning, an ALC survey of the pipeline routes, as well as in regard to seeking clarification as to the level of agricultural land proposed to be permanently or temporarily lost as a result of the proposed development. However, the ExA notes that by the close of the examination all matters raised by NE had been resolved, with the exception of NE's concern regarding air quality impact of pollutants on the Teesmouth and Cleveland Coast SSSI during construction and operation (NE's key points: NE29 and NE31).

3.13.69. Irrespective of the above, the ExA sought clarification in regard to BMV land through ExQ1, Q1.14.22 [PD-008] requesting a response from the applicant on this issue. This matter was also pursued by the ExA during ISH3 [EV9-002] to [EV9-009]. The applicant's completed SoCG with NE [REP8-026] records agreement between these parties in regard to the ALC Grade of the land in question, as well as in regard to the current land use of the different areas of the proposed development.

The ExA's considerations on Loss of Best and Most Versatile Land

3.13.70. The ExA is satisfied that the replacement land (Grade 3a ALC) for the permanent loss of open space (Grade 4 ALC) at Cowpen Bewley Woodland Park would result in a minimal impact on BMV due to the relatively small area of BMV lost.

Public Rights of Way

3.13.71. In ExQ1, Q1.14.21, [PD-008] the ExA raised concerns regarding the impact of the proposed development on PRoW. These included the temporary closure of the England Coast ProW and the Teesdale Way long distance walking route. The ExA also sought clarification on the level of consultation with the relevant Local Authorities with regards PRoW, as well as in regard to mitigation measures proposed.

3.13.72. The applicant's response to PRoW's issues were set out in its ExQ1 response [REP2-032]. Additionally, the applicant's final SoCG, with the UKHSA [REP7-035]

notes requirement 5 (PRoW) of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV) would be adequate.

3.13.73. In addition, the applicants completed SoCG with RCBC [REP5-057] confirmed that RCBC agreed requirement 5 (PRoW) provided appropriate mechanism for the management of PRoW during the construction of the proposed development and that there were no concerns with the applicant's assessment in ES chapter 18 [APP-071]. The applicant's completed SoCG with STBC [REP8-027] records the dDCO requirements have been agreed.

ExA's considerations on Public Rights of Way

3.13.74. The ExA is satisfied with the applicant's response to the ExA's R17 [REP7a-040] requesting evidence of the UKHSA's agreement to the final SoCG [REP7-035] (See paragraph 3.9.40 above) and that adequate evidence has been provided.

3.13.75. The ExA is satisfied adequate measures to ensure impacts on PRoW, would be minimised and mitigated throughout all phases of the proposed development, are secured through the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV). These include measures secured through: requirement 5 (PRoW), which would provide an appropriate mechanism for the management of PRoW during the construction of the proposed development; requirement 4 (Landscape and Biodiversity Management Plan), which would secure mitigations identified in the OLBMP [REP7-021] (APV)/ [REP8-039] (WCBAV); and requirement 15 (CEMP), which would secure mitigations identified in the Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV).

Permanent and temporary impacts on Open Space land

3.13.76. ExQ1, Q1.14.19 and Q1.14.20 [PD-008], the ExA sought clarification on the use of trenchless construction methods to avoid the removal of existing trees associated with Cowpen Bewley Woodland Park. The applicant confirmed in its response [REP2-032] trenchless techniques would be used where practicable to minimise impacts on existing vegetation, including existing trees and secured by requirement 15 (CEMP) of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV).

3.13.77. Additionally, the applicant proposes the tree planting measures as well as reinstatement of open space land temporarily lost during construction back to its former condition, as set out in the OLBMP ([REP7-021] APV/ [REP8-039] WCBAV) and secured by requirement 4 (Landscape and Biodiversity Management Plan) of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV).

3.13.78. The ExA noted ES chapter 18 [APP-071] identified the permanent loss of open space land, at Cowpen Bewley Woodland Park. To mitigate this loss, the applicant proposes to provide a replacement area of open space land of at least the same size and standard. In this regard the ExA notes the applicant's completed SoCG with STBC [REP8-027] confirms as agreed the principle of providing replacement land to compensate for the loss of land at Cowpen Bewley Woodland Park. This SoCG also confirmed as agreed as a result of the compensatory open space land there would be no overall loss of open space within the borough due to the proposed development.

ExA's considerations on the permanent and temporary impacts on Open Space Land

3.13.79. The ExA is satisfied that the applicant has taken appropriate measures to mitigate the impact on recreational open space as a result of the permanent and temporary

acquisition of open space at Cowpen Bewley Woodland Park and the temporary possession of open space at Coatham Marsh due to construction activity. The ExA is satisfied that the measures are secured through the dDCO and associated plans, including the Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV) secured by requirement 15 and OLBMP ([REP7-021] APV/ [REP8-039] WCBAV) secured by requirement 4 are adequate to ensure that the impact on open space is minimised and mitigated throughout the construction, operation, and decommissioning phases of the proposed development.

CUMULATIVE AND COMBINED EFFECTS

3.13.80. The applicant's cumulative and combined effects assessment [APP-076] was updated during the course of the examination [REP5-015], which included specific technical appendices in respect of socio-economic effects ([REP5-026], [REP5-030], [REP5-032]). A summary of the cumulative effects is set out in table 23E-20 [REP5-032], within which two moderate adverse effects are predicted due to a workforce influx upon private assets and tourist accommodation. The applicant stated a willingness and commitment to working with the promoters of other cumulative schemes to mitigate and reduce the effect of the cumulative construction workforce as far as possible.

The ExA's considerations regarding Cumulative and Combined Effects

3.13.81. The ExA is also satisfied in regard to the applicants cumulative and combined effects assessment, ES chapter 23 [APP-076], as updated in [REP5-015], which it considers has been conducted in a proportionate and reasonable way. At the close of the examination the ExA did not have any concerns regarding the applicant's conclusion in regard to cumulative and combined effects in terms of socio-economics and land use.

CONCLUSIONS

3.13.82. The ExA is satisfied that the estimated job numbers are supported by a robust methodology and secured through requirements 15 (CEMP) and 26 (Employment Skills and Training Plan) of the dDCO and aligns with NPS EN-1.

3.13.83. In terms of housing, the ExA is satisfied that the potential demand for accommodation from non-local construction workers can be met within the existing private rented sector and short-term accommodation in the Middlesbrough and Stockton TTWA. The ExA is satisfied with the conclusion in ES chapter 18 [APP-071] that there is sufficient capacity in the local housing market and temporary accommodation sector to meet this demand.

3.13.84. In the light of the preceding paragraphs, the ExA is also satisfied the proposed development would have an overall positive economic effect on the Middlesbrough and Stockton TTWA economy.

3.13.85. Whilst ES chapter 18 [APP-071] identifies the residual effects of the proposed development on PRoW and Open Space to be minor adverse (not significant), the ExA considers the dDCO contains adequate measures to ensure mitigation, to minimise the impact of the proposed development in terms of PRoW and on the permanent loss of open space land at Cowpen Bewley Woodland Park and a temporary loss of open space at Coatham Marsh, are secured.

3.13.86. The ExA is also satisfied the mitigation measures secured would be sufficient to minimise the impact of the proposed development during the construction, operation and decommissioning phases of the development on other land uses.

3.13.87. We are satisfied ES chapter 18 [APP-071] has satisfactorily assessed the socio-economic and land use impacts of the proposed development. Furthermore, the mitigation measures secured by requirement 4 (Landscape and Biodiversity Management Plan) and requirement 15 (CEMP) of the dDCO ([REP7a-003] (APV)/ [REP7a-006] (WCBAV)), are adequate to mitigate the socio-economic and land use impacts of the proposed development.

3.13.88. Overall, the ExA considers the proposed development in terms of socio-economics and land use, is consistent with, and supportive of, the government achieving its decarbonisation objectives, whilst delivering national, regional and local economic benefits, at scale. However, the ExA has already given very great positive weight in favour of the development on this basis in section 3.3 (Principle of Development) of this report and does not re-apply such weight here in regard to these matters.

3.13.89. Irrespective of the above, the ExA notes the overall positive economic effect on the Middlesbrough and Stockton TTWA economy. This in part arises from the applicant's commitment to providing support to local businesses and stakeholders and supporting skills development in the local area. This commitment would be secured through requirement 26 (Employment, skills and training plan) of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV), which aligns with paragraph 5.13.12 of NPS EN-1, and consequently, we afford moderate positive weight to this benefit in the planning balance.

3.14. SURFACE WATER, FLOOD RISK AND WATER RESOURCES

INTRODUCTION

3.14.1. This section addresses the potential effects of the construction, operation (including maintenance) and decommissioning of the proposed development on surface water, flood risk and water resources.

3.14.2. Surface Water, Flood Risk and Water Resources was identified in the IAPI contained with the ExA's Rule 6 letter [PD-005] at annex C. It specifically recognised matters concerning controlled waters, human health and biodiversity; compliance with the WFD and whether any enhancements are needed as a result of the proposed development; discharge of water and the strategy for discharging process water and/ or storm water; flood risk and the sequential test and matters concerning groundwater flooding.

POLICY BACKGROUND

Water quality and resources

3.14.3. NPS EN-1 notes at section 4.12 pollution control and other environmental regulatory regimes, which lead to other direct or indirect impacts on terrestrial, freshwater, marine, onshore, and offshore environments… may be subject to separate regulation under the pollution control framework or other consenting and licensing regimes (paragraph 4.12.1).

3.14.4. It notes pollution from industrial sources in England and Wales is controlled through the Environmental Permitting (England and Wales) Regulations 2016 and these Regulations require industrial facilities to have an EP and meet limits on allowable emissions to operate (paragraph 4.12.3). Indeed, it states larger industrial facilities undertaking specific types of activity are required to use BAT to reduce emissions to air, water, and land (paragraph 4.12.4)

3.14.5. In terms of decision making NSP EN-1 sets out the SoS should not refuse consent on the basis of pollution impacts unless there is good reason to believe that any relevant necessary operational pollution control permits or licences or other consents will not subsequently be granted (paragraph 4.12.16).

3.14.6. NPS EN-1 acknowledges infrastructure development can have adverse effects on the water environment, including groundwater, inland surface water, transitional waters, coastal and marine waters paragraph 5.16.1.

3.14.7. In terms of water quality and resources, paragraph 5.16.3 of NPS EN-1 states that, where a proposed development is likely to have effects on the water environment, the applicant should undertake an assessment of the existing status of, and impacts of the proposed project on, water quality, water resources and physical characteristics of the water environment, and how this might change due to the impact of climate change on rainfall patterns and consequently water availability across the water environment, as part of the ES. Indeed paragraph 5.16.7 sets out what the ES should assess in terms of water quality and water resource impacts.

3.14.8. Paragraph 5.16.14 of NPS EN-1 states that the SoS should be satisfied that proposed developments have regard to the River Basin Management Plans and meet the requirement of the WFD and related directives. Additionally, paragraph 5.16.16 states the SoS should consider proposals to mitigate adverse effects on the water environment and any enhancement measures put forward by the applicant and whether appropriate requirements should be attached to any development consent and/ or whether any planning obligations are necessary.

3.14.9. NPS EN-4 at section 2.21 deals with natural gas and oil pipelines and the applicant's assessment in terms of water quality and resources. Paragraph 2.21.37 notes the construction of pipelines creates corridors of surface clearance and excavation that can potentially affect watercourses, aquifers, water abstraction and discharge points, areas prone to flooding and ecological receptors.

3.14.10. This NPS also notes pipeline impacts could include inadequate or excessive drainage, interference with groundwater flow pathways, mobilisation of contaminants already in the ground, the introduction of new pollutants, flooding, disturbance to water ecology, pollution due to silt from construction and disturbance to species and their habitats. Furthermore, it notes that impacts during construction should be avoided as far as possible through route selection or mitigated if unavoidable and ground should be reinstated after construction.

3.14.11. In relation to water quality and resources, section 2.23 of NPS EN-4 in regard to natural gas and oil pipelines sets out "The SoS should liaise with the EA… over the potential for the new development to result in loss or reduction of supply to any licensed abstraction or unlicensed groundwater abstraction, or any potential interference with current legitimate uses of groundwater or surface waters, taking account of the terms of any relevant EPs or any negative effect on a groundwater dependent ecosystem" (paragraph 2.23.5).

Flood risk

3.14.12. In terms of flood risk NPS EN-1 at paragraph 5.8.13 requires that applications for energy developments of 1 hectare or greater in Flood Zone (FZ) 1 (FZ1) in England and all proposals for energy developments located in FZ 2 (FZ2) and FZ 3 (FZ3) in England should be accompanied by a Flood Risk Assessment (FRA), with the minimum requirement for an FRA detailed at paragraph 5.8.15.

3.14.13. NPS EN-1 notes applicants should set out how their developments will be resilient to flooding and not result in an increased risk of flooding. Similar considerations apply to gas supply pipelines (NPS EN-4, paragraph 2.3.4) and in relation to substations that are vital for the electricity transmission and distribution network (NPS EN-5, paragraph 2.3.2), which require applicants to set out how the proposal would be resilient to such risks related to climate change.

National Planning Policy Framework

3.14.14. Paragraphs 161 to 186 of the NPPF outline the development requirements in terms of climate change, flooding and coastal change and all sources of flood risk confirming a sequential risk-based approach should also be taken to individual applications in areas known to be at risk now or in future from any form of flooding (paragraph 173). Indeed paragraph 170 confirms that inappropriate development should be avoided in areas at the highest risk of flooding and where development is necessary in those areas it should be made safe without increasing flood risk elsewhere.

3.14.15. Paragraph 187 e) notes planning policies and decisions should contribute to and enhance the natural environment by preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as water quality, taking into account relevant information such as river basin management plans.

3.14.16. Further details of planning policy and legislation relating to the surface water, flood risk and water resources are provided in section 9.2 of chapter 9 (Surface Water, Flood Risk and Water Resources) [APP-061].

THE APPLICANT'S CASE

Introduction

3.14.17. The issues identified in the introduction section above are largely covered in ES chapter 9 (Surface Water, Flood Risk and Water Resources) [APP-061], as supported by information from several other chapters, together with appendix 9A (FRA) [REP5-022]; and appendix 9B: Water Quality Modelling Report [APP-193]. It is also supported by Figures 9-1: Surface Water Features and their Attributes [APP-106]; 9-2: Groundwater Features and their Attributes [APP-107]; 9-3: Fluvial Flood Risk [APP-108]; and 9-4: Surface Water Flood Risk [APP-109]. Additionally a Nutrient Neutrality Assessment [APP-047]; and a WFD Assessment [APP-048] are relevant to ES chapter 9 (Surface Water, Flood Risk and Water Resources).

Water Quality and Water Resources, including in relation to surface water

3.14.18. The applicant highlights the scope of its assessment as set out in chapter 9 of its ES [APP-061], which identified the potential impacts and effects on the water

environment from the construction, operation, and decommissioning of the proposed development.

3.14.19. A study area of 1km around the proposed development site was used to identify surface water features that could reasonably be affected by the proposed development. The applicant undertook a qualitative assessment of the LSEs for all phases of the proposed development, as well as considering the cumulative effects with other developments.

3.14.20. The applicant confirmed the study area is not within a Nitrate Vulnerable Zone, Drinking Water Protected Area (Surface Water), Drinking Water Safeguard Zone or near any Source Protected Zones. The applicant also advised that from data provided by the EA for the proposed development there are 27 licensed water abstractions within the study area. As such mitigation and enhancement measures are proposed to be implemented as part of the proposed development during the different phases of the proposed development, with those mitigation and enhancement measures described in section 9.7 of ES chapter 9 [APP-061].

3.14.21. For the construction stage of the proposed development, the applicant states mitigation would incorporate the adoption of the Framework CEMP which would include the final Water Management Plan, setting out a water quality monitoring programme. The applicant stated this would be further developed in consultation with the EA (due to works potentially impacting flow in a Main River and WFD water bodies), the Lead Local Flood Authority(s) (due to works potentially impacting flow in an Ordinary Watercourse), the MMO and potentially NE pursuant to DCO requirements or, where necessary, during the process of obtaining EPs/ Consents / Licences for works affecting, or for temporary discharges to, water bodies during the construction period.

3.14.22. In terms of the operational stage of the proposed development the applicant states a number of additional mitigation strategies would be required to ensure the operation of the H_2 Production Facility is maintained in the event of an extreme flood or significant pollution event. This would include a Flood Emergency Response Plan and an Emergency Response Plan. Furthermore, it notes the need for long term water quality monitoring would be set out and agreed with the EA through the environmental permitting process.

3.14.23. The applicant considers enhancements during the operational stage could deliver benefits to the water environment over the existing situation. For example, the applicant considers an improved drainage system, compared to the existing site, utilising sustainable urban drainage systems has the potential to improve the water quality of runoff that enters the Tees Estuary waterbody.

3.14.24. In terms of mitigation of adverse impacts on the water environment during the decommissioning phase, the applicant states this would be achieved principally through embedded measures as identified in section 9.5 of ES chapter 9 [APP-061], most notably through the adoption of a DEMP. The applicant states the DEMP would include details of how surface water drainage should be managed at the proposed development during decommissioning and demolition.

3.14.25. Additionally, the applicant states water quality monitoring required during the decommissioning works would be specified in the DEMP and would be expected to be similar to those described previously in relation to the construction phase.

3.14.26. In terms of residual effects, the applicant sets these out in in section 9.8 of ES chapter 9 [APP-061], with a summary of potential significant effects associated with the construction (and decommissioning) and operation of the proposed development presented in table 9-23 and table 9-24 respectively of that document. In summary during construction and decommissioning the applicant considers:

- Potential for adverse impacts on water quality from construction of trenchless crossings on the River Tees (Tees Transitional WFD water body) and Greatham (Tees Transitional WFD water body) will have a negligible magnitude of impact with the LSE and residual effects of Slight Adverse (Not Significant).
- Potential for adverse impacts on water quality from construction of open cut intrusive pipeline crossings leading to potential mobilisation of sediments or spillages on Holme Fleet was considered to have minor adverse (temporary) magnitude of impact with a LSE and residual effects of Slight Adverse (Not Significant), whilst on unnamed watercourses located west of the River Tees it was considered to have Minor adverse (temporary) magnitude of impact with a LSE and residual effects of Neutral (Not Significant).
- Potential for adverse impacts on water quality from works to add pipelines to existing pipe bridges and culverts, thereby requiring construction in close proximity, or over watercourses, leading to potential mobilisation of sediments or spillages the applicant found a negligible magnitude of impact with the LSE and residual effects of Slight Adverse (Not Significant) on The Fleet (River Tees (South Bank) WFD water body) and the Mill Race. On other unnamed water courses the applicant has found a negligible magnitude of impact with the LSE and residual effects of Neutral (Not Significant).
- Impact on channel morphology from open-cut crossing of watercourses for installation of pipelines; and Impacts of main site construction on groundwater levels and flow were both considered to have a Minor adverse magnitude of impact with a LSE and residual effects of Slight Adverse (Not Significant).
- Potential for adverse water quality impacts on the following watercourses, due to general construction site runoff and accidental spillages: the Tees Coastal WFD waterbody, Dabholm Gut, Mucky Fleet, Swallow Fleet and waterbodies within Coatham and Saltholme Marshes; Belasis Beck; and Main's Dike, Lackenby Channel, Kettle Beck, Kinkerdale Beck, Knitting Wife Beck, Ash Gill and Castle Gill will have a negligible magnitude of impact with LSE and residual effects of Slight Adverse (Not Significant). On numerous unnamed watercourses, drainage channels and ditches; the applicant has found a negligible magnitude of impact with the LSE and residual effects of Neutral (Not Significant).
- Impacts of H_2 Pipeline Corridor, Electrical Connection Corridor, Other Gases Connections Corridor and Water Connections Corridor construction on groundwater levels and flow on Groundwater – Sherwood Sandstone Group, were found to have a Negligible magnitude of impact with the LSE and residual effects of Slight Adverse (Not Significant), whilst on the Groundwater - Mercia Mudstone Group/ Redcar Mudstone Group the applicant found a negligible magnitude of impact with the LSE and residual effects of Neutral (Not Significant).
- Groundwater dewatering impacts - Groundwater - Mercia Mudstone Group / Redcar Mudstone Group and the Groundwater – Sherwood Sandstone Group; Flooding from tidal and fluvial sources during construction; Flooding from surface water sources during construction; Flooding from groundwater sources during construction; Flooding from drainage artificial sources and drainage infrastructure during construction, were all found to have a Negligible magnitude of impact with the LSE and residual effects of Slight Adverse (Not Significant).

3.14.27. With regard to significant effects during operation, these are summarised in table 9-24 of ES chapter 9 [APP-061] and the potential impacts are précised below:

- Potential pollution of surface water due to routine runoff and accidental spillages on the River Tees (Tees Transitional WFD water body) and the Tees Coastal WFD waterbody; the demand for water on the River Tees (Tees Transitional WFD water body); Impacts on water quality from process water discharges on the Tees Coastal WFD waterbody; Impact on water quality from foul water discharge on the River Tees (Tees Transitional WFD water body) and Tees Coastal WFD waterbody; Flooding from tidal and fluvial sources during operation; Flooding from surface water sources during operation; and Flooding from groundwater sources during operation - were all found to have a Negligible magnitude of impact with the LSE and residual effects of Slight Adverse (Not Significant).
- Potential impact on water quality of Pond 14 was also found to have a Negligible magnitude of impact with the LSE and residual effects of Slight Adverse (Not Significant), whilst in terms of other ponds it was found to have a Negligible magnitude of impact with the LSE and residual effects of Neutral (Not Significant).
- Potential impact from flooding from drainage artificial sources and drainage infrastructure during operation was found to have a Minor adverse magnitude of impact with the LSE and residual effects of Slight Adverse (Not Significant).

3.14.28. When taking account of embedded measures and the implementation of additional mitigation measures proposed, where required, the applicant considers no significant adverse residual effects were identified for the construction, operation or decommissioning stages of the proposed development.

Flood Risk, including from surface water

3.14.29. The applicant's Preliminary FRA [APP-192], as updated during the examination [REP5-022] identified the main site as located within FZ1, with some sections of the pipelines in FZ2 and FZ3. The applicant states the FRA would be used to inform the detailed design of the proposed development in terms of surface water management and the selection of finished floor levels, with mitigation measures described such as identifying a suitable level of the development platform for the main site, building the proposed development using flood resistant and resilient design standards, a system for monitoring flood warnings, and the development of a Flood Emergency Response Plan.

3.14.30. Although within FZ1, the applicant states the main site would be designed on a raised platform to provide additional protection from potential climate change effects for critical electrical equipment, such as transformers and switchgear. However, the applicant acknowledges the flood risk from fluvial sources (Ordinary Watercourses) on the north bank of the River Tees, between Billingham and Seal Sands, will increase for all climate change scenarios, and notes the H_2 Distribution Network would be at risk of flooding over the lifetime of the proposed development. Despite this the applicant argues most of the pipes making up the H_2 Distribution Network will be located above ground and in an existing unattended service corridor and as such it considers the H_2 Distribution Network to be acceptable development within FZ3a.

3.14.31. In terms of worst-case parameters identified in the ES related to the development platform, the applicant states in ES chapter 9 (Surface Water, Flood Risk and Water Resources), at paragraph 9.6.94, the main site will be constructed on a development platform at a level no lower than the highest flood level of 6.83m

Above Ordnance Datum (AOD) (derived from the 6.23m AOD flood level for a 0.1% Annual Exceedance probability, remaining above the H++ tidal flood level with a freeboard allowance of 0.6m). It also states at paragraph 9.6.21 (footnote 2) the phase 1 development platform will be at approximately 7.1m AOD and the final high pavement point will be above 7.4 m AOD, with the phase 2 development platform potentially being above 7.1 m AOD but not exceeding 8m AOD.

3.14.32. The applicant states appropriate mitigation measures are proposed for the construction phase in this area of higher flood risk and these measures would be secured through the final CEMP which will be discharged by DCO requirement 15 (CEMP), best practice and in consultation with the EA with regards to maintaining the integrity of the flood defences.

3.14.33. Overall, in terms of the water environment, the applicant considers requirement 10 (Surface and foul water drainage) of the draft DCO secures details of temporary surface water and drainage systems, including means of pollution control for the construction stage of the proposed development in accordance with the Framework CEMP. The applicant also advises the final version of the CEMP, would incorporate all the mitigations identified in the Framework CEMP, would be secured by requirement 15 (CEMP) of the draft DCO. Furthermore, the applicant considers requirement 12 (Contaminated Land and groundwater) would adequately secure details of a scheme to deal with contamination of ground water, which is likely to cause significant harm to person or pollution of controlled waters or the environment.

VIEWS OF INTERESTED PARTIES

3.14.34. RCBC confirmed in its LIR [REP1-043] the proposed development broadly meets the requirements of the RCLP planning policy in terms of general development principles (policy SD4) and its policies related to the promotion of renewable energy development (policy SD6); and flood risk (policy SD7). Indeed in terms of flood risk, RCBC confirm it is satisfied in regard to the conclusions of the submitted FRA.

3.14.35. STBC in its LIR [REP1-045] advised it was "…satisfied that there are no significant effects are predicted for surface water, water resources and flood risk during the construction operation or decommissioning of the proposed development.".

3.14.36. The EA in relation to surface water, flood risk and water resources highlighted a number of issues related to flood risk and the water quality modelling report [APP-193], including Benzo(g,h,i)-perylene increasing above Environmental Quality Standards for scenario 5, in its RR [RR-009].

3.14.37. NE in its WR [REP2-072] and [REP5a-015] raised concerns in regard to the impacts from nutrients in discharged effluent (water quality) during operation in regard to internationally and nationally designated sites. It also made observations in regard to water quality in relation to the impact of amines from aerial emissions during operation; seeking clarification regarding proposed discharge of removed contaminants from process water during operation; ecotoxicological impacts from effluent discharges during operation; and impacts from increased scour and sedimentation to intertidal sedimentary habitats as a result of increased runoff during operation.

3.14.38. In the same submission, it also confirmed concerns regarding the impacts on water quality from surface water run off/ drainage during construction and operation had been successfully resolved.

3.14.39. Additionally, NE also advised, subject to the completion of agreed revisions to the HRA for internationally designated sites issues and subject always to the appropriate requirements being adequately secured, the following matters had been resolved:

- Water Quality - Evidence base for assessment of the Teesmouth & Cleveland Coast SPA/Ramsar Site and SSSI.
- Water quality - Surface water run off impacts – Teesmouth & Cleveland Coast SPA/Ramsar Site and SSSI.

3.14.40. NWL did not submit an RR or WR, but in its response to ExQ1 [REP2-092], it advised *"…no agreement has yet been reached… as regards water supply to the proposed development during operation and as such the basis for the delivery of the necessary raw water supply is unclear."* It raised an objection to the proposed development on this, and other matters including in related to completion of PPs and an asset protection agreement, until a resolution regarding these matters had been resolved.

3.14.41. The STG made comments in its RR [RR-003] concerning waste water treatment and that for post separation two options were under consideration. The STG advised there was limited information on the potential quantity of brine stream that will be tankered off-site for disposal by a third party or the quantity of any solids that will be sent for disposal.

3.14.42. North Tees Group (NTG), who first engaged with the ExA at DL7 [REP7-053], advised it maintains and manages a number of monitoring boreholes which it considered to be critical infrastructure in relation to the monitoring and management of groundwater and potential contamination or migration of contamination. In terms of land being sought for compulsory acquisition/ temporary possession, it emphasised the necessity to maintain the hydrological link between adjacent land and the River Tees, especially in regard to the planning and construction of facilities to manage surface water in relation to land in the process of being infilled to form a development platform.

3.14.43. NTG also considered it inappropriate for certain land parcels to be designated or use either in relation to rights of way and or temporary use land, as such designation would prevent it from being able to carry out its operations and construct essential SUDs and other water management facilities.

THE EXAMINATION

3.14.44. The IAPI, attached as Annex C to the ExA's Rule 6 letter [PD-005] identified the following matters for further examination in regard to Surface Water, Flood Risk and Water Resources:

- Assessment of risks to controlled waters, human health and biodiversity.
- Compliance with the WFD and whether any enhancements are needed as a result of the proposed development.
- Discharge of water and the strategy for discharging process water and/ or storm water.
- Flood Risk and the sequential test.
- Assessment of groundwater flooding.

3.14.45. The ExA asked a number of questions concerning surface water, flood risk and water resources in both ExQ1 [PD-008] and ExQ2 [PD-015], all of which were

satisfactorily addressed by the applicant in [REP2-033] and [REP5-049] respectively.

3.14.46. With regard to the concerns raised by the EA, the applicant satisfactorily resolve these during the examination as confirmed in the applicant's completed SoCG with the EA [REP8-024]. In relation the EA's concerns regarding the FRA, including related to the pipeline design and construction and the temporary construction and enabling works; and the Water Quality Modelling report, including Benzo(g,h,i)-perylene increasing above Environmental Quality Standards for scenario 5, the SoCG confirmed these matters are now agreed as per the EA's DL6 submission [REP6-008] and that details of any flood risk mitigation for the construction and operation of the proposed development will be provided as part of requirement 11 of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV).

3.14.47. In terms of the EA's comment regarding an opportunity to secure habitat enhancement, contributing to achieve WFD objectives in the Tees estuary area, the applicant at DL1 [REP1-007] confirmed it would engage in further discussion on this matter with the EA, with the EA confirming at DL2 [REP2-064] that such engagement was ongoing. Indeed the applicant's completed SoCG with the EA [REP8-024] confirmed those discussions remained ongoing and unlikely to be resolved prior to the close of the examination.

3.14.48. Irrespective of the above, the ExA notes the EA did not object to the proposed development in terms of the WFD and only commented on the opportunity to secure habitat enhancements. As such the ExA noted there is no objection or concerns in regard to a breach of the WFD and therefore does not consider there to be a need to pursue such environmental enhancements as a result of the proposed development, as the imposition of a requirement securing such enhancements arising out of opportunity would not meet the tests of necessity or reasonableness.

3.14.49. In terms of NE's concerns identified immediately above, again the applicant sought to resolve these during the course of the examination. Indeed by the close of the examination all matters had been resolved, including in relation to those related to surface water, flood risk and water resources, with the exception of NE's concern regarding air quality impact of pollutants at SSSIs during construction and operation. This matter is considered in section 3.8 of this report.

3.14.50. In response to NWL's objection, as referred to above, the applicant submitted a copy of a letter from NWL [REP7a-042], dated 6 February 2025, providing an update in regard to demand forecasts and NWL's ability to supply Industrial / Raw / Potable water. In this letter NWL provide a qualified assurance, based on the applicant's predicted requirements during both the construction and operational phases of the proposed development, it would have *"…sufficient capacity to supply with the April 2025 investment program, changes to regulatory approvals and an abstraction license change."*. In terms of the other matters raised by NWL, as set out above, these are dealt with in chapter 6 of this report. On the basis of the information submitted into the examination the ExA is satisfied in regard to NWL's ability to supply Industrial/ Raw/ Potable water to the proposed development.

3.14.51. With regard to the STG concern regarding waste water treatment and the two options under consideration for post separation, the applicant responded to this concern in it DL1 submission [REP1-007], in table 3.3, where it advised the minimalised liquid waste from the effluent treatment plant was no longer proposed and it was only progressing the option for the discharge of effluent into to Tees Bay via the NZT outfall. The applicant also confirmed the effluent would be treated to an

appropriate level associated with the use of BAT and disposed of via the NZT outfall. The STG confirmed in its DL2 submission [REP2-111] its concerns in regard to this matter had been addressed.

3.14.52. Turning to the NTGs concerns, as relevant to this section of the report, the applicant sought in incorporate PPs in favour of the NTG in the dDCO submitted at DL7a ([REP7a-003] (APV)/ [REP7a-006] (WCBAV)), setting out it justification for the proposed PPs in its PP position statement [REP7a-036]. The NTG in its closing submissions made at DL8 [REP8-067] advised the PPs submitted at DL7A were unacceptable to it and providing its own preferred version (See Appendix 1 of [REP8-067]).

3.14.53. The ExA is satisfied with the applicant's response [REP9-021] and [REP9-021] to NGT's DL7 submission regarding boreholes monitoring, access maintenance and operational concerns.

3.14.54. The ExA notes RCBC confirmed in its LIR [REP1-043] the proposed development broadly meets the requirement of the RCLP planning policy in terms of general development principles (policy SD4) and its policies related to the promotion of renewable energy development (policy SD6); and flood risk (policy SD7). Indeed in terms of flood risk, RCBC confirm it is satisfied in regard to the conclusions of the submitted FRA. This position is confirmed in the applicant's SoCG completed with RCBC [REP5-057] where in relation to surface water, flood risk and water resources it is agreed the proposed development is acceptable in terms of flood risk and that appropriate mitigation measures are included to mitigate any flood risk, as set out in ES chapter 9 [APP-061].

3.14.55. In addition to the above, STBC in its LIR [REP1-045] advised it was "…satisfied that there are no significant effects are predicted for surface water, water resources and flood risk during the construction operation or decommissioning of the proposed development.". This position was repeated in the applicant's completed SoCG with STBC [REP8-027].

3.14.56. With regard to HBC, the applicant's completed SoCG with HBC [REP8-025] notes surface water, flood risk and water resources as a "Matter to be agreed.". However, the applicant also points out in the SoCG HBC's position as set out in its consultation response on 24 October 2023, where HBC confirmed its Flood Risk Officer had "No comments to make in respect of surface water management…" Indeed, the ExA notes HBC did not engage with it further during the examination.

3.14.57. With the exception of the issues raised above, no other matters concerning water supply, flood risk and water resources have been identified and the ExA is satisfied the applicant has adequately addresses all of these matters acceptably, including in relation to the WFD.

3.14.58. In consideration of the above, the ExA finds ES chapter 9 (Surface Water, Flood Risk and Water Resources) [APP-061], as supported by information from several other chapters, together with Appendix 9A (FRA) [REP5-022]; and Appendix 9B: Water Quality Modelling Report [APP-193], together with the submitted Nutrient Neutrality Assessment [APP-047]; and a WFD Assessment to be robust and sound. As such, the assessments undertaken in regard to surface water, flood risk and water resources are considered appropriate for the scale, nature and location of the proposed development and make appropriate recommendations for mitigation, which are included in requirement 10 (Drainage), requirement 11 (Flood risk mitigation), requirement 12 (Contaminated Land and Groundwater), requirement 15

(CEMP), requirement 21 (Piling and Penetrative Foundation Design) and requirement 28 (Decommissioning) of the dDCO (current version [REP7a-003] (APV)/ [REP7a-006] (WCBAV).

3.14.59. From the evidence before the ExA, having regard to the sequential and exception tests, we are satisfied that the proposed development is acceptable in terms of its location and in regard to all matters related to surface water, flood risk and water resources, including in terms of the WFD.

CUMULATIVE AND COMBINED EFFECTS

3.14.60. The applicant's cumulative and combined effects assessment [APP-076] was updated during the course of the examination [REP5-015]. The ExA notes that whilst there is the potential for cumulative surface water, flood risk and water resources effects as a result of the proposed development, where effects associated with it may act in conjunction with those associated with other developments and local plan allocations in the vicinity. However, the applicant concluded in its updated ES chapter 23 [REP5-015], paragraph 23.5.20, that subject to best practice construction measures secured in the final CEMP, no significant cumulative effects are anticipated.

3.14.61. The ExA notes that no concerns were raised by the EA in this regard, nor from the relevant Lead Local Flood Authority. Therefore, the ExA is content that there are no significant residual flood risk or surface water effects arising from the proposed development when consider cumulatively with other plans and projects in regard to the matters of surface, water flood risk and water resources.

CONCLUSIONS

3.14.62. The ExA is satisfied the applicant's submitted FRA was appropriately undertaken and meets the requirements of NPS EN-1, especially in regard to paragraphs 5.8.9, 5.8.11 and 5.8.12. It further considers the mitigation identified in the FRA and ES are sufficient and would be appropriately secured by requirement 11 (Flood risk mitigation), requirement 12 (Contaminated Land and Groundwater) and requirement 21 (Piling and Penetrative Foundation Design) of the rDCO, attached at Appendix D of this report, to guard against the risk of flooding and contamination of land and groundwater.

3.14.63. Furthermore, the ExA is satisfied water quality would be protected during construction and operation of the proposed development. Requirement 15 (CEMP) of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV) would adequately secure the Framework CEMP and the Outline SWMP. When combined with other requirements, as mentioned immediately above and below, and the environmental permitting regime, the final CEMP would ensure that the water quality is protected during construction via a system of mitigation and monitoring.

3.14.64. The ExA also considers adequate protection in terms of water quality during operation will also be provided, as the EA have the ability to control this through the EP regime. In reaching this conclusion, the ExA is mindful of NPS EN-1, paragraph 4.12.10, which advises in terms of decision making the SoS should work on the assumption that the relevant pollution control regime and other environmental regulatory regimes will be properly applied and enforced by the relevant regulator and advising such controls should not be duplicated.

3.14.65. Overall, the ExA is satisfied that surface water, flood risk and water resources, issues arising from the proposed development, including in relation to the WFD,

have been adequately addressed. We are content adequate mitigation measures relating to these matters are secured in the rDCO, attached at Appendix D of this report, including under requirement 10 (Drainage), requirement 11 (Flood risk mitigation), requirement 12 (Contaminated land and groundwater), requirement 15 (CEMP), requirement 21 (Piling and Penetrative Foundation Design) and requirement 28 (Decommissioning).

3.14.66. The ExA considers the proposed development would thus accord with relevant legislation and policy requirements, including those of NPS EN-1, NPS EN-4, NPS EN-5 and the Water Environment (WFD) (England and Wales) Regulations 2017 and overall there would be no significant adverse effects associated with surface water, flood risk and water resources, either alone or cumulatively with other developments. Such matters do not weigh against the Order being made and are of neutral weight in the planning balance.

3.15. TRAFFIC AND TRANSPORT

INTRODUCTION

3.15.1. This section addresses the potential impacts and effects of the construction, operation, maintenance and decommissioning of the proposed development arising from traffic and transport.

POLICY BACKGROUND

3.15.2. Paragraph 5.14.1 of NPS EN-1 states the transport of materials, goods and personnel to and from a development during all project phases can have a variety of impacts on the surrounding transport infrastructure and potentially on connecting transport networks, with paragraph 5.14.4 stating that mitigation of transport impacts is an essential part of government's wider policy objectives for sustainable development.

3.15.3. NPS EN-1 also states that the applicant should assess any significant transport impacts and include a transport appraisal (paragraph 5.14.5) and should also prepare a travel plan to support mitigation of travel impacts (paragraph 5.14.7).

3.15.4. Furthermore, paragraph 5.14.18 of NPS EN-1 states that the SoS should ensure that the applicant has sought to mitigate impacts on the transport infrastructure surrounding the area, with paragraph 5.14.19 stating that where the proposed mitigation measures are considered insufficient to reduce the impact on the transport infrastructure to acceptable levels, the SoS should consider requirements to mitigate these adverse impacts.

3.15.5. Additionally, paragraph 5.14.21 states that the SoS should only consider refusing development on highways grounds if there would be an unacceptable impact on highway safety, residual cumulative impacts on the road network would be severe, or it does not show how consideration has been given to the provision of adequate active public or shared transport access and provision.

3.15.6. Section 9 of the NPPF promotes sustainable transport and the creation of places that are safe, secure and attractive which minimise the scope for conflicts between pedestrians, cyclists and vehicles. It sets out that transport issues should be considered from the earliest stages of development proposals. Reflective of paragraph 5.14.21 of NPS EN-1, paragraph 116 of the NPPF makes clear that

development should only be prevented or refused on highways grounds "*if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network, following mitigation, would be severe, taking into account all reasonable future scenarios*."

3.15.7. The Tees Valley Combined Authority Strategic Transport Plan was published in 2020 with aims to improve the transport system for local people and businesses, ensuring integration between different transport modes. In addition, the RCLP includes Policy TA1 and TA2 which seek to ensure transport requirements are commensurate with the scale of development and improve accessibility and support wider regeneration objectives.

THE APPLICANT'S CASE

3.15.8. Chapter 15 of the ES [APP-068] assesses the impacts of traffic and transportation associated with the proposed development during its construction, operation and decommissioning phases. The ES chapter has been written in accordance with established principles which set out the requirements for assessing and reporting the effects on traffic and transportation.

3.15.9. The transport assessment, which is detailed in appendix 15A [APP-210] anticipates there would be a construction workforce of approximately 1,300 workers per day on site at the peak of construction, with just over 70% of the workforce located at the main site and the remainder associated with construction in the connection corridors. The ES states that this would equate to approximately 650 car worker trips per day.

3.15.10. The number of heavy goods vehicle (HGV) movements during construction is estimated to see a peak of 222 two-way daily vehicle movements with 162 being seen at the main site and the remainder across the rest of the wider site. The additional traffic caused during construction of the proposed development would result in small, temporary increases of traffic flows, including HGVs on the roads leading to the main site.

3.15.11. The ES also assessed the potential impacts of the construction work on severance; pedestrian amenity; fear and intimidation; highway safety; and driver delay. In all of these parameters, the assessment shows negligible residual effects with the exception of road safety on Belasis Avenue where the residual effect is minor.

3.15.12. The applicant has produced a Framework Construction Workers Travel Plan [REP2-013] and Framework CTMP [REP6-002] that sets out the key measures to be employed during the construction of the proposed development to control and minimise the effects; this includes matters relating to traffic and transport.

3.15.13. Chapter 15 of the ES goes on to state that once phases 1 and 2 are operational there is expected to be a maximum of approximately 130 staff working on a shift basis over a 24 hour period, which could increase to 400 during times of periodic, but infrequent maintenance, likely to be a 28 day period once in four years. During normal operation, there would be a total of 50 light goods vehicles (LGV) and 15 HGV movements a day. Therefore, in the operational phase, traffic flows are expected be very low and significantly lower than those anticipated during the construction phase. The ES states that the overall transportation effects during the operation of the proposed development are therefore not considered to be severe.

3.15.14. The ES further states that traffic movements associated with the decommissioning phase would not exceed those seen during the construction period and that the current baseline traffic volumes on local roads is not valid for the year of decommissioning. However, the applicant considers that any increase in traffic due to decommissioning would be negligible. Together, these assumptions would result in a likely negligible effect on traffic due to decommissioning. Notwithstanding this, a Decommissioning Traffic Management Plan would be implemented during the decommissioning phase to control the impact and routing of HGVs, this is secured via requirement 28 (DEMP) in Schedule 2 of the Order.

VIEWS OF INTERESTED PARTIES

3.15.15. National Highway's (NH) RR [RR-025], raised a number of issues they were seeking clarification on concerning the applicant's traffic and transport submissions, including further explanation of staff trip generation. In particular it was seeking clarification regarding the suitability of assuming that two workers would travel in one car during construction. NH were also seeking amendments to requirements in the dDCO.

3.15.16. No other RRs raised concerns specifically relating to traffic and transportation, although a number of IPs did however raise concerns about access and rights and these matters are covered in this report in the land chapter relating to any outstanding individual objections.

THE EXAMINATION

3.15.17. The IAPI identified the following matters for examination in regard to Traffic and Transport:

- Construction effects on the surrounding road network.
- Alternative access points.
- Effects on non-motorised users.
- The approach to the delivery of abnormal loads.
- The effect of the proposed development on highway and pedestrian safety.

3.15.18. In terms of the importation of construction materials and/ or abnormal indivisible loads by river, the applicant has made no assessment regarding river traffic and no IP has raised any specific concerns. In stating this, and there being no other river traffic proposed, the ExA did not need to pursue matters relating to river traffic further in the examination.

3.15.19. RCBC in its LIR [REP1-043], stated that the proposed development is consistent with a range of policies in the local plan, citing Policy TA1 and concluding that the development traffic could be accommodated on the local highway network. Similarly, in its LIR [REP1-045], STBC state that subject to compliance with the CTMP there are no highways objections to the proposed development. At the close of the examination the SoCG with all local highway authorities and the STG detailed that matters relating to traffic and transportation were agreed.

3.15.20. As stated above NH's RR [RR-025]raised a number of issues it was seeking addressed, including amendments to requirements in the dDCO and further explanation of staff trip generation. The ExA also sought confirmation of issues from both NH and the applicant in our written questions (ExQ1 [PD-008] and ExQ2 [PD-015]).

3.15.21. At DL4, NH updated the ExA on progress with a SoCG [REP4-027] where they stated that its requests for amendments to the dDCO are acknowledged by the applicant and they were confident that they will reach agreement. By the end of the examination the signed SoCG between the applicant and NH [REP7a-045] showed that all matters were agreed, including the assessment of two workers per car being an acceptable assumption for construction staff traffic trips.

3.15.22. No concerns were raised by IPs regarding environmental effects on severance, pedestrian amenity, fear and intimidation, highway safety and driver delay. Similarly, no concerns were raised in relation to abnormal loads.

CUMULATIVE AND COMBINED EFFECTS

3.15.23. Chapter 15 of the ES [APP-068] considers the cumulative and combined effects arising from transport and traffic, including from construction dust, construction traffic, operations and decommissioning. The applicant proposes a number of mitigations through the Framework Construction Workers Travel Plan [REP2-013] and the Framework CTMP [REP6-002]. These mitigations are secured through requirement 18 (CTMP), in Schedule 2 of the rDCO seen at appendix D of this report.

3.15.24. Whilst cumulative effects from construction traffic of developments in the surrounding area could have an adverse effect in terms of fear and intimidation and severance, the applicant considered that through the adoption of the Final CTMP(s) and Final CWTP(s) any effect upon non-motorised users, in regard to both fear and intimidation and severance, would be reduced to an acceptable level. Therefore, it considers the overall cumulative effects during construction, in terms of traffic and transport, would be Minor Adverse (not significant) and once operational the proposed development would not result in a severe impact upon the local highway network.

EXA'S CONSIDERATIONS REGARDING TRAFFIC AND TRANSPORT

3.15.25. The ExA are content that the applicant has satisfactorily answered all of its questions in relation to traffic and transportation; it is also content that there is broad agreement on these matters from the relevant highway authorities, including NH as demonstrated in the signed SoCG [REP7a-045].

3.15.26. It is clear to the ExA the applicant has considered the impact of the proposed development on the highway network, including matters of increased traffic, safety and non-motorised users at all stages of the project's life cycle. We consider that it has undertaken assessment and proposed mitigation in accordance with NPS EN-1 and section 9 of the NPPF.

3.15.27. Overall the ExA are satisfied that the provision of a Framework Construction Workers Travel Plan [REP2-013] and Framework CTMP [REP6-002], which would be secured via requirement 18 (CTMP) of the rDCO form an acceptable basis for developing a Construction Workers Travel Plan/ CTMP, both of which will be the subject of further consultation with appropriate named IPs and approval by the relevant Planning Authority.

CONCLUSIONS

3.15.28. The ExA notes the relevant highway authorities, including NH have no outstanding issues in regard to this matter. In line with NPS EN-1, the applicant has appraised

and mitigated the impacts of traffic and transport during construction, operation and decommissioning.

3.15.29. The ExA notes the key measures to control traffic and transport related matters during construction are secured via requirement 18 (CTMP) of the rDCO; the applicant is required to produce a final Construction Workers Travel Plan/ CTMP to the satisfaction of the relevant planning authority which would be based on the Framework Construction Workers Travel Plan [REP2-013] and the Framework CTMP [REP6-002] presented during the examination.

3.15.30. Having fully considered this subject, the ExA is satisfied that the issues relating to traffic and transport would not give rise to LSEs. Overall, the ExA considers traffic and transport related matters are neutral in the planning balance, neither weighing for or against the proposed development.

3.16. OTHER MATTERS

THE YORK POTASH HARBOUR FACILITIES ORDER 2016

3.16.1. AA Woodsmith (Teesside) Limited, AA Woodsmith Limited and AA Crop Nutrients Limited, collectively referred to as AA, are the developers of the Woodsmith Project, formerly York Potash. This project is the development of an underground mine for winning and working of polyhalite together with its transportation to and subsequent handling and shipping at Teesside. AA is the undertaker for the purposes of the YPHFO. AA submitted a RR and engaged with the examination throughout, including attendance at Hearings and making submissions at various deadlines.

3.16.2. In its RR [RR-010] AA stated it had a number of concerns regarding the proposed development, including in relation to powers of compulsory acquisition and temporary possession and the extent of rights sought. AAs overarching concern related to ensuring any powers granted do not prevent or prejudice its ability to construct and operate the authorised YPHFO. These matters, including in relation to Schedule 3 (Modification to and amendments of the YPHFO) of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV) are considered in chapter 6 of this report and not repeated here in order to avoid duplication.

DISAPPLICATION OF LEGISLATIVE PROVISIONS - THE TEES AND HARTLEPOOLS PORT AUTHOIRTY ACT 1966, THE TEES AND HARTLEPOOL PORT AUTHOIRTY REVISION ORDER 1974 AND THE TEES AND HARTLEPOOL HARBOUR REVISION ORDER 1994

3.16.3. In Article 9 of the submission version dDCO [APP-027] (Current versions [REP7a-003] (APV)/ [REP7a-006] (WCBAV)), the applicant proposed the disapplication of legislative provisions both for the construction and operation phases of the proposed development. Paragraph 2(a) of Article 9 sought to disapply the byelaws and directions made under:

- the Tees and Hartlepool Port Authority Act 1966;
- the Tees and Hartlepool Port Authority Revision Order 1974; and
- the Tees and Hartlepool Harbour Revision Order 1994.

3.16.4. PD Teesport Ltd (PDT) [RR-014], as the statutory harbour authority for Teesport under the Teesport Acts and Orders 1966 to 2008, objected to the applicant's proposed disapplication on the grounds that it could adversely affect its harbour

undertaking or other harbour users and businesses. PDT highlighted its general statutory duties [REP2-094] at Q1.6.53 and Q1.9.14 and stated that the drafting of Article 9, coupled with the absence of PPs, would cause serious detriment to occur to its undertaking.

3.16.5. The STG [RR-003] echoed such concerns, emphasising that bespoke PPs would be the preferred approach rather than disapplying existing legislative remits in the area. However, no further concerns were directly raised by this IP regarding the drafting of Article 9 in the WR [REP2-111] or submissions are subsequent deadlines.

3.16.6. The applicant indicated at DL1 [REP1-007] that negotiations were ongoing with the respective organisations to reach a resolution on the drafting of Article 9. To this extent, the made NZT Order 2024 (NZT Order) formed a baseline for discussions both for Article 9 and draft PPs, with particular relevance due to the close proximity and overlap of that Order's limits and the proposed development.

3.16.7. At ISH2, PDT set out that the byelaws and directions under the aforementioned Acts were required for the proper management of the jurisdictional area of the port. This is not just to ensure the Harbour Master can ensure safe navigation but also for the conservancy, maintenance and improvement and safety of the harbour and the facilities afforded therein or in connection therewith [REP4-048]. The applicant maintained that the purpose of disapplication in this case, as is common in other DCOs, is to ensure that the DCO provides a 'one stop shop', that means everything that is needed to be authorised and controlled is contained in the one order [REP4-016].

3.16.8. Notwithstanding this, the applicant amended the dDCO at DL5 [REP5-006] so that the disapplication of provisions within the Acts listed above would only be in force for certain numbered works, as opposed to being across the entire proposed development. The applicant highlighted [REP4-015] that this approach, narrowing the scope of the disapplied legislation to specific works as opposed to across the entire authorised development, replicated the approach taken in NZT Order [REP1-009] (Article 9, paragraph 2). In combination with this amended wording to Article 9, the applicant inserted Schedules 30 and 35 into the dDCO [REP5-006] to provide PPs for both PDT and the STG, following those which had imposed in the NZT Order, as endorsed by the SoS in the making of that Order.

3.16.9. PDTs [REP7-058] maintained an objection and notable disagreement with the applicant with regards to the disapplication of the Tees and Hartlepool Port Authority Act 1966. In rebuttal of the applicant's reliance on NZT Order, PDT noted that the proposed development proposes an entirely new tunnel and pipeline to be constructed whereas the NZT Order relied upon existing tunnels [REP4-048]. Consequently PDT proposed revised PPs [REP7-058].

3.16.10. The applicant rebutted the proposals by PDTs [REP7a-031] on the grounds that they would be too restrictive for the proposed development and an impediment to its delivery.

3.16.11. At DL8, the reported position [REP8-018] was a compromise between the parties' respective interests was being pursued. However, at the close of the examination no agreement, side agreement or other form of common ground had been reached on the wording of such PPs. The dispute regarding the disapplication of certain legislative provisions therefore remains outstanding.

3.16.12. Similarly, the position with the STG remains an outstanding dispute at the close of the examination [REP9-032], partially due to the failure to agree the wording for PPs.

ExA Reasoning

3.16.13. The conflicting positions between the applicant and PDT is clear. The applicant wishes to construct the proposed development quickly and without impediment, whilst PDT's interests as harbour authority are to protect the area within its jurisdiction and third-party users.

3.16.14. The ExA notes that Article 9, and indeed the suite of PPs contained within the made NZT Order [REP1-009], was the result of a negotiated agreement between PDT and the applicant for the NZT Order. The ExA is unaware of any objections from PDT to the drafting of Article 9 in the NZT Order and no adequate justified reasoning has been provided by this IP as to why the position on the NZT Order is untenable or unworkable.

3.16.15. The applicant's approach to the disapplication of legislative provisions, consistent with the NZT Order, is both logical and rational. The ExA is not in receipt of any adequate or justified information from any IP to warrant a departure from the NZT Order in this regard, or to substantiate a case that Article 9 should be treated differently in this instance.

3.16.16. Whilst noting that PDT have maintained an objection to the proposed development from the onset of the examination, the ExA recommends that Article 9 does not change from that drafted in the applicant's final position at the close of the examination, as set out in the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV). Conclusions regarding PP's and any implications regarding compliance with s127 of the PA2008, where relevant, is dealt with in chapter 6 of this report and not repeated here so as to avoid duplication.

COMBINED HEAT AND POWER

3.16.17. NPS EN-1 at section 4.8 sets out consideration of Combined Heat and Power (CHP) in regard to energy developments. It defines CHP at paragraph 4.8.1, whilst discussing conventional thermal generating stations at paragraph 4.8.2 and noting at paragraph 4.8.3 CHP is technically feasible for many types of thermal generating stations, including H_2.

3.16.18. Paragraph 4.8.8 of NPS EN-1 refers to guidance issued by the then Department for Trade and Industry in 2006 ('Guidance on background information to accompany application under s36 of the Electricity Act 1989), and states that will apply to any application to develop a thermal generating station under the PA2008. It also states applications for thermal stations must either include CHP proposals or contain evidence demonstrating that the possibilities for CHP have been fully explored to inform the SoS's consideration of the application.

3.16.19. In addition to the above, NPS EN-1 states that the SoS should have regard to the Department for Trade and Industry 2006 guidance, or any successor to it, when considering the CHP aspect of application for thermal generating stations (paragraph 4.8.14).

3.16.20. As such the policy contained within NPS EN-1 in regard to CHP is clearly applicable to the consideration/ provision of thermal generating stations. However, the applicant notes it does not refer to other forms of energy infrastructure or place a

requirement on it for development consent for such infrastructure (other than for thermal generating stations) in regard to the consideration of CHP.

3.16.21. The proposed development is for a H_2 Production Facility and a H_2 Pipeline Corridor and associated development. The applicant argues, it does not represent a thermal generating station and therefore there is no requirement under NPS policy for it to consider CHP in relation to the proposed development. The applicant points out the energy efficiency of the proposed development, together with any use of heat, will be addressed through the EP application for the proposed development.

3.16.22. No relevant Local Authority raised the matter of CHP in its submitted LIR (RCBC [[REP1-043]/ STBC [REP1-045]) and no other IP raised concerns during the examination in relation to this matter.

3.16.23. Having carefully considered this matter, the ExA agrees with the applicant's position in this regard and does not consider there to be a requirement under NPS policy for the proposed development, which is not a thermal generating station to consider CHP in this instance. Therefore, there is no need to ensure the proposed development is constructed so as to be *"CHP-Ready"* and no need for an article or requirement to be included within the dDCO related to the provision of CHP should development consent be granted.

4. HABITATS REGULATIONS ASSESSMENT SUMMARY

4.1. INTRODUCTION

4.1.1. This chapter sets out the Examining Authority's (ExA's) summary conclusions relevant to Habitats Regulations Assessment (HRA). This will assist the Secretary of State (SoS), as the Competent Authority, in performing their duties under the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations'). Records of examination procedure, evidence and reasoning to support the conclusions reported upon here are set out in appendix C.

4.1.2. In accordance with the precautionary principle embedded in the Habitats Regulations, consent for this proposed development may be granted only after having ascertained that it will not adversely affect the integrity of European sites and no reasonable scientific doubt remains.

4.1.3. The ExA has been mindful throughout the examination of the need to ensure that the SoS has the information reasonably required to carry out their duties as the Competent Authority. It has sought evidence from the applicant and relevant interested parties (IP), including from Natural England (NE) as the Appropriate Nature Conservation Body, through written questions and hearings.

4.2. INFORMATION AND EVIDENCE

4.2.1. The proposed development is not directly connected with, or necessary to, the management of a European Site, and therefore the implications of the proposed development with respect to adverse effects on potentially affected European Sites must be assessed by the SoS for the Department of Energy Security and Net Zero.

4.2.2. The applicant's assessment of effects is presented in its Report to inform Habitats Regulations Assessment (HRA Report) [APP-040] (redacted version)/ [APP-041] (confidential version), which was updated following s51 advice [AS-016]. The HRA Report was further updated following the applicant's first change request [CR1-023] (redacted version)/ [CR1-025] (confidential version) and again following updates to assessment work [REP5-011] and [REP6a-010] (redacted version)/ [REP6a-012] (confidential version).

4.2.3. The ExA has had careful regard to all relevant representations (RR) and written representations (WR) which identify matters relevant to the assessment of effects on European Sites. It has used written questions and relevant hearings to interrogate this material. It prepared and published a report on the Implications for European Sites [PR-018] on 16 January 2025 and sought and has considered responses from the applicant and IPs to it, to inform its consideration of and findings on effects on European sites. The consultation on the published report ran until 6 February 2025.

4.2.4. All deliberations on this information and evidence are set out in appendix C.

4.3. SUMMARY OF MATTERS CONSIDERED

4.3.1. The applicant's HRA Report [REP6a-010]/ [REP6a-012] identifies 13 European sites within the UK NSN for inclusion within the assessment. These are listed in tables 3-1 and 3-2 of the HRA Report and in summary are:

- Berwickshire and North Northumberland Coast Special Area of Conservation (SAC)
- Durham Coast SAC
- Humber Estuary SAC
- North York Moors SAC
- North York Moors Special Protection Area (SPA)
- Northumbria Coast Ramsar site
- Northumbria Coast SPA
- River Tweed SAC
- Southern North Sea SAC
- Teesmouth and Cleveland Coast Ramsar site
- Teesmouth and Cleveland Coast SPA
- The Wash and North Norfolk Coast SAC
- Tweed Estuary SAC

4.3.2. Annex D of the HRA Report listed the qualifying features of the sites and identified which are relevant to the screening for likely significant effects (LSE).

4.3.3. The main HRA matters raised by the ExA, NE and other IPs and discussed during the examination include:

- The applicant's assessment method for bird qualifying features of Teesmouth and Cleveland Coast Ramsar site and SPA. This had implications for the assessment of noise and visual disturbance, and loss of functionally linked land (FLL).
- The applicant's conclusions on LSE for atmospheric pollution, and visual disturbance to Teesmouth and Cleveland Coast Ramsar site and SPA.
- The applicant's conclusions on LSE for atmospheric pollution to North Yorks Moors SAC and SPA and Northumbria Coast Ramsar site and SPA.
- The applicant's approach to assessment of in-combination effects, including other projects considered and the overlap between the proposed development and the Net Zero Teesside Development Consent Order.

4.4. SUMMARY OF FINDINGS IN RELATION TO LIKELY SIGNIFICANT EFFECTS

4.4.1. Under Regulation 63 of the Habitats Regulations, the Competent Authority must consider whether a development will have LSE on a European site, either alone or in combination with other plans or projects.

4.4.2. The ExA sought confirmation on a number of questions relating to LSE impact pathways in ExQs and following clarification from the applicant, both the ExA and NE were satisfied with the information provided. NE [RR-026], [REP7a-061] did not identify any additional European sites or LSE impact pathways.

4.4.3. The applicant's original conclusions in respect of screening were presented in section 4, and summarised in annex D, of the HRA Report [APP-040]/ [APP-041]. It concluded that the proposed development would not be likely to give rise to significant effects, either alone or in-combination with other projects or plans, on all qualifying features of the following European sites:

- Durham Coast SAC
- North York Moors SAC
- North York Moors SPA
- Northumbria Coast Ramsar site

- Northumbria Coast SPA
- Southern North Sea SAC

4.4.4. NE [REP7a-061] agreed with the applicant's conclusion of no LSE in respect of the Southern North Sea SAC. Its [RR-026] did not dispute the applicant's LSE conclusions of no LSE from the proposed development alone for the other European sites listed, aside from Durham Coast SAC. NE subsequently confirmed grey dunes were not a qualifying feature of the Durham Coast SAC and agreed there would be no LSE [REP2-072].

4.4.5. The applicant screened in Teesmouth and Cleveland Coast SPA and Ramsar site for consideration of Adverse Effect on Integrity (AEoI) but excluded some impact pathways. NE [RR-026] raised concerns about several pathways for which the applicant originally concluded no LSE from the proposed development alone. Most of these matters were resolved by the close of the examination; however, the applicant updated the HRA Report [REP5-011] to screen in LSE for construction traffic emissions to air.

4.4.6. Regarding in-combination effects, NE [REP2-072] identified additional projects that should be screened into the assessment for operational air quality changes; the applicant amended its assessment to include these projects [CR1-023]/ [CR1-025]. No other additional plans or projects were highlighted by IPs in the examination.

4.4.7. The applicant updated its HRA Report to screen in the LSE impact pathway of operational emissions to air (nitrogen oxides and nitrogen deposition) in-combination with other projects to the Teesmouth and Cleveland Coast SPA and Ramsar site [REP6a-010]/ [REP6a-012] in response to concerns raised by NE [RR-026] about the screening criteria for significance being exceeded.

4.4.8. All concerns raised by IPs about the applicant's screening for LSE were resolved during the examination.

4.4.9. The applicant in its HRA Report [REP6a-010]/ [REP6a-012] concluded that the proposed development would be likely to give rise to significant effects, either alone or in-combination with other projects or plans, on one or more of the qualifying features of:

- Berwickshire and North Northumberland Coast SAC
- Humber Estuary SAC
- River Tweed SAC
- Teesmouth and Cleveland Coast Ramsar site
- Teesmouth and Cleveland Coast SPA
- The Wash and North Norfolk Coast SAC
- Tweed Estuary SAC

4.4.10. In addition, whilst NE [REP7-039] confirmed that its initial concerns in [RR-026] had been resolved, the ExA considers that the following sites should be assessed for AEoI from in-combination effects as a result of operational emissions to air as there would be an exceedance of the screening threshold in the EA and Department for Environment, Food and Rural Affairs guidance used in the assessment:

- North York Moors SAC and SPA
- Northumbria Coast SPA and Ramsar site

4.4.11. The ExA is satisfied, based on the information provided in the applicant's HRA Report and matters discussed above and in appendix C, that the correct impact-

effect pathways on each European site have been assessed. The ExA is satisfied with the approach to the assessment of alone and in-combination LSE.

4.4.12. The ExA considers that the proposed development is likely to have a significant effect from the impacts identified in tables D-1 to D-11 in annex D of the HRA Report [REP6a-010]/ [REP6a-012] on the qualifying features of the European sites and detailed in table C.2 of appendix C of this report, when considered alone, or in-combination with other plans or projects.

4.5. SUMMARY OF FINDINGS IN RELATION TO ADVERSE EFFECT ON INTEGRITY

4.5.1. The European sites and qualifying features likely to give rise to significant effects were assessed by the applicant to determine if they could be subject to AEoI from the proposed development, either alone or in-combination.

4.5.2. The applicant concluded in its HRA Report [REP6a-010]/ [REP6a-012] that the proposed development would not adversely affect the integrity of all European sites and features assessed, either alone or in-combination with other projects or plans.

4.5.3. Overarching themes raised included matters associated with stack heights; assessment of operational air quality effects; in-combination assessment; and proposed mitigation measures.

4.5.4. Based on the findings of the examination, the ExA is satisfied that the worst-case for stack heights has been identified and assessed by the applicant, and that the associated parameters are appropriately secured through the draft Development Consent Order (dDCO). The ExA is satisfied that an assessment of AEoI from operational air quality change as a result of the proposed development can be based on this information.

4.5.5. Regarding in-combination effects, the ExA is satisfied that an assessment of AEoI from the proposed development in-combination with other plans or projects can be based on this information and that no other plans or projects are required to be taken into account.

4.5.6. Whilst there was discussion during examination about the applicant's assessment (as discussed in table C.3 of appendix C), by the close of examination NE agreed that AEoI could be excluded from the proposed development alone and in-combination for the following European sites:

- Berwickshire and North Northumberland Coast SAC
- Humber Estuary SAC
- North York Moors SAC
- North York Moors SPA
- Northumbria Coast Ramsar site
- Northumbria Coast SPA
- River Tweed SAC
- The Wash and North Norfolk Coast SAC
- Tweed Estuary SAC

4.5.7. The applicant's conclusions of no AEoI in relation to the Teesmouth and Cleveland Coast SPA and Ramsar site were disputed by IPs and discussed during the examination. NE [RR-026] did not support the applicant's method for assessing the impact pathways of loss of FLL, noise and visual disturbance to bird qualifying

features, which was based on numbers recorded in sector surveys and the percentage of the SPA population this represented. The applicant [REP5-051] developed a new bird count method with input from NE to progress revised calculations and assessment. It presented the updated information in the HRA Report [REP6a-010]/ [REP6a-012]. NE [REP7a-060] agreed with the assessment method and confirmed it was a robust assessment on which to inform impacts.

4.5.8. Various mitigation measures were taken into account in the applicant's assessment of AEoI, including commitments on horizontal directional drilling design; timing of construction works; use of noise barriers and visual screening; a construction phase lighting scheme; and water management plan. These are set out in the Framework CEMP [REP8-003]/ [REP8-041] and its appendix B Outline Water Management Plan [APP-045] and appendix C Indicative Lighting Strategy [APP-046] and secured through requirements 15(3) and 15(4) of the dDCO [REP7a-003]/ [REP7a-006].

4.5.9. NE [RR-026] raised concerns about the applicant's assessment of AEoI of the Teesmouth and Cleveland Coast SPA and Ramsar site and the ExA sought further detail during the examination in relation to the following impact pathways:

- Direct habitat loss due to horizontal directional drilling collapse (construction) – habitats supporting bird qualifying features.
- Loss of FLL (construction, operation and decommissioning) – habitats supporting bird qualifying features.
- Noise disturbance (construction, operation and decommissioning) – bird qualifying features.
- Visual disturbance (construction and decommissioning) – bird qualifying features.
- Atmospheric pollution (construction, operation and decommissioning) – habitats supporting bird qualifying features.
- Water quality (construction, operation and decommissioning) – habitats supporting bird qualifying features.

4.5.10. The detail of the examination of these matters is set out in appendix C. In summary, the ExA concluded that AEoI of the Teesmouth and Cleveland Coast SPA and Ramsar site could be excluded following updates to the applicant's HRA Report with additional assessment work [REP6a-010]/ [REP6a-012] and mitigation commitments. The ExA also notes the advice from NE, as the Appropriate Nature Conservation Body, by close of examination that AEoI could be excluded. The applicant's conclusions were not disputed by any IP.

4.5.11. In light of conclusions provided by the applicant and taking into account the reasoning detailed in appendix C of this report, the ExA considers that the proposed development is not likely to have an AEoI from the impacts on the qualifying features of the European sites identified when considered alone, or in combination with other plans or projects.

4.6. HRA CONCLUSIONS

4.6.1. The proposed development is development for which a HRA Report has been provided. The ExA agrees the proposed development is not directly connected with, or necessary to, the management of a European site, and therefore the implications of the proposed development with respect to adverse effects on potentially affected sites must be assessed by the SoS.

4.6.2. Thirteen European sites and their qualifying features were considered in the applicant's assessment of LSE as identified in table C.1 of appendix C. LSE were identified for 11 of these sites (as listed in table C.3 of appendix C, together with Teesmouth and Cleveland Coast SPA and Ramsar site) both from the proposed development alone and in-combination with other plans or projects.

4.6.3. The methodology and outcomes of the applicant's screening for LSE on European sites was subject to some discussion and scrutiny and the HRA Report was updated to include additional impact pathways to the Teesmouth and Cleveland Coast SPA and Ramsar site during examination. By the close of examination, the sites and features for which LSE were identified were not disputed by any IP. The ExA considered on a precautionary basis the potential for AEoI from the LSE pathway of operational atmospheric pollution from the proposed development in-combination effects with other projects and plans to the North York Moors SAC and SPA, and Northumbria Coast Ramsar site and SPA. The ExA is satisfied that the correct European sites and qualifying features have been identified for the purposes of assessment, and that all potential impacts which could give rise to significant effects have been identified.

4.6.4. The ExA's findings are that, subject to the mitigation measures to be secured in the dDCO, AEoI on the European sites listed below from the proposed development when considered alone or in-combination with other plans or projects can be excluded from the impact-effect pathways assessed:

- Berwickshire and North Northumberland Coast SAC
- Humber Estuary SAC
- North York Moors SAC
- North York Moors SPA
- Northumbria Coast Ramsar site
- Northumbria Coast SPA
- River Tweed SAC
- Teesmouth and Cleveland Coast Ramsar site
- Teesmouth and Cleveland Coast SPA
- The Wash and North Norfolk Coast SAC
- Tweed Estuary SAC

4.6.5. The SoS is the competent authority under the Habitats Regulations and will make the definitive assessment. Having taken into account the advice from NE, the ExA are satisfied that the SoS has sufficient information available to perform their duties under the Habitats Regulations.

5. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

5.1. INTRODUCTION

5.1.1. This chapter sets out the Examining Authority's (ExA) overall assessment of the planning merits of the proposed development.

5.1.2. The Overarching National Policy Statement (NPS) for Energy (NPS EN-1) provides the primary basis for the Secretary of State (SoS) for the Department of Energy Security and Net Zero (DESNZ) to make decisions on development consent applications for the construction of energy infrastructure, which falls for considerations as Nationally Significant Infrastructure Projects (NSIP) in England. It is supported by a suite of other energy related NSP's, including the NPS for natural gas supply infrastructure and gas and oil pipelines (NPS EN-4) and the NPS for Electricity Networks Infrastructure (NPS EN-5). The ExA's conclusions on the case for development consent are therefore reached within the context of the policies contained within these NPSs. In coming to the conclusions set out in this chapter, the ExA have taken all other relevant law and policy into account.

5.2. SUMMARY OF THE MAIN PLANNING ISSUES

5.2.1. The ExA's findings in relation to the effects of the proposed development and its compliance against relevant policy and legislation are summarised below, drawing on the analysis of planning and Habitats Regulations Assessment (HRA) matters contained in chapter 3 and chapter 4 of this report, respectively.

5.2.2. In making our findings, the ExA have given full consideration to the Local Impact Reports (LIR) submitted by Redcar and Cleveland Borough Council (RCBC) and Stockton on Tees Borough Council (STBC). The planning matters and potential effects raised in the LIRs are considered in the relevant sections of chapter 3.

5.2.3. Additionally, the ExA has considered all relevant representations, written representations and responses to the ExA's first and second written questions, as well as all other representations made during the course of the examination.

THE PRINCIPLE OF DEVELOPMENT

5.2.4. The proposed development would create a low carbon hydrogen (H_2) facility to produce H_2 and Oxygen, together with a H_2 distribution network, and associated development. It is proposed to capture the majority of the carbon produced during the process for onward transportation via the adjoining Net Zero Teesside development and the Northern Endurance Partnership (NEP) for secure storage under the North Sea.

5.2.5. Throughout the examination, the applicant emphasised the location of the proposed development was informed by the close proximity of the proposed development of the East Coast Cluster (ECC), and the underlying carbon pipeline that the proposed development could connect directly into.

5.2.6. The H_2 facility and the related H_2 distribution network accords with the NPS EN-1, as well as related NPSs (NPS EN-4 and NPS EN-5) and benefit from the policy support given to low carbon infrastructure that is deemed to be of Critical National Priority. NPS EN-1 establishes the weight that can be attached to the proposed

development in this context would be substantial. Consequently, the ExA attaches very great positive weight in favour of making the Order.

THE ENVIRONMENTAL STATEMENT

5.2.7. The ExA is content that the Environmental Statement (ES) and other information submitted by the applicant during the examination has provided an adequate assessment of the environmental effects of the proposed development and meets the requirements under the Environmental Impact Assessment (EIA) Regulations.

5.2.8. The ExA is satisfied that the applicant's approach to the assessment of alternatives as described in the ES is comprehensive and complies with the EIA Regulations.

5.2.9. The ExA is also satisfied with the applicant's methodology for assessing cumulative effects and their assessment of decommissioning.

5.2.10. The ExA have taken full account of all environmental information in our consideration of this application.

HRA CONSIDERATIONS

5.2.11. The proposed development is development for which a HRA Report has been provided. The ExA agrees the proposed development is not directly connected with, or necessary to, the management of a European site, and therefore the implications of the proposed development with respect to adverse effects on potentially affected sites must be assessed by the SoS.

5.2.12. Thirteen European sites and their qualifying features were considered in the applicant's assessment of Likely Significant Effect (LSE) and LSE were identified for 11 of these sites, both from the proposed development alone and in-combination with other plans or projects.

5.2.13. The ExA is satisfied that the correct European sites and qualifying features have been identified for the purposes of assessment, and that all potential impacts which could give rise to significant effects have been identified.

5.2.14. The methodology and outcomes of the applicant's screening for LSE on European sites was subject to some discussion and scrutiny and the HRA Report was updated to include additional impact pathways to the Teesmouth and Cleveland Coast Special Protection Area and Ramsar site during examination. By the close of examination, the sites and features for which LSE were identified were not disputed by any IP.

5.2.15. The ExA's findings are that, subject to the mitigation measures to be secured in the DCO, Adverse Effect on Integrity (AEoI) on each of the 11 sites considered to have LSE from the proposed development, when considered alone or in-combination with other plans or projects, can be excluded from the impact-effect pathways assessed.

5.2.16. The SoS is the competent authority under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) and will make the definitive assessment. Having taken into account the advice from Natural England (NE), the ExA are satisfied that the SoS has sufficient information available to perform their duties under the Habitats Regulations.

AIR QUALITY

5.2.17. During the examination, the applicant satisfactorily answered all the ExA's queries in relation to air quality. The ExA further notes that the relevant planning authorities, including RCBC, STBC and Hartlepool Borough Council (HBC) had no outstanding issues regarding this matter. Whilst NE had two outstanding issues (NE29 and NE31), these in essence related to mitigation being required for the cumulative air quality impacts as a result of nitrogen deposition on the Teesmouth and Cleveland Coast Site of Special Scientific Interest's sand dune habitats, these outstanding concerns are discussed in the Ecology and Nature Conservation section of chapter 3 of this report and not repeated here so as to avoid duplication. In line with NPS EN-1 and NPS EN-4, the applicant has appraised and, where required, proposed mitigation regard to any air quality impacts during construction, operation and decommissioning.

5.2.18. The ExA notes the key measures to control air quality related matters during construction are secured via requirement 15 (Construction Environmental Management Plan (CEMP)) and requirement 28 (Decommissioning) of the recommended Development Consent Order (rDCO). Indeed, the applicant is required to produce a CEMP, which will be based on the Framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV) presented during the examination, prior to the commencement of various phases of the proposed development. Furthermore, the applicant is required to produce a DEMP, which is to be agreed with the relevant planning authority, following consultation, prior to commencement of the decommissioning phase of the proposed development.

5.2.19. In consideration of the above, as well as the evidence submitted by the applicant and IP's during the examination, the ExA is satisfied in terms of air quality.

5.2.20. Furthermore, the ExA is satisfied that the operation of the proposed development in terms of air quality emissions will be controlled through the Environmental Permit (EP) regime, which falls under the jurisdiction of the EA. This includes the appraisal and control of BAT and BAT-AEL through the EP, as well as the monitoring and control of amines and the "Close Loop System" related to the process emissions from the proposed development.

5.2.21. Having fully considered this subject, the ExA is satisfied that the issues relating to air quality would not give rise to likely significant effects, including in terms of cumulative and combined effects. Overall, the ExA considers the effect on air quality, resulting from the proposed development, and related matters are neutral in the planning balance, neither weighing for or against the proposed development.

CLIMATE CHANGE

5.2.22. The ExA has carefully reviewed the submissions made in regard to climate change and notes, with the exception of CEPP, no other IPs objected to the proposed development on climate change ground throughout the examination. On the basis of the evidence before it, the ExA considers the ES provides a complete assessment of climate change impacts, including upstream and downstream effects.

5.2.23. Furthermore, the ExA considers the level of information presented in the ES and across the examination to be acceptable and enables it to conclude the applicant has carried out a proportionate assessment of Greenhouse Gas (GHG) emissions, and that a rational conclusion can be reached regarding the project's effects at all stages. In reaching this view, the ExA acknowledges the applicant's arguments as set out in [AS-040], as referred to above, that the phrase 'full knowledge' is not a mandate for any applicant or decision-maker to seek out every conceivable piece of

environmental information about a particular project and that there is no abstract state or threshold of knowledge which must be obtained, but the judgement of the decision-maker takes primacy in determining whether adequate environmental information exists.

5.2.24. Bearing all the above in mind, the ExA is satisfied that the applicant's ES is robust in regard to climate change assessment and considerations and incorporates all the information required to comply with paragraph 5.3.4 of NPS EN-1. The ExA is satisfied that the applicant has, as far as is possible, assessed the GHG emissions of all stages of the development, including proportionate consideration of upstream and downstream effects, as well as direct and indirect effects resulting from the proposed development over its lifetime including construction and decommissioning. The ExA considers this accords with the Finch judgement.

5.2.25. In reaching its conclusion, the ExA agrees with the applicant, in regard to its approach in its assessment of climate change impacts, which include the beneficial off-set of other carbon emissions in its consideration of the downstream effects. However, even if the ExA is wrong in taking this position and a more refined interpretation of the Supreme Court judgement is applied, the ExA considers, on the basis of the evidence before it, the proposed development would still be acceptable in this regard.

5.2.26. Where emissions would occur, the ExA is satisfied the applicant, via the framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV), has taken reasonable steps to avoid and reduce emissions during construction and operation, in accordance with paragraph 5.3.9 of NPS EN-1. This includes the development being designed to capture a minimum rate of 95% of the CO_2 emissions of each of the H_2 unit operating at full load through the use of carbon capture and storage technology, which is consistent with other recently made DCOs. The ExA also considers any residual emissions would be significantly outweighed by the benefits of the proposed development in terms of providing a low carbon alternative to natural gas and, potentially, reducing carbon emissions by a substantial amount overall from the energy sector.

5.2.27. In respect of climate change resilience, the ExA is satisfied that embedded design and mitigation measures, together with additional mitigation detailed in the suite of management plans secured in the dDCO, would ensure the proposed development would be safe for its lifetime.

5.2.28. The ExA is also satisfied in regard to the applicants cumulative and combined effects assessment, ES chapter 23 [APP-076], as updated in [REP5-015], which it considers has been conducted in a proportionate and reasonable way. At the close of the examination the ExA did not have any concerns regarding the applicant's conclusion in regard to cumulative and combined effects in terms of climate change.

5.2.29. Having considered all of the above, the ExA is satisfied that the proposed development would contribute to meeting the UK's carbon commitment. It would further the transition to a low carbon economy by supporting the government in achieving its decarbonisation objectives, whilst delivering national, regional and local economic benefits, at scale, in line with NPS EN-1, NPS EN-4 and NPS EN-5. However, the ExA has already given very great positive weight in favour of the development on this basis in the Principle of Development section above and as such applies a neutral weight in terms of the planning balance related to climate change, neither weighting for nor against the proposed development.

CULTURAL HERITAGE

5.2.30. During the examination, the ExA found the applicant adequately assessed the significance of the heritage assets affected by the proposed development and that sufficient information to reach a conclusion on the nature, significance and value of identified designated and non-designated heritage assets was provided. The ExA also found the necessary information to allow sufficient understanding of the contribution that setting makes to their significance and the implications of the proposed development for those settings had also been provided so that the extent of the impact can be understood. As such the requirements of NPS EN-1, NPS EN-4 and NPS EN-5 were met in this regard.

5.2.31. Additionally, the ExA is satisfied the cumulative and combined effects assessment properly identified the risk of such effects in relation to cultural heritage and is satisfied the applicant's mitigation measures, as secured through requirement 13 (Archaeology) and requirement 15 (CEMP) of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV), would work to mitigate risks related to cultural heritage to an appropriate level. Consequently, the ExA is satisfied in regard to the applicant's cumulative and combined effects assessment and has no concerns regarding the residual cumulative effects in this instance.

5.2.32. The ExA is clear that the proposed development would result in less than substantial harm on designated heritage assets, with harm to non-designated heritage assets also occurring. These harms are weighed against the public benefits of the proposed development at section 5.3 of this report, in the planning balance, where we conclude on the cultural heritage effects of the proposed development.

ECOLOGY AND NATURE CONSERVATION, INCLUDING ORNITHOLOGY AND MARINE ECOLOGY

5.2.33. The policies relating to ecology and nature conservation (including ornithology and marine ecology), as set out in NPS EN-1, NPS EN-4 and NPS EN-5 have been followed by the applicant. These policies are consistent with the aims of the MPS and NEMP, section 15 (Conserving and enhancing the natural environment) of the NPPF and the relevant Development Plans, including the RCBP and the HLP. The ES has clearly set out the effects on designated sites, protected species and on habitats and other species of principal importance. The ExA agrees that significant harm to ecology and nature conservation (including ornithology and marine ecology) would be avoided, and appropriate mitigation and monitoring measures are secured via requirements on the dDCO, including the CEMP.

5.2.34. The applicant has demonstrated to the satisfaction of the ExA that activities are confined to the minimum areas required during construction and that best practice would be followed, with habitats restored after construction, where practicable. In addition, the ExA is satisfied in regard to BNG and the applicant's commitment to no net loss, as a minimum, is adequate.

5.2.35. Although NE maintained its concerns regarding air quality impact of pollutants on the Teesmouth and Cleveland Coast SSSI during construction and operation, the ExA is satisfied on the basis of the evidence submitted into the examination that the applicant's conclusion that the predicted impact is effectively insignificant, is sound and robust.

5.2.36. The ExA also noted the EA and the MMO confirmed it has no outstanding concerns regarding ecology and nature conservation.

5.2.37. Consequently, the ExA is satisfied all our questions raised during the examination have been answered satisfactorily and overall, there would be no significant adverse effects in terms of ecology and nature conservation (including ornithology and marine ecology), either alone or cumulatively with other developments. As such these matters do not weigh against the Order being made and are of neutral weight in the planning balance, neither weighing for nor against the proposed development.

GEOLOGY, HYDROGEOLOGY AND CONTAMINATED LAND

5.2.38. The ExA is satisfied the applicant has adequately considered and addressed the impact of the proposed development in respect of geology, hydrogeology and contaminated land, including in terms of cumulative and combined effects. Adequate embedded mitigations are detailed in the ES and secured within the rDCO, which contains appropriate articles and schedules, including requirements, to avoid adverse impacts arising.

5.2.39. Taking these matters into consideration, the ExA is satisfied that the proposed development would therefore accord with relevant legislation and policy requirements, including NPS EN-1, NPS EN-4 and relevant Local Development Plan policies. As such, the ExA concludes the impact of the proposed development regarding geology, hydrogeology and contaminated land is neutral in the planning balance.

HUMAN HEALTH AND MAJOR ACCIDENTS AND DISASTERS

5.2.40. During the examination, the applicant satisfactorily answered all the ExA's queries in relation to human health and major accidents and disasters. The ExA further notes that the relevant Planning Authorities, including RCBC and STBC had no outstanding issues in regard to this matter. In line with NPS EN-1, NPS EN-4 and NPS EN-5 the applicant has appraised and, where required, proposed mitigation in regard to human health, as well as major accidents and disasters, during construction, operation and decommissioning.

5.2.41. The ExA is satisfied ES chapter 20 (Major Accidents and Disasters (MA&D)) [APP-073] and chapter 22 (Human Health (HH)) [APP-075] adequately address and consider the impacts of the proposed development regarding HH and MA&D. Adequate embedded mitigation, as set out in the ES is secured through the rDCO, which contains appropriate articles, and schedules, including requirements and Protective Provisions to avoid adverse impacts arising from any HH and/ or MA&D detailed.

5.2.42. In terms of MA&D, the 'as low as reasonably possible' principles, together with the use of associated management plans secured by requirement 15 (CEMP) and requirement 28 (DEMP) are considered adequate. Indeed the CEMP and DEMP will address environmental risks and provide appropriate levels of mitigation during the various phase of the proposed development. Additionally, the ExA notes that the proposed development will be subject to controls and measures set out in other regulatory regimes, such as the COMAH Regulations, the Environmental Permitting Regulations, the Planning Hazardous Substances Act 1990 and the (Planning) Hazardous Substances Regulations 2015.

5.2.43. The ExA is also satisfied in regard to the applicants cumulative and combined effects assessment, ES chapter 23 [APP-076], as updated in [REP5-015], which it considers has been conducted in a proportionate and reasonable way. At the close of the examination the ExA did not have any concerns regarding the applicant's conclusion in regard to cumulative and combined effects in terms of HH and MA&D.

5.2.44. Taking all of these matters into account the ExA considers the proposed development is acceptable in terms of HH and CA&D, and accords with NPS EN-1, NPS EN-4, NPS EN-5 and all relevant policies, including those in the Local Development Plan. There are no disbenefits that weigh against the proposed development in this regard, especially as the operation of the proposed development would be regulated by the EA through an EP to control emissions from the proposed development using 'Best Available Techniques' and would be subject to the COMAH Regulations. As such HH and CA&D effects are a neutral consideration in the planning balance, neither weighting for nor against the proposed development.

LANDSCAPE AND VISUAL AMENITY

5.2.45. During the examination, the applicant satisfactorily answered all the ExA's queries in relation to landscape and visual amenity. The ExA further notes that the relevant Planning Authorities, including RCBC and STBC had no outstanding issues in regard to this matter. In line with NPS EN-1, NPS EN-4 and NPS EN-5 the applicant has appraised and, where required, proposed mitigation in regard to any landscape and visual amenity impacts during construction, operation and decommissioning.

5.2.46. Having considered the evidence presented, the industrial nature of the surrounding area, the views of relevant Interested Parties (including RCBC and HBC), and observations from representative viewpoints, the ExA is satisfied that the proposed development is unlikely to have a significant effect on landscape or visual amenity and meets the requirements of the above mentioned NPSs.

5.2.47. Whilst the impact on recreational users of viewpoint 7 (King Charles III Coast Path) during construction, operation, and eventual decommissioning, and viewpoint 8 (Redcar Sea Front) during construction and eventual decommissioning are noted, the ExA is satisfied that the proposed development will be seen and considered against the former industrial local character and the emerging industrial character of this location. Through careful design, the development will complement the existing nature of the site and surrounding area.

5.2.48. In terms of cumulative and combined effects in regard to landscape and visual amenity, the ExA is satisfied the applicant's assessment, ES chapter 23 [APP-076], as updated in [REP5-015] has been conducted in a proportionate and reasonable way and did not have any concerns in regard to the applicant's conclusion in this regard.

5.2.49. In addition to the above, the ExA is satisfied that requirements 3 ((Detailed Design) and 4 (Landscape and Biodiversity) of the rDCO will provide further opportunities to mitigate the visual impact of the proposed development on its surroundings. Therefore, the landscape and visual effects resulting from the proposed development are considered neutral in the planning balance, neither weighing in favour nor against the proposed development.

MATERIALS AND WASTE MANAGEMENT

5.2.50. The applicant has satisfactorily answered all our queries in relation to material resources and waste management. In line with NPS EN-1, the management of waste at the proposed development would be according to the waste hierarchy and will be managed properly, being implemented via the SWMP that is secured by requirement 15(7)(a) and based on the OSWMP submitted into the examination.

5.2.51. The ExA concludes that although most scenarios result in no significant residual effects, there is a possibility of a residual significant effect in relation to hazardous landfill capacity. Taking all matters into consideration we conclude that the issues relating to material resources and waste management would give rise to a LSEs and therefore we give a little negative weight against making the Order in the planning balance.

NOISE AND VIBRATION

5.2.52. Given the evidence presented, the ExA is satisfied that the assessments undertaken in regard to noise and vibration are appropriate for the scale, nature and location of the proposed development and make appropriate recommendations for mitigation that would be secured in the rDCO, attached at Appendix D, by virtue of the specification of authorised development as set out in Schedule 1; and the requirements detailed above and secured in Schedule 2.

5.2.53. In addition to the above, the ExA is also satisfied in regard to the applicant's cumulative and combined effects assessment and has no concerns regarding the residual cumulative effects in this instance.

5.2.54. The ExA considers that noise and vibration issues have been addressed adequately and meet the requirements specified in NPS EN-1, NPS EN-4 and NPS EN-5. As such matters relating to noise and vibration do not weigh against the Order being made and are of neutral weight in the planning balance.

SOCIO-ECONOMICS AND LAND USE

5.2.55. The ExA is satisfied that ES chapter 18 [APP-071] has satisfactorily and adequately addressed the socio-economic and land use impacts of the proposed development. The ExA considers that requirement 4 (Landscape and Biodiversity Management Plan), requirement 5 (Public Right(s) of Way (PRoW)) and requirement 15 (CEMP) are all necessary to secure appropriate mitigations during the various phases of the proposed development. The ExA is also satisfied that requirement 26 (Employment Skills and Training Plan) of the dDCO will ensure job creation, training opportunities, and ongoing engagement with relevant bodies to manage any related impacts. Additionally, requirement 25 (Local liaison Group) of the dDCO secures the engagement and communication of the applicant through a local liaison group with the local residents and other organisations, including developments such as NZT. This would assist with ensuring coordination with other projects and other relevant bodies/parties, including the relevant Local Authorities and local residents.

5.2.56. In regard to BMV land, the ExA is satisfied that due to the relatively small areas impacted resulting from land in taken, which constitutes BMV land, there will be minimal impact on such land resources. The ExA is also satisfied that the applicant has taken appropriate measures to mitigate the impact on recreational open space and PRoWs as a result of the permanent acquisition of open space at Cowpen Bewley Woodland Park and the temporary possession of open space at Coatham Marsh due to construction activity. The ExA is satisfied that the measures are secured through the dDCO and associated plans, including the framework CEMP ([REP8-003] APV/ [REP8-041] WCBAV) secured by requirement 15 (CEMP) and the OLBMP ([REP7-021] APV/ [REP8-039] WCBAV) secured by requirement 4 (Landscape and biodiversity management plan), are adequate to ensure that the impact on open space is minimised and mitigated throughout the construction, operation, and decommissioning phases of the proposed development.

5.2.57. The ExA is also satisfied in regard to the applicants cumulative and combined effects assessment, ES chapter 23 [APP-076], as updated in [REP5-015], which it considers has been conducted in a proportionate and reasonable way. At the close of the examination the ExA did not have any concerns regarding the applicant's conclusion in regard to cumulative and combined effects in terms of socio-economics and land use.

5.2.58. Overall, the ExA considers the proposed development in terms of socio-economics and land use, is consistent with, and supportive of, the government achieving its decarbonisation objectives, whilst delivering national, regional and local economic benefits, at scale. However, the ExA has already given very great positive weight in favour of the development on this basis in terms of the Principle of Development above and does not re-apply such weight here in regard to these matters.

5.2.59. Irrespective of the above, the ExA notes the overall positive economic effect on the Middlesbrough and Stockton TTWA economy. This in part arises from the applicant's commitment to providing support to local businesses and stakeholders and supporting skills development in the local area. This commitment would be secured through requirement 26 (Employment, skills and training plan) of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV), which aligns with paragraph 5.13.12 of NPS EN-1, and consequently, we afford moderate positive weight to this benefit in the planning balance.

SURFACE WATER FLOOD RISK AND WATER RESOURCES

5.2.60. During the examination, the applicant satisfactorily answered all the ExA's queries in relation to surface water, flood risk and water resources.

5.2.61. The ExA is satisfied the applicant's submitted FRA was appropriately undertaken and meets the requirements of the NPS. It further considers the mitigation identified in the FRA and ES are sufficient and would be appropriately secured by requirement 11 (Flood risk mitigation), requirement 12 (Contaminated Land and Groundwater) and requirement 21 (Piling and Penetrative Foundation Design) of the rDCO, attached at Appendix D of this report, to guard against the risk of flooding and contamination of land and groundwater.

5.2.62. Furthermore, the ExA is satisfied water quality would be protected during construction and operation of the proposed development. Requirement 15 (CEMP) of the dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV) will adequately secure the Framework CEMP and the Outline SWMP. When combined with other requirements, as mentioned immediately above and below, and the environmental permitting regime, the final CEMP would ensure that the water quality is protected during construction via a system of mitigation and monitoring.

5.2.63. The ExA also considers adequate protection in terms of water quality during operation will also be provided, as the EA have the ability to control this through the EP regime. In reaching this conclusion, the ExA is mindful of NPS EN-1, paragraph 4.12.10, which advises in terms of decision making the SoS should work on the assumption that the relevant pollution control regime and other environmental regulatory regimes will be properly applied and enforced by the relevant regulator and advising such controls should not be duplicated.

5.2.64. Overall, the ExA is satisfied that surface water, flood risk and water resources, issues arising from the proposed development, including in relation to the Water Framework Directive, have been adequately addressed. We are content adequate

mitigation measures relating to these matters are secured in the rDCO, attached at Appendix D of this report, including under requirement 10 (Drainage), requirement 11 (Flood risk mitigation), requirement 12 (Contaminated land and groundwater), requirement 15 (CEMP), requirement 21 (Piling and Penetrative Foundation Design) and requirement 28 (Decommissioning).

5.2.65. The ExA considers the proposed development would thus accord with relevant legislation and policy requirements, including those of NPS EN-1, NPS EN-4, NPS EN-5 and the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 and overall there would be no significant adverse effects associated with surface water, flood risk and water resources, either alone or cumulatively with other developments. Such matters do not weigh against the Order being made and are of neutral weight in the planning balance.

TRAFFIC AND TRANSPORT

5.2.66. During the examination, the applicant satisfactorily answered all the ExA's queries in relation to traffic and transport. The ExA further notes the relevant highway authorities, including NH have no outstanding issues in regard to this matter. In line with NPS EN-1, the applicant has appraised and mitigated the impacts of traffic during construction, operation and decommissioning.

5.2.67. The ExA notes the key measures to control traffic and transport related matters during construction are secured via requirement 18 (Construction Traffic Management Plan) of the rDCO; the applicant is required to produce a Construction Workers Travel Plan and Construction Traffic Management Plan, which would be based on the Framework Construction Workers Travel Plan [REP2-013] and Framework Construction Traffic Management Plan [REP6-002] presented during the examination.

5.2.68. Having fully considered this subject, the ExA is satisfied that the issues relating to traffic and transport would not give rise to likely significant effects. Overall, the ExA considers traffic and transport related matters are neutral in the planning balance, neither weighing for or against the proposed development.

5.3. FINDINGS AND CONCLUSIONS

5.3.1. This section weighs the benefits and disbenefits of the proposed development to reach a recommendation as to whether or not the case is made for granting development consent.

5.3.2. As a matter of law s104(3) of the Planning Act 2008 requires a NSIP, to which an NPS has effect, must be decided in accordance with the relevant NPSs, unless a relevant consideration arising from s104(4) to (8) applies.

5.3.3. In accordance with our duties under the Planning Act 2008, the ExA has had regard to the submitted LIRs, to prescribed matters and to all other important and relevant policies (including, NPS EN-1, NPS EN-4, NPS EN-5, the UK Marine Policy Statement, the North East Inshore and North East Offshore Marine Plan) and to other important and relevant matters identified in this report. The ExA have also considered whether the determination of this application in accordance with the NPSs mentioned above would lead to the UK being in breach of any of its international obligations, be in breach of any statutory duty, be unlawful, or be contrary to regulations about how decisions are to be taken. The ExA are satisfied that in all respects, this would not be the case.

5.3.4. The ExA are also obliged to consider whether the adverse impacts of the proposed development would outweigh its benefits.

5.3.5. The ExA have found that the proposed development would meet relevant government policy set out in NPS EN-1, NPS EN-4, NPS EN-5, in that it would provide a low carbon H_2 facility for the production of H_2 and oxygen, together with a H_2 distribution network, and associated development. The proposed development would also benefit from the substantial policy support given in NPS EN-1 to low carbon infrastructure of Critical National Priority.

5.3.6. The proposed development would provide extensive benefits at the national scale in terms of enhancing energy security and resilience and supporting the decarbonisation of the economy. NPS EN-1 establishes that the weight to be attached to a proposed development in this context would be substantial. On the basis of the above considerations, the ExA has attached very great positive weight in favour of the Order being made**.**

5.3.7. In addition to this, the proposed development would make a positive contribution to the local economy. The applicant is committed to providing support to local businesses and stakeholders and supporting skills development in the local area, with a view to enabling the local employment opportunities during the construction and operational phases of the proposed development. This attracts moderate positive weight in favour of the Order being made.

5.3.8. On the other side of the balance, chapter 3 of this report identifies a residual significant effect in relation to hazardous landfill capacity in regard to waste management. In recognising this would give rise to a likely significant effect, the ExA affords this matter a little negative weight against making the Order in the planning balance.

5.3.9. During the examination, the ExA found the applicant adequately assessed the significance of the heritage assets, as well as provided the necessary information to allow sufficient understanding of the contribution that setting makes to their significance and the implications of the proposed development for those settings. Whilst the ExA found the proposed development would result in less than substantial harm on designated heritage assets and harm to non-designated heritage assets, it also found that harm would be outweighed by public benefits. Those public benefits are set out above and include the very great benefits from the proposed development assisting the UK in achieving Net-Zero and meeting its decarbonisation objectives, as well as providing significant national, regional and local economic benefits, at scale, for future generations.

5.3.10. After considering the assessment of effects on designated and non-designated heritage assets, having regard to the considerations in Regulation 3 of the Decisions Regulations, the ExA is satisfied that even though the proposed development results in less than substantial harm to the significance of designated heritage assets and harm to non-designated heritage assets, that harm is clearly outweighed by the public benefits of the proposed development. Therefore the ExA considers the proposed development is acceptable in this regard. As such, the ExA considers the cultural heritage effects of the proposed development to be a neutral consideration in the planning balance.

5.3.11. All other considerations, as referred to in this report, were weighted by the ExA as neutral in the planning balance, neither weighting for nor against the proposed development.

5.3.12. Turning to the overall planning balance, taking all of the above factors into account, there are no adverse impacts of the proposed development that would outweigh its benefits. The proposed development would result in less than substantial harm to designated heritage assets and harm to non-designated heritage assets, which are outweighed by the substantial benefit from the provision of energy to meet the need identified in NPS EN-1 and by the other benefits of the application as summarised above.

5.3.13. The likely significant effect identified in relation to hazardous landfill capacity, which has been afforded a little negative weight against the Order being made, is considered to be outweighed by the very great positive weighting afforded to the principle of the development including in regard to need.

5.3.14. As such, the proposed development would be in alignment with NPS EN-1, NPS EN-4 and NPS EN-5 and be in compliance with Local Development Plan policies within the jurisdiction of RCBC, STBC and HBC.

5.3.15. Overall, the ExA concludes there is no breach of NPS policies and considers the proposed development accords with the relevant NPSs (NPS EN-1, NPS EN-4 and NPS EN-5). Furthermore, it is clear to the ExA the proposed development:

- complies with the appropriate Marine Policy Statement, including the East Inshore and East Offshore Marine Plans;
- satisfactorily resolved matters identified in the LIRs submitted by Redcar and Cleveland Borough Council [REP1-043] and Stockton on Tees Borough Council [REP1-045]; and
- does not breach any matters prescribed in relation to the development.

5.3.16. Furthermore, the ExA does not consider there to be any other matters that are both important and relevant to the decision that would lead to a different conclusion being reached.

5.3.17. For the reasons set out in the preceding chapters and summarised above, the ExA find there a convincing case for development consent to be granted and the proposed development to be acceptable in planning terms.

6. COMPULSORY ACQUISITION AND RELATED MATTERS

6.1. INTRODUCTION

6.1.1. The case for compulsory acquisition (CA) and temporary possession (TP) is examined in accordance with the tests in the Planning Act 2008 (PA2008). CA, TP and other land or rights considerations were identified in our initial assessment of principal issues (IAPI) in the Rule 6 letter [PD-005]. The Examining Authority (ExA) examined matters relating to:

- the need for the amount of land, rights and powers proposed to be subject to CA and TP;
- alternatives in relation to individual plots;
- whether the intended use for the plots was clear;
- whether funding would be available and adequate;
- whether special category land has been adequately assessed and exchange land is adequate;
- whether the applicant's case for the proposed development would be in the public interest and justify interference with human rights and would accord with the Equality Act 2010; and
- interference with statutory undertakers' (SU) land and apparatus including the approach to protective provisions (PP).

6.1.2. The full extent of the land which would be subject to powers of CA and required to enable the applicant to construct the proposed development, was described in the application in the following documents:

- Statement of Reasons (SoR) [APP-024];
- Land Plans [APP-008];
- Works Plans [APP-010];
- Book of Reference (BoR) [APP-023];
- Funding Statement [APP-025]; and
- the Explanatory Memorandum (EM) [APP-028] and in the documents comprising the Environmental Statement (ES).

6.1.3. The order land affects both open space and crown land, details of these are shown in Special Category Land and Crown Land Plans [APP-009].

6.1.4. A number of these plans and documents were updated throughout the examination; the final versions that the ExA rely on are detailed in the conclusions at the end of this chapter.

6.1.5. Additionally, it should be noted that at DL7a, following a request from the ExA for further information [PD-021], the applicant submitted an alternative without prejudice version of the draft Development Consent Order (dDCO) into the examination. Therefore, two versions of the dDCO exist from that point. These were the applicant's preferred version (APV) of the dDCO [REP7a-003] and the without Cowpen Bewley arm version (WCBAV) of the dDCO [REP7a-006]. For the reasons set out later in section 6.8 and section 6.10 of this report, the WCBAV of the dDCO became the ExA's recommended Development Consent Order (rDCO).

6.1.6. In this chapter we use the terminology of 'rDCO' and 'APV of the dDCO' in respect of the variations detailed here. Where reference is made to other documents in the

examination library (EL) which relate to either version of the Order, eg Land Plans, two EL hyperlinks may be shown which relate to the rDCO and APV of the dDCO.

6.2. LEGISLATIVE REQUIRMENTS

Planning Act 2008

6.2.1. CA powers can only be granted if the conditions set out in section (s) 122 and s123 of the PA2008 are met, together with relevant guidance.

6.2.2. S122(2) requires that the land must be required for the proposed development to which the development consent relates or is required to facilitate or is incidental to the development or under s122(2)(c) is for replacement land for the Order land under s131 or s132 (a common, open space or fuel or field garden allotment). In respect of land required for the development, the land to be taken must be no more than is reasonably required and be proportionate, as set out in the Guidance Related to Procedures for the Compulsory Acquisition of Land, DCLG, September 2013 (CA guidance).

6.2.3. S122(3) requires that there must be a compelling case in the public interest which means that the public benefit derived from the CA must outweigh the private loss that would be suffered by those whose land is affected. In balancing public interest against private loss, CA must be justified in its own right. That does not mean that the CA proposal can be considered in isolation from the wider consideration of the merits of the project. There must be a need for the project to be carried out and there must be consistency and coherency in the decision-making process.

6.2.4. S123 requires that one of three conditions is met, namely that:

- the application for the Order includes a request for CA of the land to be authorised; or
- that all persons with an interest in the land consent to the inclusion of the provision; or
- that the prescribed procedure has been followed in relation to the land.

6.2.5. A number of general considerations also have to be addressed either as a result of following applicable guidance or in accordance with legal duties on decision-makers:

- all reasonable alternatives to CA must have been explored;
- the applicant must have a clear idea of how it intends to use the land and to demonstrate that funds are available to meet the compensation liabilities which might flow from the exercise of CA powers; and
- the decision-maker must be satisfied that the purposes stated for the acquisition are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.

6.2.6. TP powers are capable of being within the scope of a development consent order (DCO) under the PA2008 Part 1 of Schedule 5. The PA2008 and the CA Guidance do not contain the same level of specification and tests to be met in relation to the granting of TP powers, as by definition such powers do not seek to deprive or amend a person's interest in land permanently. However, TP is an interference with human rights of affected persons (AP) and so there must be adequate justification for the scope of the powers and the degree of interference for them to be justified.

6.2.7. S131 and s132 respectively relate to CA of land and CA of rights over land and apply to land forming part of a common, open space or fuel or field garden allotment. These sections of the PA2008 provide for exceptions to special parliamentary procedure in relation to the special category land.

6.2.8. S132(3) states that special parliamentary procedure would not be required if the Order land will be 'no less advantageous than it was before' to those with interests in the land, including the public. S131(4) states that special parliamentary procedure would not be required if replacement land will be given in exchange for the order land and that land is subject to the same rights and vestment as the Order land and is deemed suitable for the exchange.

6.2.9. S135(1) of the PA2008 precludes the CA of interests in crown land unless the land is held 'otherwise than by or on behalf of the Crown', and the appropriate crown authority consents to the acquisition. S135(2) precludes a DCO from including any provision applying to crown land or crown rights without consent from the appropriate crown authority, these being defined in s227 of the PA2008.

6.2.10. S127 of the PA2008 applies to SU's land. S127(2) and (3) state that an order granting development consent may include provisions authorising the CA of SU land only to the extent that the SoS is satisfied that it can be purchased and not replaced without serious detriment to the carrying on of the undertaking or if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the undertaking.

6.2.11. Similarly, s127(5) and (6) of the PA2008 provide that an order granting development consent may only include provision authorising the CA of rights over land belonging to SUs to the extent that the SoS is satisfied that the right can be taken without serious detriment to the carrying out of the undertaking, or that any detriment can be made good by the SU by the use of other land belonging to or available for acquisition by them.

6.2.12. S138 of the PA2008 relates to the extinguishment of rights and the removal of apparatus on SU land. It states that an order may include a provision for the extinguishment of the relevant rights, or the removal of the relevant apparatus only if the SoS is satisfied that the extinguishment or removal is necessary for the purposes of carrying out the development to which the order relates.

6.2.13. The PA2008 requires that if changes are sought to the application, whether material or non-material, then the ExA must consider whether to accept them into the examination.

6.2.14. S115(2) of the PA2008 provides that, in addition to the development for which consent is required under Part 3 of the PA2008 (the principal development), consent may also be granted for associated development. The PA2008 defines associated development as development which is associated with the principal development.

6.2.15. S120(5)(a) of the PA2008 provides that a DCO may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the DCO and s117(4) of the PA2008 provides that, if the DCO includes such provisions, it must be in the form of a statutory instrument. Since in certain instances the applicant's final dDCO seeks to apply s120(5)(a), it is in the form of a statutory instrument.

Neighbourhood Planning Act 2017

6.2.16. The Neighbourhood Planning Act 2017 includes several provisions related to the TP of land including notice requirements, the service of counter notices and compensation. These provisions are not yet in force and are described as technical changes in the explanatory notes that accompany the Act.

6.2.17. Article 32(14) of the rDCO disapplies the provisions of the Act insofar as they relate to TP of land under Article 32 (Temporary use of land for carrying out the authorised development). Article 33(13) of the rDCO disapplies the same in relation to maintaining the authorised development under Article 33.

6.2.18. Whilst on this basis it is not necessary to assess the proposed development against these provisions, they provide a useful indication of how Parliament considers these matters should be addressed and how a balance can be struck between acquiring authorities and those whose interests are affected by the use of such powers.

The CA Guidance

6.2.19. In addition to the legislative requirements set out above, the CA guidance sets out a number of general considerations which also need to be addressed. Namely that:

- all reasonable alternatives to CA must have been explored;
- the applicant must have a clear idea of how it intends to use the land subject to CA powers;
- the applicant must be able to demonstrate that funds are available to meet the compensation liabilities that might flow from the exercise of CA powers; and
- the decision-maker must be satisfied that the purposes stated for the CA are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.

6.2.20. The ExA has taken all relevant legislation and guidance into account when considering this matter and relevant conclusions are drawn at the end of this section of this report.

6.3. THE REQUEST FOR COMPULSORY ACQUISITION AND TEMPORARY POSSESSION POWERS

Powers Sought

6.3.1. The powers being sought by the applicant and how they relate to the principal articles in the DCO are set out in the SoR [APP-024] at section 6. Explanation of the articles is set out in the EM [REP7a-008]. The powers sought are set out in part 5 of the applicant's dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV), Articles 22 to 37 and include:

- All Interests (Including Freehold), Article 22 (Compulsory acquisition of land);
- New Rights, Article 25 (Compulsory acquisition of rights etc.);
- Extinguishment/ suspension of rights, Articles 23 (Power to override easements and other rights) and 26 (Private rights);
- Special category land and replacement special category land, Article 29;
- Temporary use of land, Articles 32 (Temporary use of land for carrying out the authorised development) and 33 (Temporary use of land for maintaining the authorised development); and
- Statutory undertakers land, Article 34 (Statutory Undertakers).

Powers of CA and TP are also sought in relation to crown land seen at Article 42 (Crown rights).

Changes during the Examination

6.3.2. On 15 August 2024, the applicant gave notice to the ExA of its intention to submit a request for proposed changes to the DCO application [PDA-019]. The ExA used its discretion to accept the notification letter and responded with advice about the procedural implications of the proposed changes [PD-006]. On 17 October 2024, the applicant formally submitted its first Change Request (CR) [CR1-043] and the ExA subsequently accepted the proposed changes for examination on 21 October [PD-012] and the examination proceeded in consideration of the changed application.

6.3.3. CR1 proposed eight changes:

- change numbers 1, 5, 7 and 9 are design developments, which do not impact the Order limits;
- change numbers 2, 3 and 6 related to changes in construction approach and impacted temporary construction compounds;
- change number 2A to 2F reduced the extent of the Order limits; and
- change number 8 increased the original Order limits.

6.3.4. The change application confirmed that land required in relation to change number 8 would fall outside the existing Order limits and Order land and therefore invoked the Infrastructure Planning (Compulsory Acquisition Regulations 2010) (CA regulations). Other changes are wholly within the originally presented Order limits. On this basis the ExA accepted that the CA Regulations were engaged.

6.3.5. The CR1 documents of relevance to land rights are as follows:

- Cover Letter [CR1-043];
- Report on Proposed Changes [CR1-044];
- Revised Land Plans [CR1-004];
- Revised Special Category Land and Crown Land Plans [CR1-006];
- Revised Works Plans [CR1-007];
- Revised Book of Reference [CR1-009]; and
- Supplementary Statement of Reasons [CR1-013].

6.3.6. On 17 January 2025 the applicant gave notice to the ExA of its intention to submit a second request for proposed changes to the DCO application [AS-045]. The ExA used its discretion to accept the notification letter and responded with advice about the procedural implications of the proposed changes [PD-019]. At deadline (DL) 7 on 7 February 2025, the applicant submitted CR2 [REP7-011] and the ExA subsequently accepted the proposed changes for examination on 10 February 2025 [PD-020] and the examination proceeded and concluded in consideration of both CR1 and CR2.

6.3.7. CR2 detailed six changes and confirmed that all changes are wholly within the originally presented Order limits. On this basis the ExA accepted that the CA Regulations were not engaged.

6.3.8. The CR2 documents of relevance to land rights are as follows:

- Report on Proposed Changes [REP7-011];
- Revised Land Plans [REP7-003];
- Revised Works Plans [REP7-005];

- Revised Special Category Land and Crown Land Plans [REP7-004].
- Revised Book of Reference [REP7-014].

6.3.9. The changes are described in more detail later in this chapter where they relate to specific areas of land and/ or persons with interest in land where objections have not been withdrawn.

6.3.10. As detailed in paragraph 6.1.5 above, the ExA requested [PD-021] a without prejudice alternative version of the DCO and accompanying documents, the WCBAV, that excludes plots numbers 3/18, 3/20 and 3/21 and all plots north of these. This was provided at DL7a and updated variously at DL8. This matter is considered in section 6.10 of this report.

6.4. THE PURPOSES FOR WHICH LAND IS REQUIRED AND POWERS ARE SOUGHT

6.4.1. The applicant's justification for seeking CA powers is to enable it to construct, operate and maintain the proposed development. It would also comprise temporary diversions and infrastructure to allow for new infrastructure and temporary construction compounds to be installed.

6.4.2. The applicant's case is set out in the SoR [APP-024] which was supplemented at CR1 [CR1-013]. In summary, the SoR paragraph 1.1.22 states that to ensure that the proposed development can be built, maintained and operated, and so that the government's policies are met in relation to the timely provision of new low carbon hydrogen production capacity and its distribution, and meeting net zero carbon emissions targets for 2050, the applicant requires the acquisition of a number of property interests in third-party ownership, and has therefore applied for the grant of powers to facilitate acquisition and/ or creation of new rights and interests, and to extinguish/ suspend rights over land.

6.4.3. The applicant goes on to state in conclusion that the powers sought are no more than is reasonably necessary and proportionate and is required to facilitate or is incidental to the proposed development.

Compulsory Acquisition of Land with all Interests (Including Freehold)

6.4.4. The applicant seeks to acquire all interests, including the freehold interest, on land identified on the Land Plans [REP8-030] and [REP7-003] edged red and shaded pink. Article 22 of the Order is relied upon in respect of this land.

6.4.5. The applicant states in the SoR, paragraph 1.1.25, it has only included powers to compulsorily acquire the freehold interest in land where other powers would not be sufficient or appropriate to enable the construction, operation or maintenance of the proposed development. The applicant further states in paragraph 1.1.24 that the areas sought for freehold acquisition are related to those parts of the proposed development associated with above ground installations; replacement land is also required in exchange for lost open space.

Compulsory Acquisition of New Rights over Land

6.4.6. The applicant seeks to acquire new rights on land identified on the Land Plans as being edged red and shaded blue. Article 25 of the Order is relied upon in respect of new rights. Articles 23 and 26 of the Order provide this power, which applies in relation to land in which CA or TP are proposed.

6.4.7. The relevant plots are set out in Schedule 8 of the rDCO and APV of the DCO. The Order includes the power to impose restrictive covenants for the purposes for which new rights are sought and only so far as set out in column (2) of table 8 of the schedule.

6.4.8. The applicant seeks the CA of rights in order to construct, maintain and operate elements of the proposed development primarily relating to both the substantive works such as a pipeline or cable routes and routes along which the applicant can gain access to the relevant connection corridors.

Temporary Possession

6.4.9. The applicant seeks to take TP of land to permit construction or maintenance on land edged in red and shaded yellow on the Land Plans. Articles 32 and 33 of the Order are relied upon in respect of this land.

6.4.10. The applicant seeks to take TP of the land which is listed in Schedule 9 of the rDCO and APV of the DCO as well as TP of any other land where it has not yet exercised powers of CA.

6.4.11. In addition to the requirement for TP for the purpose previously set out, the applicant has included powers to use land temporarily to construct the proposed development where it does not require any interest in the land on a permanent basis. These areas relate to the temporary construction laydown areas and some access and highway improvements which will be used for the purposes of construction.

Extinguishment and/ or Suspension of Rights

6.4.12. The applicant seeks powers to ensure that rights or restrictions can be:

- extinguished or suspended in land belonging to SUs;
- extinguished over all other land subject to CA;
- extinguished or suspended on land subject to CA of rights or imposition of restrictions; and
- suspended over land of which the undertaker takes TP for as long as the undertaker remains in lawful possession of the land.

6.4.13. These powers relate to all the Order land in order to construct, operate and maintain all elements of the proposed development subject to relevant provisions in articles and PPs in the rDCO and APV of the dDCO.

Statutory Undertakers' Land

6.4.14. The land affected by the proposed development includes land, rights or other interests owned by several SUs, set out in the SoR paragraphs 9.1.64 to 9.1.70. A number of SU stated an objection to the proposed development, those SUs which did not withdrawn their objection at the end of the examination were:

- National Gas Transmission Plc;
- National Grid Electricity Transmission Plc;
- Network Rail Infrastructure Limited;
- Northern Powergrid (Northeast) Plc;
- Northumbrian Water; and
- PD Teesport Limited.

Crown Land

6.4.15. The applicant is seeking the CA of rights over crown land at the River Tees and at Greatham Creek. This is shown on the Land Plans [REP8-030] and [REP7-003] and also on the Special Category Land and Crown Land Plans [REP8-031] and [REP7-004].

6.4.16. The SoR paragraph 9.1.5 states that Article 42 of the Order provides that the Order does not prejudicially affect any estate (etc.) of the crown, and that the undertaker may not enter on or take any crown land other than with the consent of the appropriate authority.

Special Category Land

6.4.17. The applicant is seeking the CA of both freehold and rights over open space land at Cowpen Bewley Woodland Park and at Coatham Marsh. This is shown on the Land Plans [REP8-030] and [REP7-003] and also on the Special Category Land and Crown Land Plans [REP8-031] and [REP7-004].

6.4.18. The SoR sets out that the applicant is seeking the application of the relevant sections of the PA2008 in respect of open space land as follows:

- S131(4) in respect of part of the open space land at Cowpen Bewley Woodland Park;
- S132(4) in respect of part of the open space land at Cowpen Bewley Woodland Park; and
- S132(3) in respect of the open space land at Coatham Marsh.

6.4.19. In regard to the APV of the dDCO, the SoR paragraphs 9.1.31 state that Article 29 provides that the applicant is obliged to obtain approval of the Local Planning Authority (LPA) for the layout of replacement land. Furthermore, paragraph 9.1.34 states that Article 29 provides for the vesting and discharging from all rights, trusts and incidents over the open space land.

6.4.20. Irrespective of the above, it should be noted the WCBAV of the dDCO excludes the Cowpen Bewley arm from the Order limits and therefore the application of the relevant sections of the PA2008 in respect of open space land would solely be in regard to s132(3) in respect of the open space land at Coatham Marsh; this is further detailed later in this chapter.

6.5. THE APPLICANT'S GENERAL CASE

6.5.1. The applicant's general case for CA and TP is set out in its SoR [APP-024]. Specifically, the applicant's case for the CA and TP powers sought is set out in section 6 (Need for Compulsory Acquisition of Land and Rights and section 7 (Justification for the use of Powers of Compulsory Acquisition).

6.5.2. The strategic case is made based on the applicant's stated need to ensure that the proposed development can be built, maintained and operated, and so that the government's policies can be met in relation to the provision of low carbon hydrogen production capacity and meeting net zero carbon emissions targets, stating that this provides a compelling case in the public interest for the inclusion of CA powers in the Order.

6.5.3. The applicant has set out the requirements for CA of freehold and rights along with requirements for TP and has further detailed that it is considered that all reasonable

alternatives to CA have been explored. The applicant has also detailed that it has sought to acquire land interests and TA by voluntary agreement, however the powers of CA are required to provide certainty that the proposed development can meet the stated aims.

6.5.4. The SoR has detailed the requirements in relation to Crown land and special interest land. The applicant states that there are Crown interests within the Order limits and the dDCO includes a standard article providing that the Order does not prejudicially affect any Crown land.

6.5.5. Regarding the two areas of open space land which are impacted by the proposed development, being Coatham Marsh and Cowpen Bewley Woodland Park, the SoR states that the applicant considers that the PA2008 tests are met. It states that replacement land is provided where required and that where not required the existing areas of open space, when burdened with the relevant rights, will not be any less advantageous to persons in whom it is vested or the public.

6.5.6. The applicant has identified a number of SUs that own or operate land or apparatus within the Order limits. The Order includes the power to acquire rights and impose restrictions for the benefit of SUs at Article 25, so that where SUs' apparatus has to be moved or where new SUs' apparatus is required, the applicant has the power to acquire the necessary rights. The order also includes PPs in respect of relevant types of SUs and bespoke PPs for some SUs.

6.5.7. The SoR states that the applicant has considered the potential infringement of human rights in consequence of the inclusion of CA powers within the Order. The applicant goes on to state that it considers that there would be very significant public benefits arising from the making of the Order for the proposed development and that significant public benefits outweigh the effects on persons who own interests in relevant land or who may be affected by the proposed development.

6.5.8. The Funding Statement [APP-025] states that the applicant has the ability to procure the financial resources required for the proposed development, including the cost of acquiring any land and rights and the payment of any compensation applicable.

6.5.9. An addendum to the SoR was provided with CR1 [CR1-013], however this did not change the applicants general case for CA and TP.

6.6. EXAMINATION OF THE COMPULSORY ACQUISITION AND TEMPORARY POSESSION CASE

Introduction

6.6.1. CA and TP matters were both identified by us in the IAPI prepared under s88(1) of the PA2008 and set out in annex C of the ExA's Rule 6 Letter [PD-005]. We examined the case for CA and TP in writing through written questions and orally at two CA hearings (CAH):

- CAH1 held on 12 November 2024 [EV5-001] to [EV5-010]; and
- CAH2 held on 13 January 2025 [EV8-001] to [EV8-009].

6.6.2. In addition, we also viewed land related matters during the unaccompanied site inspections (USI) and accompanied site inspections (ASI) as detailed in chapter 1 of this report.

6.6.3. At CAH2 and in representations from DL6a onwards, a number of APs suggested a further CAH should be held at the end of the examination to ensure that the applicant made all attempts to finalise agreements. The ExA carefully considered this option and in our letter of 10 February 2025 [PD-020] we stated that a further CAH would not be appropriate due to limited remaining time in the examination and the need for resources to be focused on resolving outstanding matters rather than preparing for a hearing.

6.6.4. During the examination, the ExA was concerned that progress of negotiations on land agreements and PPs was not adequate to ensure these were capable of being concluded by the close of the examination. To this end, on a number of occasions both orally and in writing, we explained that we would not be asking the SoS to consult, or decide upon non-agreed PPs; moreover, the ExA would recommend a single version of the presented PPs to be included in the rDCO. We also stated that we would not construct a hybrid version to insert in the rDCO. The ExA therefore encouraged and gave all opportunities for parties to conclude negotiations and agreements within the examination period.

6.6.5. At the beginning of the examination most IPs who submitted a RR stated an objection to CA and/ or TP powers sought by the application unless suitable PPs were presented in the Order. At the close of the examination a number of APs retained an objection which are considered later in this chapter.

Design Development

6.6.6. A number of RRs from IPs stated that due to insufficient design detail and development of the design, it was not possible to fully understand the implications of the proposed development in relation to land matters. Moreover, there were also statements that the level of design could have led to more land being sought than necessary, notwithstanding the application of the Rochdale Envelope principles.

6.6.7. The ExA held an issue specific hearing (ISH) on 28 August 2024 ([EV3-001] to [EV3-006] inclusive) to examine the issue of design progress (ISH1). It was evident that design was progressing constantly, however detailed design would not be commenced until after the close of the examination. We examined the details of the design progression in relation to both the main site and linear features, such as pipelines and cables and their impact on the Order limits.

6.6.8. The ISH resulted in further discussion regarding the main site, pipelines and construction compounds, which continued to the end of the examination and led to the CRs detailed previously in this chapter.

Pipeline corridor widths

6.6.9. The proposed development includes over 16.093km of pipelines as part of the hydrogen distribution network plus other service connections. Indeed, the applicant's pipelines statement [CR1-021] confirms the total length of the hydrogen distribution network, as described in that Pipeline Statement (submitted as part of the first CR), would be 30.72 km. The CA powers sought include for the installation and maintenance of these, which in many locations are being proposed to be added to existing corridors with multiple, often congested, pipelines. A number of APs with existing infrastructure commented that they were concerned about the use of powers to suspend rights and moreover, that the width of the proposed powers is excessive.

6.6.10. Following ISH1, the applicant provided an Order Width Explanatory Note [REP2-037] which supported its request for CA and TP for the linear features of the proposed development. This detailed areas in which additional width of land was required, in addition to the typical width of 17m either side of the pipeline, and why. This included areas where cranage was anticipated or expansion loops were known to be required but precise locations were as yet unknown.

6.6.11. The ExA also sought information regarding various locations where pipelines and services are shown on the extremity of the Order limits. In all cases the applicant explained why these locations were detailed as such or confirmed that drafting required amendment to show all works within the Order limits.

6.6.12. This issue continued to be a theme of enquiry through the course of the examination.

Other Nationally Significant Infrastructure Projects

6.6.13. The proposed development is located in an area of extensive development that is subject to various planning applications, determined by relevant LPAs; along with a number of Nationally Significant Infrastructure Projects (NSIP) at various stages.

6.6.14. Although this is considered in cumulative impacts and in the planning balance, the ExA have also examined the interface between large projects in relation to land matters which in many cases show various overlapping locations.

6.6.15. The ExA has sought information and considerations of the impact of developments at the main site of the proposed development and in relation to the South Tees Group's (the STG) wider Foundry site. This led to extensive questioning of the applicant at CAH2 and in the ExA's Written Questions (ExQ) and the submission of a variety of alternative plans and explanations of different development scenarios, in particular relating to the Net Zero Teesside (NZT) Order 2024 as consented and the HyGreen planning application to the LPA. This included an Interrelation Report [REP2-038], which details the overlap of projects at the main site.

6.6.16. Other NSIPs and planning applications are discussed and detailed variously in our consideration of individual objections in this chapter.

Protective Provisions and Side Agreements

6.6.17. Throughout the examination, the ExA has sought clarity and understanding of the progress between the applicant and other parties regarding negotiations in relation to PPs and other individual side agreements.

6.6.18. The ExA has sought information on all plots and parties through updates to the Land Right Tracker, the final version of which was submitted at DL7a [REP7a-013] and [AS-056].

6.6.19. The ExA was conscious that negotiations to reach agreement on PPs and agreements could be time consuming. As such, we were clear to all parties from the beginning of the examination that we were expecting these negotiations to be concluded by the close of the examination. This was intended to allow the ExA and the SoS to confirm agreements and include PPs in the Order without further consultation. Unfortunately, this did not happen in the majority of cases and although the ExA offers no opinion as to the reasons for this, we were clear on a number of occasions, both in writing and orally, that this was not a situation that we were content with.

6.6.20. The ExA also outlined that we would only choose one version of non-agreed PPs presented by the applicant and an AP to be inserted into the face of the Order. In doing this, we also stated that we would not be altering the PPs to make a hybrid, or merged version. In reality, there has been a small number of instances during the writing of this report where the ExA considered that this assertion needed to be compromised. In these limited instances, we have removed a small number of paragraphs in a preferred PP to be included in the rDCO. Where this occurs, this has been highlighted to the SoS.

6.6.21. The status of PPs is the subject of discussion in most of the individual objections detailed in this chapter.

6.7. CONSIDERATION OF INDIVIDUAL OBJECTIONS

6.7.1. At the start of the examination, a number of APs and SUs objected to the proposed development of the grounds of CA and/ or TP proposals, most of which were subsequently not withdrawn at the close of the examination.

6.7.2. The ExA was kept updated throughout the examination on how matters were progressing with negotiations with APs at various DLs and at the two CAHs. The primary method for this was via the land rights tracker document, the final version of which was submitted at DL7a [REP7a-013] and [AS-056]. This tracker was requested by the ExA in the Rule 6 letter [PD-005] with the intention of allowing ease of referencing and sorting of large amounts of data.

6.7.3. At DL7a the applicant provided the ExA with a detailed commentary of outstanding issues for all PPs that had not been agreed up to that date. A number of the APs also submitted their preferred version of PPs at various stages in the examination. These are the subject of our considerations for most of the outstanding individual objections.

6.7.4. At the close of the examination the majority of objections from APs had not been withdrawn, with PPs and side agreements not agreed in relation to those outstanding objections. The ExA were informed by the applicant, and some APs, that some of these agreements could be finalised shortly following the close of the examination. As such the ExA anticipates the SoS will be updated, where appropriate, in this regard and will consider amending the rDCO or APV of the dDCO accordingly.

6.7.5. Outstanding objections in relation to CA and TP powers proposed in the dDCO are considered in this section, however those relating to SUs land are considered separately in the following section of this report.

Air Products Plc

6.7.6. Air Products Plc made a RR [RR-006] on behalf Air Products PLC, Air Products (BR) Limited, Air Products Renewable Energy Limited and Air Products Chemicals Teesside Limited (collectively referred to as Air Products) who together have Category 1 and 2 Person interest, with CA and TP powers being sought over this land by the applicant. Air Products is based in the UK and Ireland and is an industrial gas company. Air Products submitted a number of Written Representations (WR) during the examination but did not attend either of the two CAHs.

6.7.7. In its RR, Air Products state that it does not object in principle to the proposed development however, it objects to the proposed CA and requires protection of its

assets. It states that it wishes to agree PPs for its benefit to be included in the Order.

6.7.8. The applicant and Air Products confirmed that negotiations have continued through the examination. At DL5a, Air products provided the ExA with a version of its preferred PPs as requested [REP5a-002]. In its covering letter [REP5a-001] Air Products state that the key areas of difference relate to definitions; removal of apparatus; costs; and unrestricted CA and TP rights which it says have the potential to compromise its asset and operation; it confirmed that negotiations were continuing.

6.7.9. In the applicant's DL7 Protective Provisions Statement [REP7-026] it states that it has included parts of Air Products' preferred PPs into the dDCO at DL7; it also stated that negotiations continue between the parties.

6.7.10. At DL7a the applicant provided statements on the outstanding issues that had prevented PPs being agreed [REP7a-022]. On the matters which Air Products state at not agreed, the applicant gave explanation as to why they had not been included in its preferred PPs. On the matters of definitions and removal of apparatus, the applicant considers that additional wording proposed is not required and adds no further protection or is not compatible with other parts of the Order. Regarding costs, it states that additional wording which seeks to list the scope of expenses is unnecessary as this is covered in the Order and detail that other cost matter drafting is in line with standard wording and seen in other PPs in the Order.

6.7.11. Regarding restrictions to powers of CA and TP in the Order, the applicant states that the powers are necessary and justifiable in order to ensure the proposed development can be delivered. The applicant also state that its preferred PPs allow protection in so much that powers can only be used provided that any right of Air Products to maintain that apparatus in such land and to gain access to it must not be extinguished until alternative apparatus has been constructed, tested and is in operation, and access to it has been provided to APs reasonable satisfaction; the applicant states that Air Products preferred PPs also contain this language.

6.7.12. A final submission from Air Products was received at DL7a [REP7a-078] which confirmed that no further progress was reportable from that submitted at DL5a; it also did not formally withdraw its objection by the close of the examination.

6.7.13. The applicant submitted a final version of the PPs at Schedule 26 within the final APV of the dDCO [REP7a-003] and Schedule 25 [REP7a-006] within the WCBAV of the dDCO, in favour of Air Products.

ExA's Consideration regarding the objection from Air Products Plc

6.7.14. The ExA considers that Air Products and the applicant have continued negotiations through the examination and we have been updated on progress through submissions from both parties.

6.7.15. Air Products have been clear that its objection is not an objection to the proposed development but to CA rights being sought without appropriate PPs or a commercial agreement being agreed; we note that Air Product's objection was not withdrawn by the close of the examination.

6.7.16. We have not laid in detail all of the discussions regarding PPs between the parties during the examination. The ExA was clear however, it would include one set of PPs in the rDCO. Therefore, we have compared the final PPs provided by the applicant

and Air Products which still have some divergence and differences. We note however, that without further commentary on the detail of the remaining differences between the parties from Air Products after DL7a, the ExA has not had confirmation of any progress on narrowing the differences or amendments that have been submitted by the applicant.

6.7.17. Overall we consider that the PPs provided by the applicant at DL7a and included in its final dDCO have taken into account a number of the points raised by Air Products at DL5 but we accept that some differences remain between the parties.

6.7.18. The main points of difference which we consider remain at the close of the examination relate to the drafting differences regarding costs and unrestricted CA and TP powers.

6.7.19. On these matters we agree with the applicant that the Order and PPs offer protection to Air Products and that it requires the ability to exercise the powers of CA in order to deliver the proposed development.

6.7.20. On balance, we consider the applicant's preferred PPs are suitable and provide an updated position from that in Air Products DL5 submission.

6.7.21. In summary, with the inclusion of PPs as detailed, we consider that the applicant has provided sufficient justification for the CA of land and rights and TP of land. We are also satisfied that the proposed powers of CA in relation to the objectors' land and/ or rights would be necessary for the delivery of the proposed development and justified in the public interest. We accept that further negotiations may have continued after the close of the examination, potentially leading the parties to agree commercial and land matters along with PPs, but in the absence of such information we have included the applicant's latest version of PPs at Schedule 25 of the rDCO in appendix D of this report and Schedule 26 of the APV of the dDCO in appendix E of this report.

Anglo American

6.7.22. Anglo American Woodsmith (Teesside) Limited, Anglo American Woodsmith Limited and Anglo American Crop Nutrients Limited, collectively referred to as Anglo American (AA), are the developers of the Woodsmith Project, formerly York Potash. This project is the development of an underground mine for winning and working of polyhalite together with its transportation to and subsequent handling and shipping at Teesside. AA is the undertaker for the purposes of "The York Potash Harbour Facilities Order 2016" (YPHFO). AA have Category 1 and 2 Person interest, with CA and TP powers being sought over this land by the applicant. AA submitted a RR and engaged with the examination throughout including attendance at both CAHs.

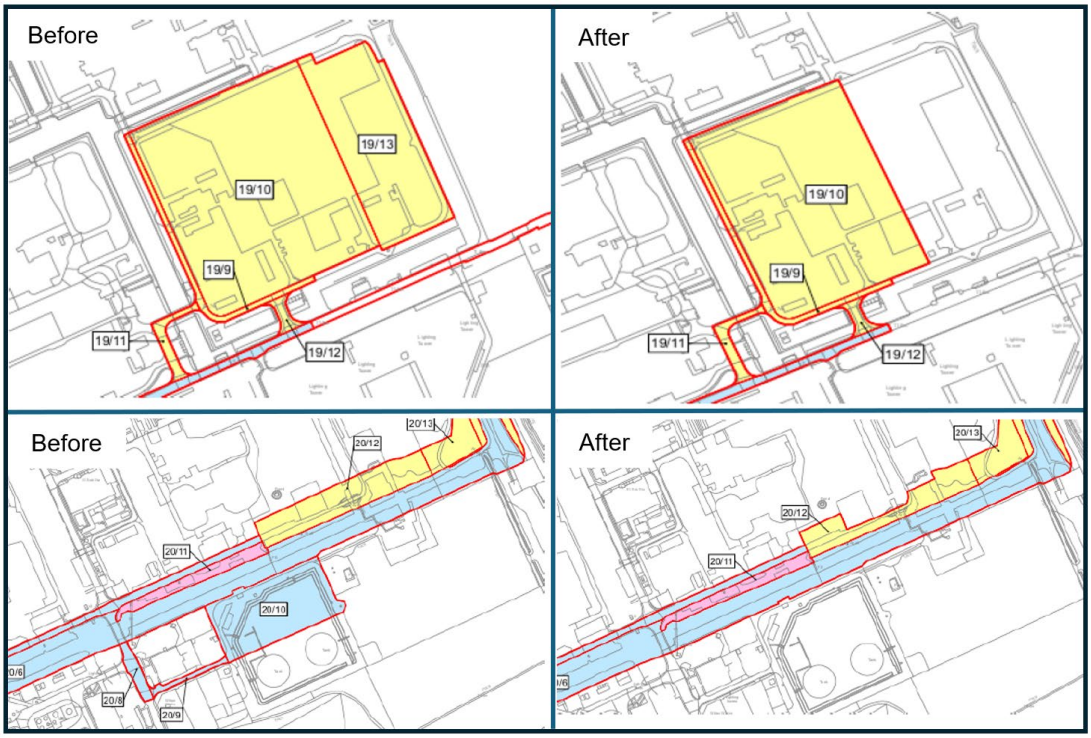
6.7.23. In its RR [RR-010] AA state that it has a number of concerns regarding the proposed development including powers of CA and TP and the extent of rights sought. AAs overarching concern is to ensure that any powers granted do not prevent or prejudice its ability to construct and operate the authorised YPHFO. AA confirm that it requested a voluntary agreement over land rights and clear arrangements for the interface of works. AA state that it formally objects to the proposal for CA of land and rights.

6.7.24. AAs WR at DL2 [REP2-074] gave further details of its concerns. Out with negotiations on PPs and side agreements, AA gave further details regarding the key overlap of the two projects including an overland conveyor route; the AA Port

Handling Facility at Redcar Bulk Terminals; Bran Sands future quay development, the boundary of the Minerals Handling Facility; and construction laydown areas.

6.7.25. As part of CR1 the applicant removed a number of plots following negotiations with AA totalling 4.9 Ha; these are seen at reference 2.E in the CR report [CR1-044], and are shown in figure 3. In addition to changes to the Order limits, at CR1 the applicant also removed a proposed AGI, which is seen at reference 9 in the CR report.

Figure 3: Plots removed following negotiations with AA - CR1 Changes 2.E : Extract from CR1 report [CR1-044]



6.7.26. AA and the applicant continued to negotiate on interface arrangements throughout the examination. In its DL8 submission [REP8-046], AA stated that there continues to be limited design development of the proposed development which means AA has not been able to fully assess the potential impacts. AA state that the applicant has cited the arrangements that the Parties reached on the NZT project as precedent to the interface between the proposed development and the Woodsmith Project. However, AA comment that matters were significantly more advanced in relation to NZT and consider, in relation to the proposed development, that it is premature for the PPs to provide for detailed specific interfaces. AA also consider that the applicant's draft side agreement is insufficient with regard to the project interface. On this basis AA reiterates that PPs should include restrictions on the use of CA powers over its land interests, such that AA's consent is required.

6.7.27. At DL8, AA introduced a new concern related to the piling operations for its overland conveyor which is within the interface areas, inserting a new paragraph to the applicant's PPs at paragraph 9(c) which would require the proposed development to be designed based on the satisfactory installed piles by AA.

6.7.28. In its DL9 response to AA, the applicant considers the details of the specific interfaces (the 'shared areas' in Schedules 3 and 28 of the WCBAV of the dDCO

and Schedules 3 and 29 of the APV of the dDCO) are known well enough for the PPs to provide adequate protection for AA. In response to the specific mention of piling operations, it states that this paragraph would mean design could not be completed until piling by AA was installed which could have serious programme implications for the proposed development.

6.7.29. AA state throughout the examination that due to the need to protect its consented development, it requires protection from the use of powers of CA and TP without its consent and in the absence of an agreed side agreement. The dDCO rev 5 at DL5 [REP5-006] did include this protection however, at DL6a [REP6a-008] the applicant removed this from Schedule 29 paragraph 6(3). AA states that this protection should remain as a side agreement has not been reached.

6.7.30. Although there is commentary from both parties to show that there have been compromises and a narrowing of differences through negotiations the matters detailed above are stated as being at large at the close of the examination.

6.7.31. AA provided a final version of its preferred PPs at DL8 along with closing comments both at DL8 [REP8-046] and DL9 [REP9-026] on the last day of the examination. AA did not formally withdraw its objection by the close of the examination.

6.7.32. The applicant provided a final version of PPs for AA at DL8 [REP8-005]. The applicant did not update its final version of the dDCO with the latest PPs for AA. This submission is an update to Schedule 29 of the APV of the dDCO [REP7a-003] and Schedule 28 of the WCBAV of the dDCO [REP7a-006] both submitted at DL7a.

ExA's Consideration regarding the objection from Anglo American

6.7.33. The ExA considers that AA and the applicant have continued negotiations through the examination and we have been updated on progress through submissions from both parties.

6.7.34. AA have been clear that it would not withdraw its objection, which was not an objection to the proposed development but to CA rights being sought, without appropriate PPs or a commercial agreement being agreed; we note that AA's objection was not withdrawn by the close of the examination.

6.7.35. The ExA has not laid in detail all of the drafting differences in the preferred PPs between the parties but have focused on those matters seen as still in dispute at the close of the examination.

6.7.36. We have been clear that we will include one set of PPs in our rDCO, therefore we have compared the final PPs provided by the applicant and AA which still have some divergence and differences. The main points of difference relate to:

- the exclusion from the applicant's PPs of protection from CA and TP rights;
- the matter of piling at AAs overland conveyor; and
- the extent of the ability to textually describe the shared areas rather than rely on a plan.

6.7.37. We consider the following in relation to these matters:

- AA have a consented Order for constructing a NSIP. We consider it is appropriate for AA to have protection for CA and TP powers only to be used with its approval. Not only was this initially included for AA in early revisions of the dDCO, but they were included in the NZT Order for the benefit of AA.

- We consider that AA require the matter of piling to be considered in the design of the proposed development, however we agree with the applicant that the proposed paragraph 9(c) is overly restrictive on the programming of the proposed development.
- We consider that the Shared Area plan is sufficient as the basis for describing the shared areas and the applicant's inclusion of description is not entirely necessary.

6.7.38. Overall we consider that although some parts are more suitable from each of the submitted PPs, that the overriding need for AA to be protected from unrestricted CA and TA powers due to protecting its existing rights in its consented YPHFO, leads us to consider it most appropriate to include AAs preferred PPs in the rDCO. However, we also consider that within this PP, the requirement regarding programming at paragraph 9(c) of the Schedule is overly restrictive and as such the ExA have removed this from the version in the rDCO and the APV of the dDCO.

6.7.39. In summary, with the inclusion of PPs as detailed, we consider that the applicant has provided sufficient justification for the CA of land and rights and TP of land. We are also satisfied that the proposed powers of CA in relation to the objectors' land and/ or rights would be necessary for the delivery of the proposed development and justified in the public interest. We accept that further negotiations may have led the parties to agree commercial and land matters along with PPs, but in the absence of such we have included AA's PPs at Schedule 28 of the rDCO in appendix D of this report and Schedule 29 of the APV of the dDCO in appendix E of this report.

BOC Ltd

6.7.40. BOC Ltd (BOC) is a provider of industrial, medical and specialist gases and have Category 1 and 2 Person interest, with CA and TP powers being sought over this land by the applicant. BOC submitted a RR [RR-016] and engaged with the examination throughout including attendance at both CAHs.

6.7.41. In its DL2 WR [REP2-079] BOC state that it does not object in principle to the application on the basis that acceptable PPs are agreed however, in the absence of such BOC object to the proposed acquisition of land and rights in its current form. BOC state that it requires access to the entirety of its pipeline infrastructure to comply with its statutory and regulatory obligation and as such have concerns about extinguishment or suspension of rights that may prevent it undertaking maintenance, monitoring and emergency works.

6.7.42. The applicant and BOC confirmed that negotiations have continued through the examination and although both parties expressed some frustration with progress, the ExA was informed that agreement had been reached in mid-February. At this point BOC maintained its objection. Notwithstanding this, the applicant removed PPs for BOC from its dDCO between DL7 and DL7a, stating in the Schedule of Changes [REP7a-005] that following negotiations between the parties, this schedule has been omitted from the dDCO.

6.7.43. However, it appears that following the completion of negotiations, the finalisation of the commercial agreement has become frustrated. In its DL7 [REP7-043] and DL8 [REP8-048] submissions, which were summarised again at DL9 [REP9-027], BOC state that it continues to have no objection to the application in principle, provided that appropriate PPs are inserted on the face of the Order or preferably a comprehensive compromise agreement is agreed and entered into. BOC state that no agreement was in place at the close of the examination and therefore provided

its own preferred PPs for the first time on the final day of the examination for inclusion by the ExA into the DCO. BOC did not withdraw its objection.

6.7.44. The applicant did not update its dDCO after DL7a and did not provide a subsequent version or commentary regarding PPs for BOC, therefore at the close of the examination no PPs were included in the dDCO for the benefit of BOC. Further to this in its DL9 document Response to Deadline 8 Submissions [REP9-023], the applicant updated the ExA and stated that following late disagreements, further negotiations took place and an agreement was completed on 28 February 2025, the date the examination closed. The applicant also clarified that completion of this agreement will not lead to any changes being required to the dDCO and considers that it can therefore be considered that all matters in relation to BOC have been agreed.

ExA's Consideration regarding the objection from BOC Ltd

6.7.45. The ExA considers that BOC and the applicant have continued negotiations through the examination and we have been updated on progress through submissions from both parties. We acknowledge that terms of a commercial agreement with appropriate PPs were agreed in mid-February 2025 however it is clear that the agreement did not translate to a completion of a legally binding agreement by the close of the examination.

6.7.46. BOC have been clear that it would not withdraw its objection, which was not an objection to the proposed development but to CA rights being sought, without appropriate PPs or a commercial agreement being agreed; we note that BOC's objection was not withdrawn by the close of the examination.

6.7.47. We consider that we are in the position of considering the following:

- BOC and the applicant give differing accounts of the final position at DL9, being the closing day of the examination.
- BOC submitted its preferred PPs on the last day of the examination, therefore not allowing the applicant to give its response to these.
- The applicant removed the PPs from its final dDCO therefore there are no PPs in the Order for the benefit of BOC.

6.7.48. On the matters listed above, we consider them as follows:

- Although the applicant has stated at DL9 that an agreement with BOC was reached on 28 February 2025, being the last day of the examination, we have no confirmation of this from BOC and therefore consider that we cannot rely on this statement in this report.
- All IPs were asked throughout the examination to provide the ExA with its preferred form of PPs in the eventuality that we may need to decide which version to include in our rDCO. BOC did not do this until the last day of the examination, consequently the applicant has not had the opportunity to give us its response to BOCs PPs. Therefore we consider that due to principles of fairness in the examination, we cannot consider BOCs preferred version of PPs.
- By removing the PPs for the benefit of BOC from the dDCO, the applicant has removed protection that has been agreed in principle is required.
- The ExA is not aware of the status, detail, and any outstanding matters, of the PPs as this has not been disclosed to the examination, primarily at DL7a, as it has for other IPs.
- We consider that BOC requires PPs and although they may be agreed, we did not have confirmation of that at the close of the examination.

- We consider that reinserting the latest version of PPs that were presented into the examination in the dDCO at DL7 [REP7-018] by the applicant is the only option available to the ExA at the time of writing this report with a view to addressing this matter.

6.7.49. In summary, with the inclusion of PPs as detailed, we consider that the applicant has provided sufficient justification for the CA of land and rights and TP of land. We are also satisfied that the proposed powers of CA in relation to the objectors' land and/ or rights would be necessary for the delivery of the proposed development and justified in the public interest. We accept that a commercial agreement may have been reached between the parties which may preclude the need for PPs in favour of BOC, but in the absence of that confirmation by the close of the examination, we have added PPs at Schedule 45 of the rDCO in appendix D of this report and Schedule 46 of the APV of the dDCO in appendix E of this report, being the last version of the applicant's PPs in favour of BOC which were included at Schedule 38 of revision 7 of the dDCO submitted at DL7 [REP7-018].

CATS North Sea Ltd and Kellas Midstream Ltd

6.7.50. CATS North Sea Ltd (CNSL) and its parent company Kellas Midstream Ltd transport gas through a 404km, 36 inch pipeline from the Central North Sea to a processing terminal located at Teesside; this equates to approximately 25% of daily UK gas demand from North Sea natural gas. CNSL have Category 1 Person interest, with CA and TP powers being sought over this land by the applicant. CNSL submitted a RR and attended CAH1. We will refer only to CNSL in the remainder of this report.

6.7.51. In its RR [RR-037], CNSL state that it does not object in principle to the proposed development however, it objects to the proposed development and dDCO, in its current form as the dDCO does not include sufficient protection for CNSLs operational infrastructure; it states this could be addressed by the inclusion of CNSL's standard PPs.

6.7.52. CNSL also stated that although it does not fall within the definition of a SU for the purposes of s127 of the PA2008, due to the significance of the CNSL pipelines and system as nationally important infrastructure, it should be afforded similar protection to land and infrastructure owned and operated by SUs.

6.7.53. The applicant and CNSL confirmed that negotiations have continued through the examination. At DL5, CNSL provided the ExA with a version of its preferred PPs [REP5-072] as requested and confirmed that negotiations were continuing. In this submission it notes that the applicant's position at CAH1 is that PPs should be more closely aligned to those included in the consented NZT Order 2024. However, CNSL considers that each project should be considered on its own merits and that the PPs included for the NZT Order were not sufficient for the proposed development, supported from experience of having these applied in practice.

6.7.54. In its DL5 submission, CNSL also detailed a number of matters that it sought to have included in the PPs, these included matters relating to access, CA and TP and consenting mechanisms.

6.7.55. Regarding restrictions to powers of CA and TP in the Order, the applicant states that the powers are necessary and justifiable in order to ensure the proposed development can be delivered, it also states that its preferred PPs allow protection in so much that CNSL have the right to consent any of the specified works.

6.7.56. As an Additional Submission (AS) on 27 February 2025, being the day before the end of the examination, the applicant provided updated PPs and statements on the outstanding issues that had prevented PPs being agreed [AS-049].

6.7.57. No further submissions were received from CNSL after DL5; it also did not formally withdraw its objection by the close of the examination.

6.7.58. The applicant did not update its final version of the dDCO with the latest PPs for CNSL. As detailed previously, the final version of PPs from the applicant was submitted separately as an AS on 27 February 2025 being the day before the end of the examination; this was an update to Schedule 33 of the dDCO provided at DL7a [REP7a-003] and Schedule 32 of the WCBAV of the dDCO [REP7a-006].

ExA's Consideration regarding the objection from CATS North Sea Ltd and Kellas Midstream Ltd

6.7.59. The ExA considers that CNSL and the applicant have continued negotiations through the examination and we have been updated on progress through submissions from both parties, although not from CNSL after DL5.

6.7.60. CNSL have been clear that it would not withdraw its objection, which was not an objection to the proposed development but to CA rights being sought, without appropriate PPs or a commercial agreement being agreed; we note that CNSL's objection was not withdrawn by the close of the examination.

6.7.61. We are unable to give weight to CNSLs request to be considered in the same way as a SU as by its own submissions, it is not a SU. However, we have given some weight to the clear importance of its operation to the UK energy supply.

6.7.62. We have not laid in detail all of the drafting differences in the preferred PPs between the parties but we have focused on those matters seen as still in dispute at the close of the examination.

6.7.63. We have been clear that we will include one set of PPs in our rDCO, therefore we have compared the final PPs provided by the applicant and CNSL which still have some divergence and differences. We note however, that without further submissions from CNSL after DL5, the ExA has not had confirmation of any progress on narrowing the differences, or amendments that have been submitted by the applicant.

6.7.64. The main points of difference which we consider remain appears to be related to the request from CNSL to have protection from unrestricted CA and TP rights. There may be other matters which CNSL disagree with, however without further commentary we have not had the opportunity to understand its updated position after DL5.

6.7.65. Overall, we consider that the PPs provided by the applicant as an AS on 27 February 2025 have taken into account many of the points raised by CNSL at DL5 although there remain differences. We note that this submission of updated PPs was not subsequently available for CNSL to comment upon as it was entered into the examination only the day before it closed. However, the ExA consider this submission is helpful as the applicant has endeavoured to resolve some outstanding issues. Whilst CNSL has not had the opportunity to reply, the applicant was utilising a final right of reply to address some of the outstanding points of concerns. As such the ExA considers it can consider and rely on the applicant's final PPs.

6.7.66. In regard to the request for CNSL to be protected from CA and TP powers over its land and rights, we have considered this carefully and although we accept the importance of CNSL' operation, we agree with the applicant that the powers sought are required to construct and operate the proposed development and we consider that the applicant's proposed PPs give sufficient protection to CNSL, primarily via the right to consent to works.

6.7.67. On balance, we consider the applicant's preferred PPs are most suitable and provide a significantly updated position from that in CNSLs DL5 submission.

6.7.68. In summary, with the inclusion of PPs as detailed, we consider that the applicant has provided sufficient justification for the CA of land and rights and TP of land. We are also satisfied that the proposed powers of CA in relation to the objectors' land and/ or rights would be necessary for the delivery of the proposed development and justified in the public interest. We accept that further negotiations may have continued after the close of the examination, potentially leading the parties to agree commercial and land matters along with PPs, but in the absence of such information we have included PPs at Schedule 32 of the rDCO in appendix D of this report and Schedule 33 of the APV of the dDCO in appendix E of this report.

CF Fertilisers UK Limited

6.7.69. CF Fertilisers UK Ltd (CFFL) is a fertiliser manufacturer. Its production site in Billingham produces both fertiliser, chemicals and utilities directly supplying users in Teesside and nationally. CFFL have Category 1 Person interest, with CA and TP powers being sought over this land by the applicant. CFFL submitted a RR and engaged with the examination throughout including attendance at both CAHs.

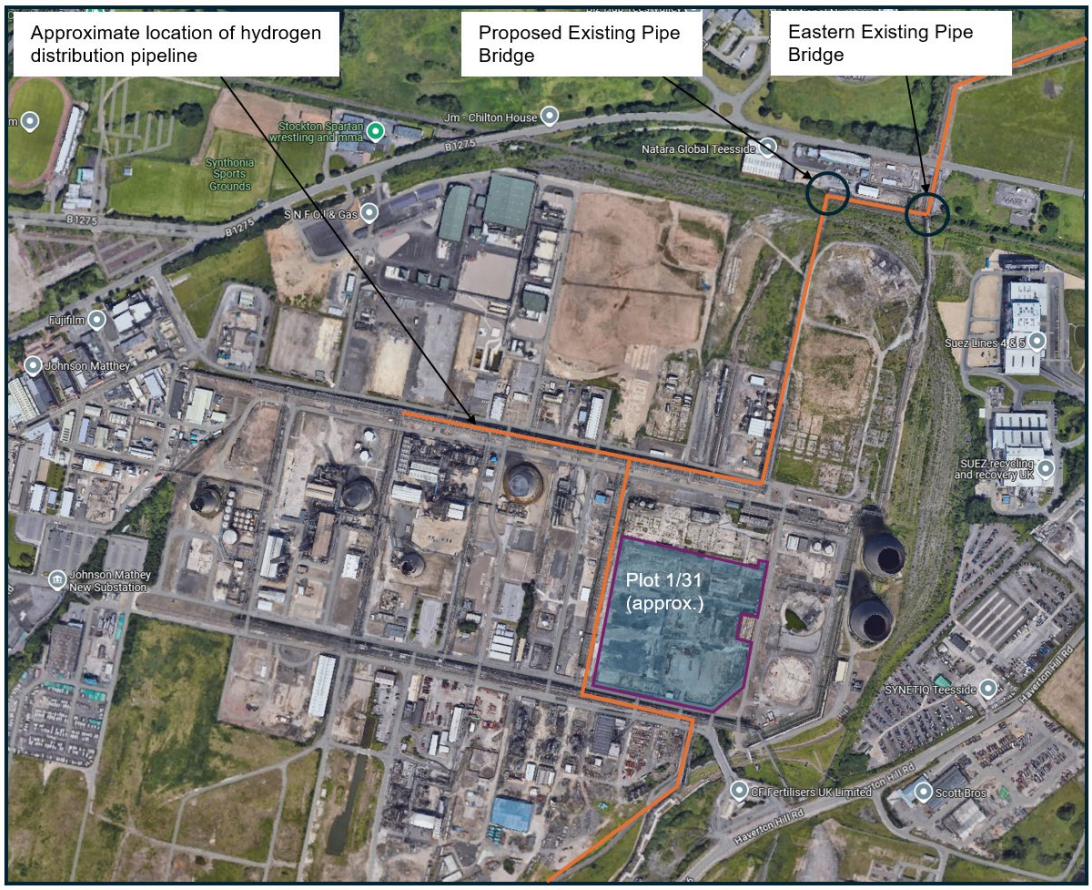
6.7.70. In its RR [RR-011] CFFL state that it does not object in principle to the proposed development however, it must ensure that its current and planned future operations, and those parties for whom CFFL is vicariously responsible, are not adversely affected. CFFL further state that it is expected that its concerns can be addressed by the inclusion of appropriate PPs in the Order. However, it stated throughout the examination that it has concerns in relation to a number of issues and the impact on its business.

6.7.71. CFFL consider that the CA of land and rights within its site is not necessary and there is not a compelling case in the public interest for the grant of CA powers as future hydrogen connections in this area are either modest or speculative; indeed it has confirmed to the applicant that it will not require hydrogen supply. In response, the applicant stated that the pipeline routing for the hydrogen distribution network has been designed to facilitate the decarbonisation of Teesside industry as a whole and is not being constructed to supply specific off-takers. The applicant goes on to state that the Billingham site is one where high carbon industries are likely to exist in the future, and the proposed development would provide for future decarbonisation.

6.7.72. CFFL also stated that that the applicant has not adequately explored alternative options that would avoid the need for CA, nor has it considered alternatives routes, in particular the use of the existing pipeline corridor along the eastern edge of the Billingham site. This would rely on the use of an alternative pipe bridge over the railway line into the Billingham site, as shown in figure 4. The ExA asked the applicant about this matter in written questions. In response to ExQ2, Q2.6.10 [REP5-044], the applicant stated that it had considered this in the earlier phases of the site selection process however, this alternative route was deemed to not be an

option due to the existing capacity and additional pipeline from other planned projects which already propose to use the eastern pipe bridge route.

Figure 4: Billingham Industrial Estate



6.7.73. CFFL also contested that the applicant has identified plot 1/31 for TP which it suggests is a valuable plot and one which multiple approaches from parties wishing to purchase or take a lease of this land have been made; CFFL added that the inclusion of this plot is likely to sterilise the land for future development in the short to medium term. The location of this plot is shown in figure 4. In response to ExQ1, Q1.6.65 [REP2-024] the applicant explained that it has allowed to have one small satellite compound on each of the pipeline branches and these sites were dependent on land availability and their capacity to include offices, welfare facilities, car parking, and storage including pipe, plant and fuel. The applicant also state that alternatives were assessed by considering the availability of vacant land of sufficient size, proximity to the construction areas and taking account of consultation with landowners.

6.7.74. The applicant and CFFL confirmed that negotiations have continued through the examination regarding commercial agreements and PPs. Despite repeated requests from the ExA, CFFL did not submit its preferred version of PPs into the examination. Notwithstanding this, at DL7a the applicant provided statements on the outstanding issues that had prevented PPs being agreed [REP7a-023].

6.7.75. In its closing submission at DL8 [REP8-049] CFFL stated that it continues negotiations with the applicant as it had been unable to concluded these by the close of the examination. CFFL also confirmed that its objection was not withdrawn.

6.7.76. The applicant submitted a final version of the PPs at Schedule 27 within the final APV of the dDCO [REP7a-003] and Schedule 26 [REP7a-006] within the WCBAV of the dDCO, in favour of CFFL.

ExA's Consideration regarding the objection from CF Fertilisers UK Limited

6.7.77. The ExA considers that CFFL and the applicant have continued negotiations through the examination and we have been updated on progress through submissions from both parties.

6.7.78. CFFL have been clear that it would not withdraw its objection, which was not an objection to the proposed development but to CA rights being sought, without appropriate PPs or a commercial agreement being agreed; we note that CFFL's objection was not withdrawn by the close of the examination.

6.7.79. We consider that the applicant has adequately explained the alternatives that it explored in regard to the routing of the pipeline through CFFL's land. We also consider that the matter raised by CFFL regarding current and near-term commitments to off-takers does not reduce the need for the proposed development nor the pipeline in question, which in this case is providing for future off-take opportunities.

6.7.80. Regarding the selection of site construction compounds and use of plot 1/31, we consider the applicant has adequately explained the need for these within CFFLs land and we acknowledge these are temporary in nature.

6.7.81. We are disappointed that CFFL did not submit a version of its preferred PPs into the examination and therefore we are unable to understand the differences between these, while CFFL continue to say up to and including in its closing statement that they are inadequate.

6.7.82. Notwithstanding this, we consider that the PPs provided by the applicant and included in its final dDCO have taken into account many of the points raised by CFFL and on balance, we consider they are appropriate to be included in the Order.

6.7.83. In summary, with the inclusion of PPs as detailed, we consider that the applicant has provided sufficient justification for the CA of land and rights and TP of land. We are also satisfied that the proposed powers of CA in relation to the objectors' land and/ or rights would be necessary for the delivery of the proposed development and justified in the public interest. We accept that further negotiations may have continued after the close of the examination, potentially leading the parties to agree commercial and land matters along with PPs. However, in the absence of either PPs from CFFL or confirmation of any agreements of such information we have included the applicant's version of PPs at Schedule 26 of the rDCO in appendix D of this report and Schedule 27 of the APV of the dDCO in appendix E of this report.

H2NorthEast Limited

6.7.84. H2NorthEast Limited (H2NE) is progressing the development of a low carbon hydrogen production and distribution facility and associated pipeline distribution network which is planned to be developed in an area adjacent to the existing CNSL

terminal. H2NE do not have land interested listed in the BoR. H2NE submitted a RR and only engaged with the examination at DL4 following attendance at CAH1.

6.7.85. In its RR [RR-036] H2NE state that it does not object to the proposed development, however it has concerns relating to the extent of land being sought which has the potential to sterilise land. H2NE also raise concerns regarding potential interface issues with its own proposals and state there are insufficient design and programming detail to understand the implications of the proposed development. It concludes by stating that it believes its concerns can be addressed with an agreed cooperation agreement with the applicant.

6.7.86. In its summary of oral representations at CAH1 [REP4-039] H2NE state that it continues to have concerns about the extent of land powers sought and cited that regular meetings between the parties were being held.

6.7.87. In its response to RRs [REP1-007] the applicant stated that it has sought to minimise land take across the entirety of the Order limits. It also highlighted that in the absence of a planning application submitted by H2NE, it understood that the N2NE proposals are to be located in an area where the Order limits are identical to that of the made NZT DCO and it has used an established precedent in this area to minimise impact to any IP. The applicant also agreed that interface discussions were necessary.

6.7.88. The applicant updated the ExA on progress with negotiations with N2NE at CAH2. In its summary of oral representation [REP6a-018] the applicant stated that, given the very early stage of development of the H2NE project the approach was to put in place a high level framework to secure regular engagement. The applicant added a post-hearing note to say that the parties have exchanged further correspondence and have agreed next steps with a view to developing a suitable agreement.

6.7.89. In its Protective Provisions Statement at DL7 [REP7-026] the applicant updated the ExA and stated that it is preparing a draft engagement agreement which has been agreed between the parties.

6.7.90. Although at DL7 the applicant also stated that it anticipates providing updates to the ExA once the draft agreement has been reviewed by H2NE, no further submissions were made by either party and hence H2NE did not formally withdraw its objection.

ExA's Consideration regarding the objection from H2NorthEast Limited

6.7.91. The ExA considers that H2NE and the applicant have established and continued negotiations through the examination and we have been updated in a limited way on progress through submissions from both parties.

6.7.92. We acknowledge H2NE do not have land which is being sought by the applicant for either CA or TP powers however, we accept that H2NE is developing proposals which will have land related implications for both proposed developments. We also acknowledge that H2NE submitted an objection which was not withdrawn by the close of the examination.

6.7.93. We have been made aware of the development of a legal agreement to ensure information sharing and negotiations continue, however progress on this was silent after DL7 and as such we are not aware of an agreement being in place.

6.7.94. In summary, we consider that the applicant has provided sufficient information into the examination to allow the ExA to consider it likely that future project interfaces

will be managed through dialogue, on the assumption that the engagement agreement referenced at DL7 is finalised. Taking this into account, we give no weight to the objection from N2NE.

Industrial Chemicals Ltd

6.7.95. Industrial Chemicals Ltd (ICL) operates an industrial chemicals plant at Port Clarence on the north bank of the River Tees. ICL have Category 1 Person interest, with CA and TP powers being sought over this land by the applicant. ICL did not submit a RR but did submit a number of WRs during the examination. ICL also attended CAH1.

6.7.96. ICL in its DL2 WR [REP2-078] confirmed its status as an AP. In further WR [REP2-079] ICL state that it has concerns primarily regarding access to its operations and seek assurance via the DCO process and state that it therefore objects to the proposed development until it has the assurances it seeks.

6.7.97. The applicant and ICL confirmed that negotiations have continued through the examination regarding a single side agreement with PPs. However, despite repeated requests, ICL did not submit its preferred version of PPs to the ExA. The applicant has also not provided a form of PPs into the examination in favour of ICL. It is noted that the applicant's land rights tracker [REP7a-013] and [AS-056] states the PPs in favour of ICL are required and are being negotiated.

6.7.98. In its closing submission at DL8 [REP8-050] ICL stated that it continues negotiations with the applicant and anticipate agreeing a single side agreement before or shortly after the close of the examination. ICL also confirmed that its objection would not be withdrawn until such agreement was completed.

6.7.99. The applicant's final commentary on the status of negotiations with ICL was at DL7 in its Protective Provisions Statement [REP7-026] where it states that the parties have agreed the principles of the PPs and it has provided ICL with proposed PPs and await comments. The applicant also states that ICLs concerns only relate to maintaining access along Huntsman Drive and Seaton Carew Road. The applicant has not included PPs into the Order in favour of ICL.

ExA's Consideration regarding the objection from Industrial Chemicals Ltd

6.7.100. The ExA considers that ICL and the applicant have continued negotiations through the examination and we have been updated on progress through submissions from both parties. We acknowledge that a single side agreement with appropriate PPs is close to being agreed however it is clear that the agreement did not translate to a completion of a legally binding agreement by the close of the examination.

6.7.101. We consider that although bespoke PPs have not been included in the dDCO or indeed have not been submitted into the examination for ICL, it does have protection via Schedule 17 of the rDCO (the WCBAV) or Schedule 18 of the APV of the dDCO, Protective Provisions for The Protection of Third Party Apparatus.

6.7.102. In summary, with the inclusion of PPs as detailed, we consider that the applicant has provided sufficient justification for the CA of rights and we are satisfied that the proposed powers of CA in relation to the objectors' land and/ or rights would be necessary for the delivery of the proposed development and justified in the public interest. We accept that a single side agreement may have been reached between the parties.

INEOS Nitriles (UK) Ltd

6.7.103. INEOS Nitriles Ltd (INL) is part of the INEOS group which is a global manufacturer of petrochemicals, speciality chemicals and oil products; INL have facilities on the north side of the River Tees. INL have Category 1 Person interest, with CA and TP powers being sought over this land by the applicant. INL submitted a RR and engaged with the examination throughout including attendance at both CAHs.

6.7.104. In its RR [RR-012] INL state that it does not object in principle to the proposed development however, it must ensure that its operations and future development potential, and those of parties who have rights over INEOS's land, are not adversely affected. INL further state that it is expected that its concerns can be addressed by the inclusion of appropriate PPs in the Order.

6.7.105. Although INL considered that its concerns could be addressed with appropriate PPs, it raised a number of issues. One of these relates to land which is identified for a temporary construction compound and accessway, plots 10/22 and 10/23. INL state that while the principle of using part of its land for such purposes is supported it has concerns that this area is not practicable without significant impacts to its own development proposals. INL has proposed alternative locations to the applicant. In response to the RR [REP1-007] the applicant acknowledges the concerns raised by INL and states that it has worked collaboratively to confirm the requirements for the construction compound. INL suggested that these matters were able to be included in a private treaty and PPs [REP4-021]; at the close of the examination these two plots remain in the Order.

6.7.106. The second of INL's concerns was detailed in its summary of CAH1 [REP4-042] and relates to two access points from its site to the river frontage which currently runs under pipe bridges which are in the pipelines corridor on the south eastern corner of its site. INL go on to state that there should be appropriate protections in the DCO to ensure that any new pipelines laid in this area cross the existing pipe bridges in order to ensure that the access points are maintained to the same capacity and standard as currently exists.

6.7.107. In response to this issue, the applicant stated in its PP update at DL7a [REP7a-020] that it has included wording into paragraph 5(1)(a) of Schedule 24 that so that INEOS Nitriles can reasonably refuse consent if the proposed works materially constrains INEOS Nitriles' vehicular accessways to the River Tees more than the existing access points as at the date of the Order. This is wording proposed by INL.

6.7.108. The applicant and INL confirmed that negotiations have continued through the examination. At DL5, INL provided the ExA with a version of its preferred PPs [REP5-076] as requested by the ExA.

6.7.109. At DL7a the applicant provided statements on the outstanding issues that had prevented PPs being agreed [REP7a-020].

6.7.110. At DL7a, INL [REP7a-057] confirmed it had provided the applicant with its preferred version of PPs and a draft of a side agreement had been provided, INL also confirmed that its objections could be overcome by the inclusion of its preferred PPs. A final submission from INL was received at DL8 [REP8-052] which confirmed that no further progress was reportable from that submitted at DL7a; INL did not formally withdraw its objection by the close of the examination.

6.7.111. The applicant submitted a final version of the PPs at Schedule 24 within its final version of APV of the dDCO [REP7a-003] and Schedule 23 of the WCBAV of the dDCO [REP7a-006] in favour of INL.

ExA's Consideration regarding the objection from INEOS Nitriles (UK) Ltd

6.7.112. The ExA considers that INL and the applicant have continued negotiations through the examination and we have been updated on progress through submissions from both parties.

6.7.113. INL have been clear that it would not withdraw its objection, which was not an objection to the proposed development but to CA rights being sought, without appropriate PPs or a commercial agreement being agreed; we note that INL's objection was not withdrawn by the close of the examination.

6.7.114. On the matters raised by INL in its RR, we consider that the applicant has considered these points and given commentary on this which allows us to confirm that the land is required and other matters are address in PPs.

6.7.115. We have not laid in detail all of the drafting differences in the preferred PPs between the parties but we have focused on those matters seen as still in dispute at the close of the examination.

6.7.116. We have, however, been clear that we will include one set of PPs in our rDCO, therefore we have compared the final PPs provided by the applicant and INL which still have some divergence and differences. We note however, that without further commentary on the detail of the remaining differences between the parties from INL after DL5, the ExA has not had confirmation of any progress on narrowing the differences or amendments that have been submitted by the applicant.

6.7.117. The main points of difference which we consider remain appears to be related to the drafting differences relating to consenting of works; indemnity; and dispute resolutions however, without further commentary, we have not had the opportunity to understand INLs updated position after DL5.

6.7.118. Overall we consider that the PPs provided by the applicant at DL7a and included in its final dDCO have taken into account many of the points raised by INL at DL5 although there are many drafting changes from that proposed by INL, some of which may have been subsequently agreed.

6.7.119. On balance, we consider the applicant's preferred PPs are most suitable and provide a significantly updated position from that in INLs DL5 submission.

6.7.120. In summary, with the inclusion of PPs as detailed, we consider that the applicant has provided sufficient justification for the CA of land and rights and TP of land. We are also satisfied that the proposed powers of CA in relation to the objectors' land and/ or rights would be necessary for the delivery of the proposed development and justified in the public interest. We accept that further negotiations may have continued after the close of the examination, potentially leading the parties to agree commercial and land matters along with PPs, but in the absence of such information we have included the applicant's latest version of PPs at Schedule 23 of the rDCO in appendix D of this report and Schedule 24 of the APV of the dDCO in appendix E of this report.

Lighthouse Green Fuels Ltd.

6.7.121. Lighthouse Green Fuels Ltd (LGF) are producers of sustainable aviation fuel and are intending to locate a facility in Teesside. LGF have Category 1 Person interest, with CA and TP powers being sought over this land by the applicant. LGF submitted a RR and engaged with the examination throughout including attendance at both CAHs.

6.7.122. In its RR [RR-002] LGF state that it strongly welcomes the proposed development however this support is subject to its concerns relating to the overlap of the two projects being addressed. At DL2 [REP2-084] LGF made further WRs and stated that it objects to the proposed powers of CA over land in which it has an interest unless adequate protection in the form of an asset protection agreement or PPs can be agreed.

6.7.123. In its response to ExQ1, Q1.6.62 [REP2-084], LGF detailed its land based objections. These relate to the need for plot 9/16, citing that there were alternative locations for the proposed infrastructure, and plot 9/41 which LGF occupies and benefits from several utility services in the corridors proposed to be subject to CA. LGF reiterated this concern a number of times during the examination. In its final submission at DL8 [REP8-053] it stated the applicant has provided further information in relation to both plots. However, LGF also state that the applicant has not agreed formal documentation which appropriately secures this via a private agreement and therefore is not content that these issues are adequately resolved.

6.7.124. At DL8 [REP8-018] the applicant addressed the matter of these two plots, stating that it believes LGF has sufficient information to alleviate its concerns regarding the use of CA powers for these plots but it understood that LGF will not withdraw its objection until a side agreement has been completed, which will not happen until after the close of examination.

6.7.125. The applicant and LGF confirmed that negotiations have continued through the examination. At DL5a LGF provided the ExA with a version of its preferred PPs as requested by the ExA and updated them further at DL8 [REP8-054].

6.7.126. At DL7a the applicant provided statements on the outstanding issues that had prevented PPs being agreed [REP7a-034].

6.7.127. At DL8, LGF submitted its final position statement [REP8-053]. It stated that it had only seen the applicant's proposed PPs at DL7 and although it has replied to these, there had been no substantive change. LGF also confirmed it had provided the applicant with a draft of the side agreement and its preferred version of PPs, which the applicant did not incorporate into its DL7a version. LGF detailed three outstanding issues relating to the PPs which it wished to be incorporated into the dDCO which related to definitions, descriptions of the 'Tees Valley Project', and unrestricted use of CA and TP powers. LGF did not formally withdraw its concerns relating to the protection of its asset by the close of the examination.

6.7.128. In its response to DL8 submissions [REP9-023] the applicant accepted the change relating to definitions and also proposed an amendment to the definition of 'Tees Valley project'. The applicant did not accept the request to include restrictions on the application of CA powers, stating that this would not give certainty to the applicant to allow it to construct the proposed development.

6.7.129. At the close of the examination LGF confirmed that its objection was not withdrawn, and detailed that it maintains the objection to the acquisition of plots 9/41 and 9/16, although LGF also state that the applicant provided more information in relation to

these plots but that has not been translated into formal documentation which appropriately secures the required assurances in a private agreement.

6.7.130. The applicant submitted a version of the PPs at Schedule 39 within its final version of APV of the dDCO [REP7a-003] and Schedule 38 of the WCBAV of the dDCO [REP7a-006] in favour of LGF. However, following further negotiations with LGF, the applicant provided a further, final updated version at DL9 [REP9-012].

ExA's Consideration regarding the objection from Lighthouse Green Fuels Limited

6.7.131. The ExA considers that LGF and the applicant have continued negotiations through the examination and we have been updated on progress through submissions from both parties.

6.7.132. LGF have been clear that it would not withdraw its objection, which was not an objection to the proposed development but to CA rights being sought, without appropriate PPs or a commercial agreement being agreed; we note that LGF's objection was not withdrawn by the close of the examination.

6.7.133. On the matters raised by LGF in its RR, we consider that the applicant has considered these points and given commentary on this which allows us to confirm that the land is required and other matters are addressed in PPs.

6.7.134. We have not laid in detail all of the discussions regarding PPs between the parties during the examination.

6.7.135. In relation to LGF's objection to plots 9/41 and 9/16, we acknowledge that sufficient agreement has been reached to allow a private agreement to be put in place, however this was not completed by the close of the examination.

6.7.136. We have, however, been clear that we will include one set of PPs in our rDCO, therefore we have compared the final PPs provided by the applicant and LGF which still have some divergence and differences.

6.7.137. We note that that the applicant's DL9 submission of updated PPs was not subsequently available for LGF to comment upon. However, the ExA consider this submission is helpful as the applicant has endeavoured to resolve some outstanding issues. Whilst LGF has not had the opportunity to reply, the applicant was utilising a final right of reply to address some of LGFs points of concerns. As such the ExA considers it can consider and rely on the applicant's PPs submitted at DL9.

6.7.138. With regard to the PPs, we consider that the PPs provided by the applicant at DL9 have taken into account some of the remaining points raised by LGF at DL8 however, not in relation to unrestricted CA powers. We have considered this outstanding matter and conclude that the impact on LGF in terms of CA powers primarily relates to powers of access on Huntsman Drive and tracks leading from it. The matter of Huntsman Drive has been questioned and the applicant has included a paragraph in the PPs for LGF which states that access will not be prevented as a result of the construction or operation of the authorised development unless in the event of an emergency; we consider this is adequate.

6.7.139. Regarding plot 9/16, the ExA finds that LFG are not listed in the BoR as having interest in this plot and as such we give this objection little weight. Regarding plot

9/41, we consider the applicant has shown that this is required for its AGI and no suitable alternative is available.

6.7.140. In summary, with the inclusion of PPs as detailed, we consider that the applicant has provided sufficient justification for the CA of land and rights and TP of land. We are also satisfied that the proposed powers of CA in relation to the objectors' land and/ or rights would be necessary for the delivery of the proposed development and justified in the public interest. We accept that further negotiations may have continued after the close of the examination, potentially leading the parties to agree commercial and land matters along with PPs, but in the absence of such information we have included the applicant's latest version of PPs at Schedule 38 of the rDCO in appendix D of this report and Schedule 39 of the APV of the dDCO in appendix E of this report.

Natara Global Ltd

6.7.141. Natara Global Ltd (NGL) operates a manufacturing, storage and distribution facility for natural extracts, resins and synthetic aroma chemicals in Billingham; during the consultation and pre-application stage the company changed its name from Flavour Speciality Ingredients Ltd. NGL have Category 1 Person interest, with CA and TP powers being sought over this land by the applicant.

6.7.142. In its RR [RR-023] NGL state that it has no objection to the proposed development in principle but strongly object to the impacts it will have on its property and business. NGL cite access requirements as a key concern and request PPs to be included in the Order for its benefit.

6.7.143. In response to NGLs concerns regarding access [REP1-007], the applicant stated that it is committed to working closely with NGL to mitigate operational disruptions. It also indicated that it explored alternatives during the design development phase but these have been deemed as not feasible. In addition to the above, the applicant also stated that the parties agreed to negotiate suitable PPs for NGL.

6.7.144. The applicant and NGL confirmed that negotiations have continued through the examination, with NGL stating it is willing to develop PPs and Heads of Terms for a voluntary agreement.

6.7.145. In its closing submission at DL9 [REP9-028] NGL state that it has continued negotiations with the applicant, include a meeting the day before the close of the examination. It restated its main outstanding concern regarding PPs which relates to compensation. NGL state that it requires compensation for any loss arising from the construction and operation of the proposed development but the applicant has excluded consequential damages and losses, with the exception of that related to TP. NGL state that due to the nature of work proposed in the vicinity of its operations, including the need to crane materials over its site, there is a high risk to its operations and it is unreasonable not to have full protection in the form of compensation for indirect and consequential loss and damage.

6.7.146. The applicant addresses this in its DL9 submission of PPs statement for NGL [REP9-019] and state that paragraph 9(3) creates a liability for the undertaker to pay compensation which applies in addition to the other compensation provisions in the main body of the Order. Although paragraph 9(3) is then qualified in sub-paragraph 9(4)(b), NGL contests that this applies only to the paragraph 9(3) liability in the PPs and it does not limit the compensation that may be recovered under the other provisions of the Order.

6.7.147. In its closing submission at DL9 [REP9-028] NGL state that it has continued negotiations with the applicant, include a meeting the day before the close of the examination. NGL confirmed that no agreement has been reached between the parties and that unless its PPs are included in the Order it considers that there is no compelling case for CA. NGL also submitted its only version of preferred PPs to the ExA at DL9, being the last day of the examination. NGL did not withdraw its objections by the close of the examination.

6.7.148. The applicant first provided the ExA with PPs to be inserted in the Order for NGL at DL8 [REP8-014] which were updated at DL9 [REP9-016]. In its Response to DL8 Submissions [REP9-023], the applicant stated negotiations with NGL have been extensive but ultimately a side agreement with PPs was not finalised. The applicant states that its preferred approach was to have PPs on the face of the Order and to that end has now submitted such which have been discussed in detail between the parties and the applicant considers there are now only very limited points of difference.

ExA's Consideration regarding the objection from Natara Global Ltd

6.7.149. The ExA considers that NGL and the applicant have continued negotiations through the examination and we have been updated on progress through submissions from both parties. We acknowledge that a side agreement with appropriate PPs were not agreed by the close of the examination.

6.7.150. NGL have been clear that it considers there is no compelling case for CA and interference with its human rights without appropriate PPs or a commercial agreement being agreed; we note that NGL's objection was not withdrawn by the close of the examination.

6.7.151. We note that that the applicant's DL9 submission of updated PPs was not subsequently available for NGL to comment upon. However, the ExA consider this submission is helpful as the applicant has endeavoured to resolve some outstanding issues. Whilst NGL has not had the opportunity to reply, the applicant was utilising a final right of reply to address some of the IPs points of concerns. As such the ExA considers it can consider and rely on the applicant's PPs submitted at DL9.

6.7.152. We consider that we are in the position of considering the following:

- NGL and the applicant give differing versions of PPs at DL9, being the closing day of the examination; in particular in regard to compensation.
- NGL submitted its preferred PPs on the last day of the examination, therefore not allowing the applicant to give its response to these to the ExA.
- The applicant has not included PPs in any, or indeed, its final dDCOs for NGL however, the applicant did provide the ExA with separate PPs in the last week of the examination, with the final version at DL9 [REP9-016].

6.7.153. Regarding the matters listed above, the ExA considers the following:

- Although the applicant has stated at DL9 that its latest PPs for NGL to be inserted on the face of the Order have only a small number of matters outstanding, NGL do not confirm this in its submissions, therefore we cannot rely on this statement.
- All IPs were asked throughout the examination to provide the ExA with its preferred form of PPs in the eventuality that we may need to decide which version to include in the rDCO. NGL did not do this until the last day of the

examination, consequently the applicant has not had the opportunity to give us its response to NGLs PPs. Therefore, the ExA considers that due to principles of fairness in the examination, it cannot consider NGLs preferred version of PPs.

- Notwithstanding the above, the ExA considers that the applicant's DL9 submission of updated PPs is helpful to the ExA as it has endeavoured to resolve some outstanding issues. Whilst the IP has not had the opportunity to reply to this version of the applicant's PPs, the applicant was utilising a final right of reply to address some of the IPs remaining points of concerns. As such the ExA considers it can consider and rely on the applicant's PPs submitted at DL9.
- With regard to the exclusion of compensation for indirect and consequential losses, we agree with the applicant that there are adequate provisions in the body of the Order in this regard.
- We consider that NGL requires PPs and we consider that inserting the latest version of PPs that were presented into the examination by the applicant is the only option available to us at the time of writing this report.

6.7.154. In summary, with the inclusion of PPs as detailed, we consider that the applicant has provided sufficient justification for the CA of rights and TP of land. We are also satisfied that the proposed powers of CA in relation to the objectors' land and/ or rights would be necessary for the delivery of the proposed development and justified in the public interest. We accept that a side agreement with PPs and/ or PPs to be inserted into the face of the Order may yet be agreed between the parties, but in the absence of an agreement by the close of the examination, we have considered that the applicant's preferred PPs for NGL should be included and we have added this at Schedule 44 of the rDCO in appendix D of this report and Schedule 45 of the APV of the dDCO in appendix E of this report.

Navigator Terminals Ltd

6.7.155. Navigator Terminals Ltd (Navigator) are a bulk liquid storage provider with four terminals in the UK including a site at North Tees which has a fuel and crude storage hub. Navigator have Category 1 Person interest, with CA and TP powers being sought over this land by the applicant. Navigator submitted a RR and engaged with the examination throughout including attendance at both CAHs.

6.7.156. In its RR [RR-013] Navigator state that it does not object in principle to the proposed development however, it must ensure that the proposed development does not adversely affect its existing or future operations or the safety of people and the environment. Navigator further state that discussions have commenced regarding a private treaty agreement and consider the inclusion of appropriate PPs in the Order to be a necessity. Navigator concluded its RR by stating that it objects to the current iteration of the proposed development and consider the required land is excessive and disproportionate.

6.7.157. Although Navigator consider the need for agreements and/ or PPs, it raised a number of specific concerns. Navigator state that it has development proposals on a significant part of its land, some of which is impacted by the proposed development. This includes a new CO_2 hub which was granted planning permission on 20 December 2024; a new jetty and propane storage which has an existing planning permission; and expansion plans for its existing operations. In its final submission at DL8 [REP8-059] Navigator list these matters as outstanding concerns however, it also cites the welcome inclusion of Article 39 (Planning permission, etc.) in the dDCO and strongly encourage the ExA to include this in the report.

6.7.158. In its response to RR [REP1-007] the applicant states that the majority of Navigator's undeveloped land for will be utilised on a temporary basis and that it is

committed to a collaborative approach to ensure the efficient and effective use of land. The applicant also states that the construction programme has been discussed with Navigator with a view to aligning timings of the various projects coming forward. Further to this, in its applicant's Responses to Deadline 2 submissions [REP3-006] the applicant gives further details of proposed construction timings.

6.7.159. At DL7a Navigator stated that the applicant had not provided information regarding the River Tees crossing to address its concerns. No further information regarding this concern was given at this DL. The applicant refers Navigator to its answer to ExQ2, Q2.6.15 [REP5-044] where it states that the level of design to assess the land requirements is appropriate and the extent of the Order limit uses the Rochdale Envelope principles. In its DL9 comments on DL8 submissions [REP9-023] the applicant states that it has discussed this with Navigator and is confident that Navigator's concerns can be addressed through the side agreement.

6.7.160. The applicant and Navigator confirmed that negotiations have continued through the examination. At DL5, Navigator provided the ExA with a version of its preferred PPs [REP5-079] as requested by the ExA.

6.7.161. At DL7a the applicant provided statements on the outstanding issues that had prevented PPs being agreed [REP7a-021].

6.7.162. At DL7a [REP7a-062] Navigator confirmed it had provided the applicant with its preferred version of PPs and remain in negotiations regarding a side agreement. Navigator also state that it has not received sufficient information from the applicant regarding its outstanding concerns. A final submission from Navigator was received at DL8 [REP8-059] which confirmed that no further progress was reportable from that submitted at DL7a; Navigator also did not formally withdraw its objection by the close of the examination.

6.7.163. In its DL9 submission [REP9-023], the applicant provides a closing joint statement on behalf of both parties. In summary, the applicant and Navigator exchanged drafts and updates of a side agreement in the last week of the examination and although this was not finalised by the close of the examination, there *"…are only a few points that are being negotiated…"* and the parties expect the agreement will be finalised and completed shortly after the close of the examination.

6.7.164. The applicant submitted a final version of the PPs at Schedule 25 within its final version of APV of the dDCO [REP7a-003] and Schedule 24 of the WCBAV of the dDCO [REP7a-006] in favour of Navigator.

ExA's Consideration regarding the objection from Navigator Terminals Ltd

6.7.165. The ExA considers that Navigator and the applicant have continued negotiations through the examination and we have been updated on progress through submissions from both parties.

6.7.166. Navigator have been clear that it would not withdraw its objection, which was not an objection to the proposed development but to CA rights being sought, without appropriate PPs or a commercial agreement being agreed; we note that Navigator's objection was not withdrawn by the close of the examination.

6.7.167. On the matters raised by Navigator in its RR, we consider that the applicant has considered these points and given commentary on this which allows us to confirm that the land is required and other matters are addressed in PPs.

6.7.168. We have not laid in detail all of the drafting differences in the preferred PPs between the parties but we have focused on those matters seen as still in dispute at the close of the examination.

6.7.169. We have, however, been clear that we will include one set of PPs in our rDCO, therefore we have compared the final PPs provided by the applicant and Navigator which still appear to have some divergence and differences. We note however, that without further commentary on the detail of the remaining differences between the parties from Navigator after DL5, the ExA has not had confirmation of the progress on narrowing the differences or amendments that have been submitted by the applicant.

6.7.170. The ExA considers that the main point of difference relates to the drafting differences. The inclusion of Article 39 (Planning Permissions etc.) into the Order appears to have removed Navigators concerns about the impact on its existing planning permissions.

6.7.171. Overall we consider that the PPs provided by the applicant at DL7a and included in its final dDCO have taken into account many of the points raised by Navigator at DL5 although there are many drafting changes from that proposed by Navigator, some of which may have been agreed between the parties after the close of the examination.

6.7.172. On balance, we consider the applicant's preferred PPs are suitable and provide an updated position from that in Navigators DL5 submission.

6.7.173. In summary, with the inclusion of PPs as detailed, we consider that the applicant has provided sufficient justification for the CA of land and rights and TP of land. We are also satisfied that the proposed powers of CA in relation to the objectors' land and/ or rights would be necessary for the delivery of the proposed development and justified in the public interest. We accept that further negotiations may have continued after the close of the examination, potentially leading the parties to agree commercial and land matters along with PPs, but in the absence of such information we have included the applicant's latest version of PPs at Schedule 24 of the WCBAV of the rDCO in appendix D of this report and Schedule 25 of the APV of the dDCO in appendix E of this report.

Net Zero North Sea Storage Ltd

6.7.174. Net Zero North Sea Storage Ltd (NZNSS) are named as an undertaker in the NZT Order 2024 and will be developing the Northern Endurance Partnership (NEP) project which involves a CO_2 gathering network, for onward transport to an offshore geological storage site in the North Sea. NZNSS have Category 2 Person interest, with CA and TP powers being sought over this land by the applicant. NZNSS submitted a late RR [AS-023] accepted as an AS by the ExA and only engaged with the examination at DL7a, NZNSS did not attend either of the two CAHs

6.7.175. The late RR stated that NZNSS strongly support the proposed development and that it is in commercial discussions with the applicant. NZNSS also state that it has certain land, programme and engineering interaction concerns which are also under discussion and in the event that an agreement is not reached it will require appropriate PPs to be inserted in the Order.

6.7.176. At DL7a, NZNSS updated the ExA [REP7a-063] to advise that, although it had anticipated agreement being made with the applicant by the close of the

examination, this was now unlikely and therefore require PPs to be inserted into the Order.

6.7.177. The applicant stated in its PP statement [REP7-026] that it remains in discussion with NZNSS regarding PPs and then submitted updated PPs for NZNSS at DL8 [REP8-017].

6.7.178. In its closing statement at DL8 [REP8-060] NZNSS state that although some progress had been made with negotiations, it understood that the applicant will be maintaining its position on outstanding and not-agreed issues. NZNSS list these issues, which include matters of insurance requirements and the need to control part of the Order powers, which it states are highly unusual and constitutes a major omission. On the basis of the outstanding issues, NZNSS stated that it objects to the proposed development on the basis of the applicant PPs that have been included in the dDCO. Its closing statement was accompanied by its preferred version of PPs [REP8-062].

6.7.179. In its final commentary at DL9 [REP9-023] the applicant stated that further discussions between the parties have been held and although positions have narrowed there remain some differences, in particular relating to insurance and regulation of DCO powers. The applicant contest that it has not generally provided insurance to protect statutory undertakers and the indemnity provided to NZNSS at paragraph 8 of the PPs gives sufficient protection and further, that is for the applicant to determine whether insurance is required to cover any works and it is inappropriate for the Order to state how this is done.

6.7.180. With regard to regulation of powers in the Order, the applicant goes on to state that it is not appropriate to include wide ranging restrictions, which '…*goes to the heart of powers required to deliver the authorised development…'* and the imposition of the need to seek approvals which could dramatically delay delivery of the proposed development. The applicant also refers the ExA to the consented Immingham Green Energy Terminal decision letter, paragraph 183 in relation to Network Rail, to support its argument.

6.7.181. The applicant concludes that, notwithstanding these outstanding points of difference, positive engagement remains including a side agreement to ensure the interfaces between the respective projects are sufficiently protected. The applicant maintains that the PPs included on the face of its final dDCO are sufficient to allow for the grant of CA powers without causing serious detriment to NZNSS.

6.7.182. NZNSS did not formally withdraw its objection by the close of the examination.

6.7.183. The applicant submitted a final version of the PPs in favour of NZNSS at DL8 [REP8-017], which was an update from that included in its final dDCOs.

ExA's Consideration regarding the objection from Net Zero North Sea Storage Ltd

6.7.184. The ExA considers that although NZNSS only entered the examination at DL7a, NZNSS and the applicant have progressed negotiations and we have been updated on progress through submissions from both parties in the latter stages of the examination.

6.7.185. NZNSS have been clear that it would not withdraw its objection, which was not an objection to the proposed development but to CA rights being sought, without

appropriate PPs or a commercial agreement being agreed; we note that NZNSS's objection was not withdrawn by the close of the examination.

6.7.186. We have not laid in detail all of the drafting differences in the preferred PPs between the parties but we have focused on those matters seen as still in dispute at the close of the examination.

6.7.187. We have been clear that we will include one set of PPs in our rDCO, therefore we have compared the final PPs provided by the applicant and NZNSS which still have some divergence and differences but in most parts are agreed. The outstanding differences between the parties preferred version of PPs at the close of the examination were limited to two parts being the applicant's exclusion of NZNSS paragraphs 6 relating to regulation of powers and paragraphs 9(7) and (8) relating to insurance.

6.7.188. NZNSS are an undertaker for a consented Order for constructing a NSIP. We consider it is appropriate for NZNSS to have protection from certain powers in the DCO for the proposed development which can only to be exercised with written consent and therefore we agree that these protections should be included within PPs for NZNSS. We consider that the applicants reference to the consented Immingham Green Terminal Order is not reflective of the circumstances for NZNSS and therefore we have given this little weight.

6.7.189. Regarding insurance and indemnity, we agree with the applicant that it is not appropriate to state how it covers the works and that it has shown in the application that it has sufficient funds to cover compensation and claims and it should be able to determine how this is done.

6.7.190. Overall we consider that due to NZNSS needing to protect its consented Order, the overriding need for NZNSS to be protected from unrestricted powers in the Order for the proposed development leads us to consider it most appropriate to include NZNSSs preferred PPs in the rDCO. However, we also consider that within these PPs it is not appropriate to include paragraphs 9(7) and (8) regarding insurance and indemnity and as such the ExA have removed this from the version in the rDCO and the APV of the dDCO.

6.7.191. In summary, with the inclusion of PPs as detailed, we consider that the applicant has provided sufficient justification for the CA of rights and TP of land. We are also satisfied that the proposed powers of CA in relation to the objectors' land and/ or rights would be necessary for the delivery of the proposed development and justified in the public interest. We accept that further negotiations may have led the parties to agree commercial and land matters along with PPs, but in the absence of such we have included NZNSSs version of PPs at Schedule 43 of the rDCO in appendix D of this report and Schedule 44 of the APV of the dDCO in appendix E of this report. However, we consider that paragraphs 9(7) and (8) are not appropriate and these have been removed from the final versions of the Orders.

Net Zero Teesside Power Ltd

6.7.192. Net Zero Teesside Power Ltd (NZTP) are named as an undertaker in the NZT Order 2024 and will develop the gas-fired power station with carbon capture plant, as well as related service connections and pipelines. NZTP have Category 2 Person interest, with CA and TP powers being sought over this land by the applicant. NZTP submitted a late RR [AS-024] accepted as an AS by the ExA and only engaged with the examination at DL7a, NZTP did not attend either of the two CAHs.

6.7.193. The late RR stated that NZTP strongly support the proposed development and that it is in commercial discussions with the applicant. NZTP also state that it has certain land, programme and engineering interaction concerns which are also under discussion and in the event that an agreement is not reached it will require that appropriate PPs to be inserted in the Order.

6.7.194. At DL7a, NZTP updated the ExA [REP7a-064] to advise that, although it had anticipated agreement being met with the applicant by the close of the examination, this was now unlikely and therefore require PPs to be inserted into the Order.

6.7.195. The applicant stated in its PP statement [REP7-026] that it remained in discussion with NZTP regarding PPs and then submitted PPs for NZT made Order at DL8 [REP8-016].

6.7.196. In its closing statement at DL8 [REP8-063] NZTP state that although some progress had been made with negotiations, it understood that the applicant will be maintaining its position on outstanding and not-agreed issues. NZTP list these issues, which include matters of insurance requirements and the need to control part of the Order powers, which it states are highly unusual and constitutes a major omission. On the basis of the outstanding issues, NZTP stated that it objects to the proposed development on the basis of the applicant PPs that have been included in the dDCO. Its closing statement was accompanied by its preferred version of PPs [REP8-065].

6.7.197. In its final commentary at DL9 [REP9-023] the applicant stated that further discussions between the parties have been held and although positions have narrowed there remain some differences, in particular relating to insurance and regulation of DCO powers. The applicant contests that it has not generally provided insurance to protect statutory undertakes and the indemnity provided to NZTP at paragraph 8 of the PPs gives sufficient protection and further, that is for the applicant to determine whether insurance is required to cover any works and it is inappropriate for the Order to state how this is done.

6.7.198. With regard to regulation of powers in the Order, the applicant goes on to state that it is not appropriate to include wide ranging restrictions, which '…*goes to the heart of powers required to deliver the authorised development…'* and the imposition of the need to seek approvals could dramatically delay delivery of the proposed development. The applicant also refers the ExA to the consented Immingham Green Energy Terminal decision letter, paragraph 183 in relation to Network Rail, to support its argument.

6.7.199. The applicant concludes that, notwithstanding these outstanding points of difference, positive engagement remains including a side agreement to ensure the interfaces between the respective projects are sufficiently protected. The applicant maintains that the PPs included on the face of its final dDCO are sufficient to allow for the grant of CA powers without causing serious detriment to NZTP.

6.7.200. NZTP did not formally withdraw its objection by the close of the examination.

6.7.201. The applicant submitted a final version of the PPs in favour of NZTP at DL8 [REP8-016], which was an update from that included in its final dDCOs.

ExA's Consideration regarding the objection from Net Zero Teesside Power Ltd

6.7.202. The ExA considers that although NZTP only entered the examination at DL7a, NZTP and the applicant have progressed negotiations and we have been updated on progress through submissions from both parties in the latter stages of the examination.

6.7.203. We have been clear that we will include one set of PPs in our rDCO, therefore we have compared the final PPs provided by the applicant and NZTP which still have some divergence and differences but in most parts are agreed. The outstanding differences between the parties preferred version of PPs at the close of the examination were limited to two parts being the applicant's exclusion of NZTP paragraphs 6 relating to regulation of powers and paragraphs 9(7) and (8) relating to insurance.

6.7.204. NZTP are an undertaker for a consented Order for constructing a NSIP. We consider it is appropriate for NZTP to have protection from certain powers in the DCO for the proposed development which can only be exercised with written consent and therefore we agree that these protections should be included within PPs for NZTP. We consider that the applicant's reference to the consented Immingham Green Terminal Order is not reflective of the circumstances for NZTP and therefore we have given this little weight.

6.7.205. Regarding insurance and indemnity, we agree with the applicant that it is not appropriate to state how it covers the works and that it has shown in the application that it has sufficient funds to cover compensation and claims and it should be able to determine how this is done.

6.7.206. Overall we consider that due to NZTP needing to protect its consented Order, the overriding need for NZTP to be protected from unrestricted powers in the Order for the proposed development leads us to consider it most appropriate to include NZTPs preferred PPs in the rDCO. However, we also consider that within these PPs it is not appropriate to include paragraphs 9(7) and (8) regarding insurance and indemnity and as such the ExA have removed this from the version in the rDCO and the APV of the dDCO.

6.7.207. In summary, with the inclusion of PPs as detailed, we consider that the applicant has provided sufficient justification for the CA of rights and TP of land. We are also satisfied that the proposed powers of CA in relation to the objectors' land and/ or rights would be necessary for the delivery of the proposed development and justified in the public interest. We accept that further negotiations may have led the parties to agree commercial and land matters along with PPs, but in the absence of such we have included NZTP s version of PPs at 42 of the rDCO in appendix D of this report and Schedule 43 of the APV of the dDCO in appendix E of this report. However, we consider that paragraphs 9(7) and (8) are not appropriate and these have been removed from the final versions of the Orders.

NPL Waste Management Ltd

6.7.208. NPL Waste Management Ltd (NPL Waste) have Category 1 and 2 Person interest, with CA and TP powers being sought over this land by the applicant. NPL Waste did not submit a RR and engaged with the examination only at DL7a [REP7a-066], NPL did not attend either of the two CAHs.

6.7.209. In its DL7a submission, NPL Waste stated that it was yet to reach a voluntary agreement with the applicant and it had four main concerns which it sought to ensure were covered in the Order. These matters were in regard to compensation;

disposal of hazardous and contaminated soils; reinstatement of a high security fence; and adequate reinstatement of its land.

6.7.210. In its response to DL7a submissions [REP8-018] the applicant responded to all these matters, stating that all are covered in requirements within the Order or in regard to compensation, this is covered by statute or will be within a voluntary agreement between the parties.

ExA's Consideration regarding the submission from NPL Waste

6.7.211. The ExA considers that although NPL Waste did not state an objection to the proposed development of powers associated with land rights, it is appropriate to address matters in this chapter of the report.

6.7.212. We consider that the matters raised by NPL Waste have been adequately addressed by the applicant and we agree with its assessment of the protection that is within the Order in regard to the matters raised by NPL Waste.

North Tees Group Ltd

6.7.213. North Tees Group (NTG) related companies include North Tees Land Limited; North Tees Landfill Sites (Cowpen) Limited; North Tees Rail Limited; and North Tees Waste Management Cowpen Limited. NTG have Category 1 and 2 Person interest, with CA and TP powers being sought over this land by the applicant. NTG did not submit a RR and engaged with the examination at DL7, NTG did not attend either of the two CAHs.

6.7.214. NTG stated in its DL7 submission [REP7-053] that it supported the principle of the development but object to the application due to matters relating to land and rights. NTG were seeking to maintain to the fullest extent possible its rights of access and freehold ownership and were seeking suitable PPs for its benefit, which should include matters such as access; routing of pipeline and its impact on land and access now and in the future; protection of monitoring boreholes; and future developments of its own, including a weighbridge. NTG also expressed concern that the dDCO did not contain PPs relating to the protection of the link line corridor that is operated by Sembcorp.

6.7.215. NTG provided further commentary at DL8 [REP8-067] and provided its own version of the PPs [REP8-068]; in this NTG also included additional PPs for owners and operators of the 'link line corridor'.

6.7.216. The applicant provided a form of PPs in its DL7a dDCO [REP7a-003] (APV)/ [REP7a-006] (WCBAV); it also provided statements on the outstanding issues that had prevented PPs being agreed [REP7a-036]. The applicant states that the PPs are based on those within the approved The NZT Order 2024 and subject to some minor changes in respect of the proposed development and it considers these to still be appropriate. Regarding the protection of the link line corridor that is operated by Sembcorp, the applicant notes that PPs have been incorporated in the dDCO in favour of Sembcorp and also for SABIC (SABIC UK Petrochemicals Limited) which addresses this.

6.7.217. Further to this, at DL9, being the last day of the examination, the applicant gave a full reply to NTGs DL7 and DL8 submissions [REP9-021]. The applicant confirms that it will maintain access for NTG where required and, specifically regarding access to Huntsman Drive, there is updated wording regarding this is the latest version of the applicant's PPs for NTG. The applicant also states that it has included

protection in the PPs for NTG in regard to its responsibilities for borehole monitoring. In respect of planning permissions, article 39 of the Order now gives protection to third parties. With regard to specific plots NTG have concerns over regarding access, the applicant states that it will liaise further with NTG and commitments in the CEMP and PPs give adequate protection.

6.7.218. The applicant submitted a version of the PPs at Schedule 41 of its APV final revision of the dDCO [REP7a-003] and Schedule 40 within the WCBAV of the dDCO [REP7a-006] in favour of NTG however, following further negotiations with NTG the applicant provided a further, final updated version at DL9 [REP9-014].

ExA's Consideration regarding the objection from North Tees Group

6.7.219. The ExA considers that although NTG only entered the examination at DL7, NTG and the applicant have progressed negotiations and we have been updated on progress through submissions from both parties in the latter stages of the examination.

6.7.220. NTG have been clear that it would not withdraw its objection, which was not an objection to the proposed development but to CA rights being sought, without appropriate PPs or a commercial agreement being agreed; we note that NTG's objection was not withdrawn by the close of the examination.

6.7.221. The ExA notes that the applicant's reply to NTGs submissions at DL9 gave NTG no opportunity to respond. However, we consider that the applicant's DL9 commentary is helpful to the ExA as it has given certain assurances and endeavoured to resolve some outstanding issues. Whilst the IP has not had the opportunity to reply, the applicant was utilising a final right of reply to address some of the IPs remaining points of concerns. As such the ExA considers it can consider and rely on the applicant's PPs and comments submitted at DL9.

6.7.222. We have, however, been clear that we will include one set of PPs in our rDCO, therefore we have compared the final PPs provided by the applicant and NTG which still have significant divergence and differences in drafting and content.

6.7.223. We have not laid in detail all of the drafting differences in the preferred PPs between the parties and following comparison of the PPs from each party the points of difference appear to be extensive and we do not list each item here.

6.7.224. However, we consider that overall the PPs provided by the applicant at DL9 take account of most of the points raised by NTG and as it is substantially based on the PPs included in the NZT Order for the benefit of NTG, in this case we believe this precedent is appropriate to be used.

6.7.225. Therefore, on balance, we consider the applicant's preferred PPs are most suitable and provide a suitable protection for NTG.

6.7.226. In summary, with the inclusion of PPs as detailed, we consider that the applicant has provided sufficient justification for the CA of land and rights and TP of land. We are also satisfied that the proposed powers of CA in relation to the objectors' land and/ or rights would be necessary for the delivery of the proposed development and justified in the public interest. We accept that further negotiations may have continued after the close of the examination, potentially leading the parties to agree commercial and land matters along with PPs, but in the absence of such information we have included the applicant's latest version of PPs at Schedule 40 of the rDCO

in appendix D of this report and Schedule 41 of the APV of the dDCO in appendix E of this report.

Mrs Shirley Peel

6.7.227. Mrs Peel is the owner of some 20,650m^2 of land within the Order limits which the BoR describes as "...*grassland, trees, hedgerow and public right of way, north of Cowpen Lane, Cowpen Bewley, Billingham*". Mrs Peel has Category 1 Person interests and CA and TP powers are sought over this land by the applicant. A RR was submitted on behalf of Mrs Peel [RR-018]. However, there was no further engagement in the examination and there was no representation at either of the two CAHs.

6.7.228. The RR from Mrs Peel highlighted concerns regarding land drainage and also suggested that alternative routing of the pipeline east of the A1185 and through the Cowpen Bewley Woodland Park should be considered. Although the RR did not specify an objection to the proposed development, the applicant's land rights tracker [REP7a-013] and [AS-056] identifies that an objection is made.

6.7.229. In its response to RRs [REP1-007] the applicant states that the alternative route suggested by Mrs Peel was carefully considered and discounted due to constraints including existing utilities and its protection zones. In addition, it states that the land on the alternative route is partially designated a Special Protection Area and partially historic landfill. This alternative route would also increase the interaction with the Cowpen Bewley Open Space Land.

6.7.230. Regarding land drainage, the applicant goes on to state that section 4.2 of the Framework CEMP, relating to drainage, [REP8-003] APV/ [REP8-041] WCBAV will apply to any interactions with field drainage. The applicant also states that it will work collaboratively with Mrs Peel and her representatives to ensure that any new drainage designs are sufficient to prevent any deterioration of drainage in Mrs Peel's land and that this will be included in an agreement with Mrs Peel.

6.7.231. Mrs Peel did not formally withdraw the objection by the close of the examination or comment on the status of legal agreements.

6.7.232. The applicant's final land rights tracker [REP7a-013] and [AS-056] states that it has successfully negotiated heads of terms with Mrs Peel's legal representative and there were no outstanding issues remaining. The applicant's legal representatives have been instructed to proceed with the legal agreements, which were issued on 11th of February 2025.

ExA's Consideration regarding the objection from Mrs Shirley Peel

6.7.233. The ExA considers that Mrs Peel and the applicant have continued negotiations through the examination and we have been updated on progress through submissions from the applicant.

6.7.234. We acknowledge that a legal agreement is likely close to being agreed however, it is clear that the agreement did not translate to a completion of a legally binding agreement by the close of the examination and Mrs Peel did not withdraw her objection.

6.7.235. We consider that the applicant has provided sufficient justification for the CA of rights and TP of land. We are also satisfied that the proposed powers of CA in relation to the objectors' land and/ or rights would be necessary for the delivery of the proposed development and justified in the public interest.

Redcar Bulk Terminal Ltd

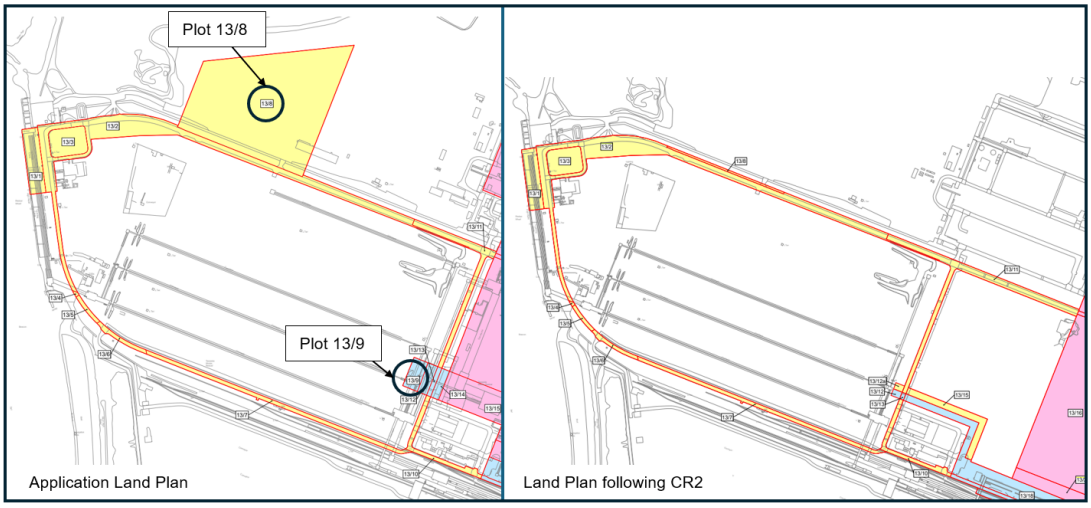
6.7.236. Redcar Bulk Terminals Ltd (RBT) is the operator of the deep-water marine terminal on the east bank of the River Tees. The terminal operates a 320m quay and has 130 hectares (ha) of land used for short and long-term storage and processing of cargos. RBT have Category 1 and 2 Person interest, with CA and TP powers being sought over this land by the applicant. RBT submitted a RR and engaged with the examination throughout including attendance at both CAHs.

6.7.237. In its RR [RR-022] RBT state that it objects to the proposed development which it may be able to withdraw if satisfactory agreements with the applicant are made regarding certain CA and TP powers; removal of certain plots; and the inclusion of PPs in the DCO which safeguard RBT's operation.

6.7.238. In its WR at DL2 [REP2-096] RBT state that it does not object in principle to the proposed development and it reiterates its concerns detailed in its RR. RBT also give more detail about its specific concern regarding the inclusion of certain plots, referencing the need to remove plots 13/8 and 13/9 from the Order.

6.7.239. As part of the CRs, the applicant removed the proposed construction compound and a number of other plots which were within land owned by RBT, including the requested plots 13/8 and 13/9. This is shown in figure 5 with plots 13/8 and 13/9 circled.

Figure 5: Reduction in Redcar Bulk Terminal land plots



6.7.240. The applicant and RBT confirmed that negotiations have continued through the examination. At DL5, RBT provided a version of its preferred PPs [REP5-083] as requested by the ExA. At DL7 [REP7-059] RBT updated its preferred version of PPs, and state that there are three particular issues which remain as not agreed. These issues related to unrestricted CA powers to extinguish rights; the preservation of interests for third parties with rights on its land; and access rights. Notwithstanding this, RBT also stated that it believes the PPs to be largely agreed.

RBT made no further submissions and did not formally withdraw its objection by the close of the examination.

6.7.241. The applicant added PPs into the dDCO at DL5 for RBT. At DL7, in its PP statement [REP7-026] the applicant stated that negotiations continue regarding PPs and a side agreement. However there remain outstanding points which need to be resolved in the side agreement before PPs can be finalised.

6.7.242. At DL7a the applicant provided statements on the outstanding issues that had prevented PPs being agreed [REP7a-032]. Further to this, no further comments were made from either party.

6.7.243. The applicant submitted a final version of the PPs at Schedule 36 within its final APV of the dDCO [REP7a-003] and Schedule 35 of its final WCBAV of the dDCO [REP7a-006] in favour of RBT.

ExA's Consideration regarding the objection from Redcar Bulk Terminal Limited

6.7.244. The ExA considers that RBT and the applicant have continued negotiations through the examination and we have been updated on progress through submissions from both parties.

6.7.245. RBT have been clear that it would not withdraw its objection, which was not an objection to the proposed development but to CA rights being sought, without appropriate PPs or a commercial agreement being agreed; we note that RBT's objection was not withdrawn by the close of the examination.

6.7.246. On the matters raised by RBT in its RR, we consider that the applicant has considered these points and given commentary on this which allows us to confirm that the remaining land in the Order is required and other matters are addressed in PPs. We also note that land plots have been removed from the Order which has reduced areas of land which RBT raised as an issue.

6.7.247. We have not laid in detail all of the drafting differences in the preferred PPs between the parties but we have focused on those matters seen as still in dispute at the close of the examination.

6.7.248. We have, however, been clear that we will include one set of PPs in our rDCO, therefore we have compared the final PPs provided by the applicant and RBT which still appear to have some divergence and differences. We note however, that without further commentary on the detail of the remaining differences between the parties from RBT after DL5, the ExA has not had confirmation of the progress on narrowing the differences or amendments that have been submitted by the applicant.

6.7.249. We consider that the applicant has addressed two of the three primary issues with the PPs that RBT raised at DL7, however it has removed the applicant's requirement to address unrestricted CA and TP powers.

6.7.250. Overall we consider that the PPs provided by the applicant at DL7a and included in its final dDCO have taken into account many of the points raised by RBT at DL5 although there are many drafting changes from that proposed by RBT, some of which we consider could now be agreed.

6.7.251. On balance, we consider the applicant's preferred PPs are most suitable and provide a significantly updated position from that in RBTs DL5 submission.

6.7.252. In summary, with the inclusion of PPs as detailed, we consider that the applicant has provided sufficient justification for the CA of land and rights and TP of land. We are also satisfied that the proposed powers of CA in relation to the objectors' land and/ or rights would be necessary for the delivery of the proposed development and justified in the public interest. We accept that further negotiations may have continued after the close of the examination, potentially leading the parties to agree commercial and land matters along with PPs, but in the absence of such information we have included the applicant's latest version of PPs at Schedule 35 of the rDCO in appendix D of this report and Schedule 36 of the APV of the dDCO in appendix E of this report.

SABIC UK Petrochemicals Ltd

6.7.253. SABIC UK Petrochemicals Limited's (SABIC) operations at South Teesside are primarily the manufacture of ethylene and low-density polyethylene which is linked, via the Link Line Corridor and tunnel, to storage facilities at North Tees. These are supported by large logistical, storage and distribution facilities. SABIC have Category 1 and 2 Person interest, with CA and TP powers being sought over this land by the applicant. SABIC submitted a RR and engaged with the examination throughout including attendance at both CAHs.

6.7.254. In its RR [RR-035] SABIC state that it has a number of concerns regarding the proposed development including access rights and areas where CA and TP rights are sought which are parts of active work sites that SABIC require at all times.

6.7.255. The ExA note that at DL2, we accepted a late RR from SABIC Tees Holdings Limited and SABIC Petrochemicals B.V. (SABIC BV) [REP2-097]. These two companies state it has land rights and requested that the RR and WRs presented by SABIC UK Petrochemicals Limited's were adopted as its own. All subsequent WRs following this were in the names of the three companies, collectively referred to as SABIC.

6.7.256. As part of CR1 the applicant added further plots of land to the Order, including in respect of SABIC's interest and operation. In its RR to CR1 [RR-047] SABIC state that its previous commentary regarding concerns about CA and TP rights and requirement of PPs apply equally to these additional plots.

6.7.257. In its closing submission [REP8-073] SABIC summarises its position regarding the likely impacts on of the proposed development on its operations. SABIC state that its operation is nationally significant, being part of three interconnected sites which produce the entirety of the UK's ethylene manufacture. SABIC liken its operation at Teesside to an electrical circuit where, if the circuit is broken, even temporarily and to a very small extent, the whole circuit fails; SABIC continue to state that the extinguishment or suspension of rights over any part of SABIC's system, would prevent or suspend operations. SABIC go on to state that it is incredibly difficult or impossible to minimise or mitigate for this eventuality.

6.7.258. SABIC conclude by stating the applicant's preferred PPs do not guarantee the continuous operation of SABIC's facilities or provide an indemnity to SABIC to cover its consequential losses arising from such any interruption.

6.7.259. In its DL9 [REP9-023] response, the applicant states that SABIC's assertion that the proposed development will have significant impacts on or risks for its operations is unsupported by any objective analysis and that the risk is *'…a bare assertion'*. The applicant contests that the proposed development has been carefully designed to take account of potential interactions with existing apparatus and businesses and that this will continue through detailed design, construction and operation. The applicant further states that the dDCO and its proposed PPs incorporates significant safeguards which will ensure that there is no adverse impact on SABIC's apparatus or operations.

6.7.260. Throughout the examination, SABIC stated that it believes that its concerns are able to be resolved through suitable PPs. SABIC provided the ExA with its preferred PPs initially at DL3 [REP3-020] which were based on the PPs provided to SABIC in the YPHFO. SABIC updated its preferred PPs at DL8 [REP8-074] and submitted a further update at DL9 on the last day of the examination [REP9-029].

6.7.261. At DL7a the applicant provided statements on the outstanding issues that had prevented PPs being agreed [REP7a-030]. The applicant provided a final version of its preferred PPs at DL8 [REP8-009].

6.7.262. Underlying the differences between the parties PPs has been a debate about which PPs from consented order to use as precedent. SABIC contest that the YPHFO is the most suitable precedent as it affords higher protection in particular in regard to CA powers. The applicant contests that the NZT Order is most relevant as it relates to fundamentally the same type of development in the same location as the proposed development. The applicant goes on to contest that the NZT DCO is more recent and sets out the SoS's position on the balance of risk of SABIC's operation and that SABIC's same arguments were not upheld by the SoS in the NZT Order.

6.7.263. Although there is commentary from both parties to show that there have been compromises and a narrowing of differences through negotiations, a number matters are stated as being at large at the close of the examination in relation to PPs; SABIC detail these in its closing submission [REP8-073] as:

- the exercise of the Order powers relating to CA, TP and access;
- indemnity and insurance provisions for SABIC; and
- inclusion of SABIC BV as an additional beneficiary.

The exercise of the Order powers relating to CA, TP and access

6.7.264. In its DL8 submission [REP8-073] SABIC state that the applicant's PPs do not provide adequate protection against the interruption of SABIC's operations which could occur through the use of CA and TP powers. SABIC also state that the dDCO includes powers which would exclude them from some of its facilities, reiterating that it requires access to its facilities and apparatus at all times.

6.7.265. SABIC explain this in further detail in its DL7a response to ExAs Rule 17 request of 10 February 2025 [REP7a-069]. In explaining its proposed drafting of PPs, SABIC state that its primary concern is with regard to unrestricted CA powers and the ability that would give the applicant to put SABIC's operations at risk. SABIC state that it was afforded protection in the YPHFO and its suggested drafting for the proposed development is similar but less stringent, this wording would require that '…*SABIC's rights cannot be extinguished or suspended unless there is a situation whereby the authorised development cannot be carried out unless this is done'.* SABIC have included wording in its preferred PPs to reflect this.

6.7.266. In its DL9 submission [REP9-023], the applicant counters SABIC's statements regarding the restriction of powers, stating that SABIC's proposed PP drafting would impose unreasonable constraints on the applicant which would jeopardise the delivery of the proposed development. The applicant continues, stating that SABIC's proposed protections would not stop a 'break in the circuit' in so much that, if land was acquired or SABIC's rights were extinguished, this would have no practical effect on the integrity of SABIC's apparatus which would still be there, intact and unchanged.

6.7.267. The applicant summarises its assessment of the adequacy of protection afforded to SABIC from the Order powers stating that the PPs in this regard rely on practical measures rather than specific powers. The cited examples being:

- Paragraph 22 (Mitigation in respect of SABIC apparatus, etc.) which prohibits the applicant from removing or diverting any apparatus, or extinguishing any rights unless and until replacement apparatus has been approved and is in place;
- Paragraphs 3 (Pipeline survey); 4 (Authorisation of works details affecting pipelines or the protected crossing); and 9 to 17 (Further provisions about works and Monitoring for damage to affected assets), which impose rigorous controls with which the undertaker must comply in order to reduce any potential risk to the integrity of SABIC's apparatus; and
- Paragraphs 18 to 20 (Access for construction and maintenance) states that SABIC's access to its apparatus is adequately protected by the applicant's proposed PPs, with the construction access plan an important prerequisite to support this.

Indemnity and insurance provisions for SABIC

6.7.268. SABIC have expressed concerns that the PPs, the Funding Statement [APP-025] and hence guarantees and securities in the Order under Article 47 (Funding for CA compensation), do not take account of the significantly high value of potential losses. SABIC also considers that the SoS cannot assess the cost of indemnity through Article 47 without taking account of the worst-case cost of SABIC's operation failing and ultimately, it is concerned that there is not adequate financial guarantees in place for the risk of failure of its operations.

6.7.269. The applicant explained in its DL6 response to DL5 submissions [REP6-006] that the Funding Statement has assessed compensation levels, but has not included the large sums suggested by SABIC as it has assumed the PPs would be in place to stop such consequences happening. The applicant goes on to state that notwithstanding this, the promoting companies have the financial resources to fund and/ or finance the project including any associated compensation payments or costs. In its DL9 submission [REP9-023], the applicant's also states that the preferred wording in its PPs is consistent with other statutory liabilities of this nature.

Inclusion of SABIC BV as an additional beneficiary

6.7.270. SABIC stated in its submissions, summarised in its closing submission [REP8-073], that the PPs should be extended for the benefit of the 'inventory owner', SABIC BV, which owns the contents of the pipeline but does not have a land interest detailed in the BoR nor owns assets within the Order limits. SABIC state that it is a well-established principle that PPs have a role in protecting the financial position of the person affected and SABIC BV would be a third party at risk of suffering significant financial losses. SABIC state that protection against consequential losses occurs

frequently in the applicant's dDCO, for example those in favour of National Grid Electricity Transmission Plc and National Gas Transmission Plc.

6.7.271. In response, the applicant states in its summary position at DL9 [REP9-023] that, as far as the applicant is aware, there is no precedent for the inclusion of an inventory owner as the beneficiary of PPs in any made DCO; it also cites that SABIC have not identify a made Order in this regard. The applicant also notes that SABIC put forward the same argument in relation to the NZT which the SoS rejected; the applicant argues the proposed development is substantially similar enough to use this as precedent.

PPs in the dDCO

6.7.272. The applicant did not update its final version of the dDCO with the latest updated PPs for SABIC. As detailed previously, the final version of PPs from the applicant was submitted separately at DL8 [REP8-009], being an update to Schedule 34 of the APV of the dDCO [REP7a-003] and Schedule 33 of the WCBAV of the dDCO [REP7a-006] provided at DL7a.

ExA's Consideration regarding the objection from SABIC UK Petrochemicals Limited

6.7.273. We have carefully considered the objections raised by SABIC in regard to the proposed development. Although some matters have been resolved through negotiations during the examination, a number of fundamental issues have remained in disagreement between the parties, primarily in regard to the agreement of PPs.

6.7.274. SABIC have been clear that it would not withdraw its objection without appropriate PPs being agreed; we note that SABIC's objection was not withdrawn by the close of the examination.

6.7.275. We note SABIC's concerns about the need to have uninterrupted continuation of its operations and acknowledge the magnitude of the risk if any part of that operation were affected. We consider that the applicant is cognisant of this and has clarified that it has designed and will continue to design and delivering the proposed development accordingly throughout all phases of the proposed development.

6.7.276. SABIC provided an updated version of its preferred PPs at DL9, however as the applicant has not had the opportunity to comment on this, and therefore taking account of procedural fairness, we consider SABIC previous version of PPs at DL8 as the final version for consideration.

6.7.277. We have not laid in detail all of the drafting differences in the preferred PPs between the parties but we have focused on those matters seen as still in dispute at the close of the examination.

6.7.278. In regard to the main outstanding issues discussed, we consider the following:

- The use of the NZT Order as a precedent for PPs for SABIC is agreed by the ExA; these are the most recent of those debated and have been tested in similar circumstances by the SoS.
- In relation to restriction of powers in the Order, we understand SABIC's concerns, however we agree with the applicant that restrictions of CA powers would potentially compromise the delivery of the proposed development. We also agree that the protections afforded by the applicant's preferred PPs ensure

SABIC's approval is required before changing its asset and affords protection to rights of access; being the main issues raised by SABIC.

- We note the significant potential costs and losses to SABIC for disruption to its operations, however we agree with the applicant that it is not appropriate to consider total loss in the Funding Statement. Notwithstanding this, the ExA considers provisions in the Order and PPs for SABIC do protect them from loss in terms of preventative measures to mitigate risk. We consider Article 47 does not directly protect Sabic for operational losses, however it is given protection in PPs in this regard which the ExA considers is appropriate.
- Regarding the inclusion in the PPs for SABIC BV, the ExA considers that this was presented clearly as a request in the NZT Order and the SoS considered it not appropriate to include in the made Order.

6.7.279. We have been clear that we will include one set of PPs in our rDCO, therefore we have compared the final PPs provided by the applicant and SABIC which still have significant divergence and differences.

6.7.280. Taking the above into account, overall we consider that the PPs provided by the applicant at DL8 have taken into account many of the points raised by SABIC and on balance, we consider the applicant's preferred PPs are most suitable.

6.7.281. In summary, with the inclusion of PPs as detailed, we consider that the applicant has provided sufficient justification for the CA of land and rights and TP of land. We are also satisfied that the proposed powers of CA in relation to the objectors' land and/ or rights would be necessary for the delivery of the proposed development and justified in the public interest. We accept that further negotiations may have continued after the close of the examination, potentially leading the parties to agree commercial and land matters along with PPs, but in the absence of such information we have included the applicant's latest version of PPs at Schedule 33 of the rDCO in appendix D of this report and Schedule 34 of the APV of the dDCO in appendix E of this report.

The South Tees Group

6.7.282. South Tees Developments Limited own and manage the majority of The Teesworks site which covers 4,500 acres on the south of the River Tees, of which approximately 2,000 acres is developable land; the Teesworks site is overseen by Teesworks Limited. South Tees Developments Ltd is a wholly owned subsidiary of a mayoral development corporation, South Tees Development Corporation. The representations into the examination have been in respect of the interests of all three companies and are collectively referenced as the STG. The STG have Category 1 and 2 Person interest, with CA and TP powers being sought over this land by the applicant. The STG submitted a RR and engaged with the examination throughout including attendance at both CAHs.

6.7.283. In its RR [RR-003] the STG raised a number of concerns relating to land, access and interfaces with other projects on the STGs land. STG state that although it supports the proposed development in principle, it submits a holding objection.

6.7.284. During the examination, the STG and the applicant continued negotiations on a side agreement as well as PPs and technical discussion to resolve issues raised by the STG. Although some matters were resolved or progressed during the course of the examination, in its closing submission at DL8 [REP8-078] and reiterated at DL9 on the last day of the examination [REP9-032], the STG retained unresolved objections. These unresolved objections related to

- land matters in and around the main site;
- the potential impact on the STG land outside of the Order limits from hazardous installation risk zones; and
- Non agreement of PPs for the STG.

Land at the main site

6.7.285. In its RR, the STG detailed that one of its primary issues was relating to excessive land area within the Order limits and suggested that this was larger than required and in its WR at DL2 [REP2-111] requested discussions in order to reduce this.

6.7.286. Following the applicant's submission of the order width explanatory note [REP2-037], the STG were concerned that this report did not include an explanation regarding the need for land at the main site. In its DL3 WR [REP3-024] it also raised the issue of the demarcation between phases 1 and 2 as a '*key line of enquiry'* and noted that it was discussing prospective land transactions with other parties in relation to the land at the main site.

6.7.287. At paragraph 5.2 of its DL3 report, the STG introduce its view that the applicant is yet to decide on the siting of the phase 2 works and may not do so for some years. STG go on to state that the CA guidance is clear that the applicant must have a clear need for the land and raise the question in paragraph 5.3 as to why the applicant cannot bring forward a separate consent for phase 2 once land requirements are known.

6.7.288. The ExA examined this point at length in ExQs and at CAH2. We also included matters relating to the need for land which was also being proposed for other developments at the main site, ie the consented NZT and HyGreen, both of which are also being promoted by the main promoter of the proposed development. The examination of this matter included the request for alternative plans for the main site which detailed in interface between these different developments and further details of the progress of the HyGreen proposal.

6.7.289. Notwithstanding this line of enquiry, as part of CR1 the applicant removed a number of plots from the Order. In relation to the main site this reduction was 50.7ha mainly in the area already consented for NZT. Subsequently at CR2 a further reduction was made at the main site as a consequence of removing land options for phase 2. This is seen as change 5 in the CR2 report [REP7-011]. The change to the extent of land included in the Order limits at the main site between the original application and final Land Plans is shown in figure 6.

6.7.290. Following the submission of CR2, the STG provided comments [REP7a-077] to the extent that it welcomes the reduction in land required at the main site but state that this reduction is not sufficient. STG state that three elements clash with another infrastructure development that it is bringing forward These areas are referred to as 'the retrained Phase 2 land; the 'Red Main construction access'; and 'the pipeline to the main RBT land'. The STG also submits that there is no justification for including these areas in the proposed development and that the "compelling case in the public interest" test has not been met. Further, in its closing statement [REP8-078], the STG add it considered it is '*extremely doubtful that Phase 2 will ever be implemented'.*

Figure 6: Changes to land plots at the main site and the Foundry

6.7.291. Finally, at DL9 [REP9-032], the STG reaffirm its position regarding the applicant's case for the phase 2 land. STG reiterates its belief that phase 2 is speculative, evidencing that CR2 was late and with extensive change, therefore proposals are not developed (ExA's interpretation of this point). STG also reiterate a point it has made previously in the examination and state that the applicant has not complied "*…with paragraph 25 of the relevant 2013 guidance, which states that "…authority to acquire land compulsorily should only be sought as part of an order granting development consent if attempts to acquire by agreement fail."* The STG state that negotiations for Phase 2 land, at the applicant's preference, have not commenced. The STG also state that it is its right as a private landowner to develop the site in the way that it considers would best bring benefits to Teesside, and the extent of the land in the Order would be an infringement upon those rights and is not justified.

6.7.292. Reinforcing comments in earlier submissions, the STG reiterate in its DL9 submission that it has alternative development proposals for the Foundry site and it

has an outline planning permission for the whole of this site. STG go on to say that it believes there is reasonable prospect that this development could be approved via reserved matters approval within six months of the close of the examination.

6.7.293. The STG conclude its DL9 submission by maintaining its objection of the proposed development insofar as it contests it would sterilise or limit its ability to regenerate the land holding it is responsible for. As such, it requests that the land parcels discussed in relation to the phase 2 works are removed from the Order.

6.7.294. At DL8 [REP8-020] and DL9 [REP9-024], the applicant submitted responses to the STGs objection relating to the main site. The applicant states that the need has been proven as part of the UKs hydrogen target, with phase 2 providing 5% of the UKs total target. The applicants states that the SoS's s35 direction was for the applicant to bring forward a two-phase scheme with a capacity of up to 1,200 MW, the reasoning included that "*The proposed Project will play an important role in enabling an energy system that meets the UK's commitment to reduce carbon emissions and the Government's objectives to create secure, reliable and affordable energy supply for customers*"; the applicant states that this direction recognises that phases 1 and 2 together constitute a nationally significant infrastructure project. It also states that the need case for phase 2 is in line with NPS EN-1 and constitutes Critical National Priority infrastructure.

6.7.295. The applicant contests that there is no basis in law, policy or guidance to require absolute certainty of delivering a project, but reiterates that phase 2 is supported by policy as detailed in the SoR [APP-024] and Need Statement [APP-033] and furthermore the Funding Statement [APP-025] has shown that phase 2 is secured as part of the overall cost consideration and affordability; for clarity, the Supplementary Funding Statement [CR1-014] states that with CR1 there is no change to the estimated cost in relation to phase 1 or 2 as a result of the CR.

6.7.296. Regarding the STGs submissions regarding alternative development proposals being progressed for the phase 2 land, the applicant states that the alternative has not been detailed as nationally significant infrastructure. In addition, the applicant states that the certainty of the proposal coming forward cannot be judged as no information relating to these proposals was available by the close of the examination, either in the outline planning application which the STG refers, or in the public domain.

6.7.297. With regard to the STGs comments about needing to acquire land voluntarily, the applicant states that it has made clear that its position is to secure the land option over the Phase 1 land first which would set a commercial baseline for the negotiations for Phase 2 land. STG further explain that these subsequent negotiations would involve the same parties for an adjacent piece of land with similar characteristics.

6.7.298. In addition to the issues raised and examined above, the applicant raised a further consequence of the STGs request to remove phase 2 land from the Order in that, this area is proposed to be used as a construction compound and laydown area for phase 1 and without this, phase 1 either could not be constructed or there would be consequences for the Order limits. In reply at DL9 [REP9-032] the STG contest that it has offered the applicant alternative and suitable locations for a compound and the applicant has failed to accept the STG's offer, which it remains amenable to. The STG also state that the applicant has not attempted to negotiate an interest in the land for this compound site.

ExA's consideration regarding land at the main site

6.7.299. The ExA acknowledges that land matters relating to phase 1 are not in question and that commercial agreement is being discussed and progressed between the parties for a negotiated agreement.

6.7.300. We consider that the initial submission for CA at the main site, which included options for phase 2 and overlapped significantly with the proposed NZT and HyGreen project were excessive. However, we tested this matter extensively during the examination and as part of both CR1 and CR2, the area of land required was reduced significantly. This reduction has removed the applicant's wider options for the location of phase 2 but retained sufficient flexibility for its proposals. The ExA consider that these changes were wholly beneficial.

6.7.301. We accept that the STG said as early as DL2 that some of the land requirements were excessive and could sterilise parts of the site that could be developed, however we agree with the applicant that no specific details in this regard were made until CAH1. In its summary of oral representation at CAH1, the STG state that there was a potential developer that could make use of part of the Foundry site. No detail was given then or subsequently into the examination as to what, who, when or indeed any details that could be helpful to understand the magnitude of the issue. We therefore give this little weight in our consideration of land matters at the main site.

6.7.302. We consider that the land requirements in the Order subsequent to CR1 and CR2 in relation to the phase 2 land is wholly appropriate for delivery of the proposed development. Similarly, we consider that the issues raised regarding the Red Main route and pipelines in the vicinity of the main site are also necessary and proportionate. We acknowledge that the STG did not raise the issues of subsidiary plots until DL7 however was also accept that these particular points only became apparent as a consequence of reducing the main site area in CR2; nevertheless, this does not alter our consideration on the matter.

6.7.303. The issue of using the phase 2 land as a construction compound was not raised until mid-way through the examination and although there may be alternatives which the STG could provide, the ExA accepts that this would impact the Order limits and also that it is not unreasonable to use land which will be permanently acquired for temporary purposes. However, we do accept the STGs argument that the applicant has not tried to secure this land for temporary purposes for the construction of phase 2, however, as this was only raised at DL9 being the last day of the examination, we have not had the benefit of the applicant's reply and therefore give this little weight in our considerations.

6.7.304. We have considered the STG's contention that the applicant has not fulfilled the requirements in the 2013 CA guidance in respect of paragraph 25. We consider that the way the STG have paraphrased this paragraph in its submissions gives a misleading emphasis. The full passage of text, of which the STG only quote part, states that *"applicants should seek to acquire land by negotiation wherever practicable. As a general rule, authority to acquire land compulsorily should only be sought as part of an order granting development consent if attempts to acquire by agreement fail."* paragraph 25 continues to state that…. "*Where proposals would entail the compulsory acquisition of many separate plots of land (such as for long, linear schemes) it may not always be practicable to acquire by agreement each plot of land. Where this is the case it is reasonable to include provision authorising compulsory acquisition covering all the land required at the outset*."

6.7.305. The ExA considers that the applicant's explanation that it is negotiating commercial agreement for phase 1 and will then use that as the basis for phase 2 is entirely reasonable in this situation and is not in opposition to the CA guidance, as this states that CA after consented agreement is a general rule, and we consider that in this situation the applicant has made an acceptable case for not following that general rule. We therefore give this line of argument from the STG no weight in our consideration of land matters at the main site.

6.7.306. Turning to the STG contention that it is sceptical about phase 2 going ahead. We find this line of argument unsubstantiated and broadly based only on the lack of negotiation on a voluntary commercial agreement for phase 2 not starting, which we have addressed above. The STG also stated in its DL9 submission that recent public announcements by BP Plc regarding reducing certain investment in alternative fuel supported its position, however we find that this is not the case.

6.7.307. Considering the STGs comments regarding alternative development proposals that it states is being brought forward for the Foundry site. We acknowledge this potential however, by the close of the examination there was no information available to the applicant or the ExA in this regard and as such we consider it can only be considered speculative. Therefore, we give this no weight in our consideration of this matter.

6.7.308. Overall, we consider that the applicant has endeavoured to meet the requests from the STG, including the reduction of land within the Order at the main site, however, there remains outstanding concerns from the STG regarding the impact of CA and TP powers on the land outside the Order limits. We consider that the applicant's final land requirements are wholly proportionate, meet the required need as set out in the relevant application documents and any impact on private rights are necessary, proportionate and in the public interest.

Hazardous installation risk zones

6.7.309. At DL7 [REP7-062] the STG raised an issue which relates to the potential sterilisation of land outside of the Order limits which could result from the applicant's hazardous substance consent (HSC) application to the Health and Safety Executive (HSE).

6.7.310. In summary, the STG are concerned that if hazardous substances are stored in a way which would lead HSE to create a hazardous installation risk zone, in particular the highest level of risk known as an inner zone, this could restrict the type of development able to be delivered in the vicinity of the proposed development.

6.7.311. The STG state that the outline planning permission for the overall development of the Foundry site, which includes the main site of the proposed development, did not have conditions attached relating to restriction on type of development as a result of HSE hazardous zones.

6.7.312. The STG argue that since this issue has been raised, the applicant has not provided information regarding the anticipated HSE consultation zones to support an understanding of the potential impact. STG also state that it did not raise this prior to DL7 as the issue is only seen since the reduction of land at the main site as presented in CR2, prior to this it considered that the land removed to CR2 acted as a natural buffer between the STG land and the proposed development.

6.7.313. In its explanation of the issue, the STG state that it has another development coming forward which could be given planning permission in advance of the applicant applying for HSC. STG continue to conjecture that if this were the case, the applicant may be put in a compromised position as the HSE would have to take that into account when considering consultation zones.

6.7.314. The STG conclude that it objects to the Order being consented without the inclusion of a satisfactory requirement for the applicant to design and operate the proposed development in a way that keeps any HSE inner zone within its Order limits; the STG inserted proposed wording in this regard into its preferred PPs.

6.7.315. In reply to the STG at DL8 [REP8-020] and DL9 [REP9-024] the applicant considers that the STG have not provided reason for the inclusion of this issue into the examination only at DL7, apart from the argument of the removed land at the main site creating a buffer zone. It contests this is not a reasoned justification for the lateness of the issue being raised and that the STG have been fully aware of the nature of the development in the land being sought and the likely impact on its surrounding land.

6.7.316. Regarding the suggested additional wording in the PPs proposed by the STG, the applicant states that placing conditions relating to "…*unsubstantiated potential prospects of an unspecified alternative development that might be affected by the Proposed Development.."* would be "…*unreasonable; impossible for the applicant to comply with; and which would be likely to render the Proposed Development undeliverable*…" and as such contest this should not be included in the PPs for the STG and believe this it is unreasonable and undeliverable. The applicant cites paragraph 4.1.16 of NPS EN-1, in that the SoS should only impose requirements that are necessary and reasonable and state that the extent of the inner zone is beyond the control of the applicant as this will be determined wholly by the HSE.

ExA's consideration regarding hazardous installation risk zones

6.7.317. The ExA agrees with the STG that the issue of potential hazardous risk zones could impact land outside the Order limits of the proposed development, of which the applicant also accepts.

6.7.318. However, the ExA agrees with the applicant that this issue was entered into the examination at a late stage, being DL7 which was only just over three weeks before the close of the examination. This left limited time for the ExA to consider the issue in more detail and there was also limited time for the applicant to make meaningful changes; we consider the applicant has responded promptly and in detail.

6.7.319. We agree with the applicant that the STG could have foreseen the potential impact of a hazardous risk zone on its adjacent land, both before or after the reduction of land at the main site seen at CR2. We further agree with the applicant that there is no material difference in the potential impact between before and after CR2 and the land removed at CR2 was not providing a buffer zone as there was no certainty of where hazardous material would be stored in either scenario.

6.7.320. Turning to the matter of another proposed development coming forward in the vicinity of the main site. We consider that the outline planning permission for the wider Foundry site does not include restrictions on HSE zones but agree with the applicant that any new development that does come forward would need to take account of the factors in the proposed development if consented.

6.7.321. With regard to the inclusion of the STGs proposal for additional wording in PPs to require the applicant to design its storage in a way that precludes a HSE inner zone. We agree with the applicant that it would be unreasonable to require this restriction and it would also be a condition that would be out with its control and we have therefore not included it in our rDCO.

6.7.322. Overall, we find that the applicant has undertaken all appropriate considerations of this matter and the proposed development would be potentially impacted if we placed any restriction in the Order in this regard. We consider that the STG have entered this matter into the examination late in the process and we give no weight to this issue.

Protective Provisions

6.7.323. The STG provided the ExA with its preferred PPs initially at DL5 [REP5-088]. At DL7a the applicant provided updated statements on the outstanding issues that had prevented PPs being agreed [REP7a-027]. Both the STG and the applicant provided updates to PPs through the examination with the STGs final referred PPs submitted at DL8 [REP8-079] and the applicant's final version submitted as a standalone document at DL9 [REP9-010]; this was an update from that seen in the last version of the dDCO [REP7a-003].

6.7.324. The ExA have reviewed the outstanding differences between the PPs proposed by the STG and the applicant. In general, there appear to be drafting differences in regard to descriptions and the request from the STG for certain costs to be included. The outstanding matters are primarily:

- Control of Works;
- New requirement from the STG to limit unrestricted CA powers; and
- The STG request removal of what it considers are unnecessary processes for diversion works.

6.7.325. The STG have suggested that certain wording in the Control of Works section, paragraphs 3 and 4 should be changed such that it is required for all works to be submitted to the STG for approval; the applicant's version excludes Works No 1 from this. The STG argue that as Work No.1 is the main work in the proposed development, excluding just this element from a requirement for the STG's approval is unacceptable; it also notes that the STGs approval for all works is precedented in the consented NZT Order. In addition to this at paragraph 5, the STG consider that there should not be restrictions on the conditions it may need to impose on preliminary works, it states that this was also not seen in the NZT.

6.7.326. In its DL7a submission [REP7a-027] the applicant has responded to the STGs comments, most of which remain relevant at the close of the examination. With regard to the exclusion of Work No 1 from the ability of the STG to approve works, the applicant states that these works will be self-contained and it would have sole control over this work. The applicant states that it is not reasonable or necessary for the PPs to give the STG control over works that are not near to, nor would impact on, the STGs interests. Similarly regarding paragraph 5, the applicant states that it is not reasonable for the STG to have wide ranging powers to impose conditions which could potentially see the imposition of conditions or requirements that could '…*effectively result in the authorised development not being able to be constructed*.'

6.7.327. With regard to CA powers, in its RR and in further submissions, the STG raise concerns that the applicant is requesting significantly more land and rights than was

reasonably required for the proposed development. This, it argues, related to areas and widths of pipeline and service corridors, and was a factor primarily of undeveloped designs leading to more uncertainty than would be expected, particularly in a constrained location.

6.7.328. This matter was examined during the examination and some reduction to land extents were made, but not specifically regarding pipeline corridor widths. The STG consider that the powers of suspension and extinguishment of rights is too wide ranging and the applicant should not have unrestricted powers. This is considered important to the STG due to the nature of the site and the STG's role in managing it; it has proposed an additional paragraph in the PPs in this regard.

6.7.329. In response, the applicant argues that it needs the ability to deliver the proposed development utilising the land shown on the Order limits and contest that giving the STG the ability to *'…essentially stymie…'* the development by refusing consent to utilise the land could mean that the substantial public benefits that it considers exist for the authorised development may not be realised.

6.7.330. Within the PPs there is a section relating to diversion works and diversion notices. The STG have suggested that three paragraphs are removed from the applicant's preferred PPs which are in relation to further deadlines and information to be supplied in this regard.

6.7.331. In its DL9 response to the STGs DL8 submission [REP9-024], the applicant has made some concessions to the STG in regard to certain articles and terminology but contests that changes to diversion work is contrary to the cost provisions outlined in other parts of the PPs. The applicant also reiterates that the STGs proposed paragraph relating to HSE hazardous material zones would potentially make the proposed development undeliverable. The applicant provided an updated form of PPs for the STG at DL9 [REP9-010].

ExA's consideration regarding Protective Provisions

6.7.332. Although we have not detailed every difference in the wording between the parties preferred PPs, we have highlighted the main differences in the drafts that have been submitted into the examination.

6.7.333. We have, however, been clear that we will include one set of PPs in our rDCO, therefore we have compared the final PPs provided by the applicant and the STG which have both minor drafting differences along with some fundamental divergences.

6.7.334. We consider that the applicant has addressed some of the STGs concerns and amended its proposed PPs, including in its final DL9 submission. Further to this, we agree with the applicant that the amendments requested in relation to the HSE hazardous zones would be unreasonable and a matter out with the control of the applicant and therefore not in accordance with NPS EN-1. We also agree with the applicant that changes to the diversionary notices and associated wording are not necessary and there is sufficient protection for the STGs operations.

6.7.335. With regard to the matter of unrestricted CA and TP powers which the STG state is unreasonable, we have considered this carefully. Although we accept that the pipeline corridor widths are what we consider to be the maximum justifiable within the context of the Rochdale Envelope application, we consider that the need for the applicant to have CA and TP powers at the main site essential for the delivery of the

proposed development. Therefore, taking these matters into account, we agree with the applicant that the PPs for the STG should not include additional protection over unrestricted CA and TP powers in the Order. We further consider that a voluntary agreement between the parties in this regard should be sought.

6.7.336. The matter of other drafting points we do not itemise here, but consider the applicant's version is appropriate to afford adequate protection to the STG.

6.7.337. We note that that the applicant's DL9 submission of updated PPs was not subsequently available for the STG to comment upon. However, the ExA consider this submission is helpful as the applicant has endeavoured to resolve some outstanding issues. Whilst the STG has not had the opportunity to reply, the applicant was utilising a final right of reply to address some of the STGs points of concerns. As such the ExA considers it can consider and rely on the applicant's PPs submitted at DL9.

6.7.338. On balance, we consider the applicant's preferred PPs provided by the applicant at DL9 [REP9-010] are most suitable and we have added these into the Orders.

ExA's Overall Consideration regarding the objection from The South Tees Group

6.7.339. We have carefully considered the objections raised by the STG in regard to the proposed development. Although some matters have been resolved through negotiations during the examination, a number of fundamental issues have remained in disagreement between the parties.

6.7.340. We have concluded that the applicant has endeavoured to meet the requests from the STG but has not been able to agree to the matters detailed above, namely that of the HSE hazardous substance zones and removal of land for the phase 2 and associated plots, of which we agree with the applicant's position.

6.7.341. We have also concluded that the applicant's PPs are the most suitable version to be inserted in the Order, as detailed in paragraph 6.7.323 of this report.

6.7.342. In summary, with the inclusion of PPs as detailed, we consider that the applicant has provided sufficient justification for the CA of land and rights and TP of land. We are also satisfied that the proposed powers of CA in relation to the objectors' land and/ or rights would be necessary for the delivery of the proposed development and justified in the public interest. We accept that further negotiations may have continued after the close of the examination, potentially leading the parties to agree commercial and land matters along with PPs, but in the absence of such information we consider the applicant's latest version of PPs should be included at Schedule 29 of the rDCO in appendix D of this report and Schedule 30 of the APV of the dDCO in appendix E of this report.

Suez Recycling and Recovery UK Ltd

6.7.343. Suez Recycling and Recovery UK Ltd (Suez) is a global recycling and resource management company and operates a waste management facility in Teesside which has the capacity to manage approximately 376,000 tonnes of waste per year; it also has extant permission for development which would add a further 200,000 tonnes of processing capacity per year. Suez have Category 1 Person interest, with CA and TP powers being sought over this land by the applicant. Suez did not submit a RR and only engaged with the examination at DL7, it did not attend either of the two CAHs.

6.7.344. The submission from Suez [REP7-061] states that it objects to the Order due to disagreeing with a number of commercial matters in the proposed PPs shown in the Order.

6.7.345. Also at DL7, in its PP statement [REP7-026] the applicant stated that heads of terms had been agreed and instructions to proceed with the legal agreements had been issued. There was no mention of PPs in this update, however the land rights tracker at DL7a [REP7a-013] and [AS-056] showed that PPs were still being negotiated.

6.7.346. Despite repeated requests, Suez did not submit its preferred version of PPs to the ExA. Notwithstanding this, at DL7a the applicant provided statements on the outstanding issues that had prevented PPs being agreed [REP7a-019].

6.7.347. Suez did not formally withdraw its objection by the close of the examination or comment on the status of legal agreements.

6.7.348. The applicant submitted a final version of the PPs at Schedule 23 within its final APV of the dDCO [REP7a-003] and Schedule 22 of its WCBAV of the dDCO [REP7a-006] in favour of Suez.

ExA's Consideration regarding the objection from Suez Recycling

6.7.349. The ExA considers that Suez and the applicant have continued negotiations through the examination and we have been updated on progress through submissions from the applicant but Suez only engaged with the examination once at DL7 to register an objection.

6.7.350. We acknowledge that a legal agreement is likely close to being agreed however it is clear that the agreement did not translate to a completion of a legally binding agreement by the close of the examination. Suez did not provide the ExA with a version of its preferred PPs and did not withdraw its objection by the close of the examination.

6.7.351. In summary, with the inclusion of PPs as detailed, we consider that the applicant has provided sufficient justification for the CA of rights and TP of land. We are also satisfied that the proposed powers of CA in relation to the objectors' land and/ or rights would be necessary for the delivery of the proposed development and justified in the public interest. We accept that a side agreement with PPs and/ or PPs to be inserted into the face of the Order may yet be agreed between the parties, but in the absence of an agreement by the close of the examination, we consider that the applicant's preferred PPs for Suez should be included at Schedule 22 of the rDCO in appendix D of this report and Schedule 23 of the APV of the dDCO in appendix E of this report.

Venator Materials UK Limited

6.7.352. Venator Materials UK Limited (Venator) is a supplier of titanium dioxide, timber treatment and functional additive products; it owns and operate the Venator Greatham Works. Venator have Category 1 Person interest, with CA and TP powers being sought over this land by the applicant. Venator submitted a RR and engaged with the examination further at DL1, it did not attend either of the CAHs.

6.7.353. In its RR [RR-034] Venator state that it strongly welcomes the proposed development however, it states there are certain land and operational issues that it considers require resolution; Venator did not state a formal objection.

6.7.354. Venator subsequently provided a WR at DL1 [REP1-051] stating that although it supports the proposed development, the land and operational issues mentioned previously in its RR would need to be resolved before it can give its full support. Venator continued to state that it considers insufficient evidence has been provided to demonstrates that the extent of the CA rights are justified and proportionate and whether all reasonable alternatives have been explored to justify interference with human rights. Venator also highlight that it has proposals to extend its operations and the only land to do this is part of the proposed pipeline route and as such there is a risk of prejudicing the future extension of its Greatham Works; it states that this is supported by local planning policy contained in the Hartlepool Local Plan 2018.

6.7.355. In response to Venators concerns the applicant [REP3-006] explained that sections 5-7 of the SoR [APP-024] outline the CA powers sought, including the justification for those powers. In terms of the consideration of alternatives for the pipeline corridor highlighted by Venator, the applicant cites paragraph 1.1.41 of the SoR which states that alternatives have been considered and these have been refined and flexibility has been retained where design and landowner/ stakeholder negotiations are progressing. The applicant gives support to this approach by reference to CR1 which reduced land requirements in Venator's non-operational land.

6.7.356. The applicant confirmed that negotiations have continued through the examination regarding commercial agreements and PPs. However, despite repeated request, Venator did not submit its preferred version of PPs to the ExA. Notwithstanding this, at DL7a the applicant provided statements on the outstanding issues that had prevented PPs being agreed [REP7a-035].

6.7.357. In its PP statement [REP7-026] the applicant stated that negotiations continue regarding PPs and a side agreement, with outstanding commercial issues to be resolved however, heads of terms have been agreed.

6.7.358. The applicant submitted a final version of the PPs at Schedule 40 within its final APV of the dDCO [REP7a-003] and Schedule 39 of the WCBAV of the dDCO [REP7a-006] in favour of Venator.

ExA's Consideration regarding the objection from Venator Materials UK Limited

6.7.359. The ExA considers that Venator and the applicant have continued negotiations through the examination and we have been updated on progress through submissions, primarily from the applicant. We acknowledge that a side agreement is close to being agreed however it is clear that the agreement did not translate to a completion of a legally binding agreement by the close of the examination.

6.7.360. Venator did not provide the ExA with a version of its preferred PPs and although it did not state a formal objection, we consider the issues it stated require consideration.

6.7.361. We consider that in its reply to Venators only submission into the examination at DL1, the applicant has given reasoned explanation to Venator's concerns and that these have been subject to further negotiation, as stated in the applicant's DL7 update on PPs. We further consider that following these comments the applicant has inserted Article 39 into the Order in respect of third party planning permissions. In respect to Venators comment about human rights, we give our conclusions to this at the end of this chapter.

6.7.362. In summary, with the inclusion of PPs as detailed we consider that the applicant has provided sufficient justification for the CA of land and rights and TP of land. We are also satisfied that the proposed powers of CA in relation to the objectors' land and/ or rights would be necessary for the delivery of the proposed development and justified in the public interest. We accept that a side agreement with PPs and/ or PPs to be inserted into the face of the Order may yet be agreed between the parties, but in the absence of an agreement by the close of the examination, we consider that the applicant's preferred PPs for Venator should be included at Schedule 39 of the rDCO in appendix D of this report and Schedule 40 of the APV of the dDCO in appendix E of this report.

6.8. CONSIDERATION OF STATUTORY UNDERTAKERS LAND

Introduction

6.8.1. A number of RRs and WRs were submitted by affected SUs. Throughout the examination the ExA were updated by both the applicant and most SUs as to progress with negotiations.

6.8.2. We have summarised the substantive matters for each affected SU and consider those with objections which were not withdrawn at the close of the examination which are:

- National Gas Transmission Plc
- National Grid Electricity Transmission Plc
- Network Rail Infrastructure Limited
- Northern Powergrid (Northeast) Plc
- Northumbrian Water
- PD Teesport Limited

Anglian Water

6.8.3. Anglian Water have Category 1 Person interest, with CA and TP powers being sought over this land by the applicant. Anglian Water did not submit a RR and have also not submitted WRs into the examination nor did it attend either of the two CAHs.

6.8.4. Neither the applicant's schedule of negotiations in its initial application [APP-026] nor the land rights tracker [REP7a-013] and [AS-056] gave details regarding negotiations with Anglian Water; there are PPs inserted in the Order at Schedule 15 of the APV of the dDCO [REP7a-003] and Schedule 16 of its WCBAV of the dDCO [REP7a-006] for electricity, gas, water and sewerage undertakers.

ExA's Consideration regarding Anglian Water

6.8.5. The ExA considers Anglian Water have chosen not to engage in the examination in writing or orally at the CAH hearings. In these circumstances we consider that the PP set out at Schedule 16 of the dDCO to be a reasonable protection of Anglian Water's undertaking, apparatus, rights and land interests.

6.8.6. Consequently, the ExA is satisfied that the Order and inclusion of PPs in the rDCO at Schedule 15 of the rDCO and Schedule 16 of the APV of the dDCO are sufficient to ensure that there would be no serious detriment to the carrying on of its undertaking. As such, the ExA considers the tests set out in s127 and s138 of the PA2008 are met in regard to Anglian Water.

National Gas Transmission Plc

6.8.7. National Gas Transmission Plc (NGT) have Category 1 and 2 Person interest, with CA and TP powers being sought over this land by the applicant. NGT submitted a RR [RR-017] and further WRs throughout the examination; it also attended CAH2.

6.8.8. In its DL2 WR [REP2-067] NGT detailed the main issues it was seeking to address, which were related the protection of its asset and related issues in PPs, in particular the unrestricted use of CA and TP powers and rights of access to its assets. NGT further updated the ExA at DL5 [REP5-063] explaining in further detail the issues it raised in DL2 and also concerns that progress was not being made. NGT concluded by stating that the PPs provided by the applicant at that point did not adequately safeguard NGT's obligations and rights and had the potential to give rise to serious detriment in the context of NGT's statutory undertaking.

6.8.9. NGT provided the ExA with its preferred PPs along with a position statement at DL7a [REP7a-059]. NGT consider there was agreement to include protection to limit CA powers but there remained some disagreement about wording, with the applicant arguing that there should be wording for NGT consent '*not to be unreasonably withheld'* with NGT contesting that paragraph 13(2) already imposes this obligation therefore the additional wording is an unnecessary duplication. NGT further contest that the applicant restricting the protection against CA and TP powers so it does '*...not apply to any interest in any land or apparatus of NGT which a third party owns or is the beneficiary of*' represents an unnecessary and unacceptable limitation.

6.8.10. NGT listed further issues regarding a change of emphasis in paragraph 7(3) to which would state that NGT '*must*' take certain steps to assist the applicant to secure alternatives; NGT believe that it cannot be compelled to take such steps and especially if in doing so could place them in breach of its licence obligations or wider statutory duties. NGT state as precedent for inclusion of their preferred wording The National Grid (Yorkshire Green Energy Enablement Project) Order 2024 and similar limitations in the commercial terms agreed in the context of the NZT Order 2024.

6.8.11. A further issue that NGT raise is in relation to costs requirements in paragraph 11(5) where the applicant seeks to require NGT to substantiate costs or compensation, stating that the same paragraph already requires them to use reasonable endeavours to mitigate and to minimise any costs or expenses to which the indemnity applies.

6.8.12. NGTs final substantive issue relates to its proposed additional paragraph at 11(7) which would require the applicant to meet certain requirements before starting construction near NGT assets, which it cites as having precedent in The National Grid (Yorkshire Green Energy Enablement Project) Order 2024, The Mallard Pass Solar Farm Order 2024 and The HyNet Carbon Dioxide Pipeline Order 2024.

6.8.13. NGT also referenced PINS Advice Note 15 paragraph 4.1, saying that this advice "…*expects applicants to submit the standard protective provisions for protected parties with any amendments that the applicant is seeking annotated with full justification included within the Explanatory Memorandum*"; NGT state that the applicant has not justified the changes to NGTs standard PPs. It further states that '*It is NGT's position that, without full and effective mitigation being legally secured, the applicant's proposals will give rise to serious detriment to NGT's statutory undertaking in the context of the application of the statutory test under Section 127(6). Any detriment caused to the carrying out of NGT's undertaking, in*

consequence of the acquisition of the rights, could not be made good by the use of other land belonging to NGT or available for acquisition by NGT'. NGT state that inserting its preferred PPs would mitigate that risk.

6.8.14. The applicant confirmed that negotiations have continued through the examination regarding a side agreement and PPs and at DL7a the applicant provided statements on the outstanding issues that had prevented PPs being agreed [REP7a-017]. Subsequent to this and further to NGTs WR at DL7a the applicant provided further details of its position in its response to DL7a submissions [REP8-018].

6.8.15. The applicant submitted further information in this respect in its response to the ExAs Rule 17 letter of 19 February 2025 [PD-022], where we asked why the applicant had not justified using NGTs standard PPs [REP8-021]. The applicant considers that it has provided full justification in its DL7a submission for making changes to NGTs standard PPs and further expanded on those points. The applicant states that the protections to CA and TP rights it has added to the PPs are adequate and any further restrictions of them could delay the proposed development.

6.8.16. Regarding the requirement that NGT '*must*' take certain steps to assist the applicant to secure alternatives if required, the applicant states that this is not unreasonable and the drafting does not require NGT to act in a way that would breach its licence conditions. The applicant cites that this form of wording has precedent a number of consented DCOs which include this condition, NZT Order 2024; Heckington Fen Solar Park Order 2025; A1 Northumberland - Morpeth to Ellingham Development Consent Order 2024; and A66 Northern Trans-Pennine Development Consent Order 2024).

6.8.17. The applicant state that the additional requirement for NGT to provide details to substantiate any cost or compensation claimed is simply a mechanism to allow the applicant to understand and consider what is being claimed.

6.8.18. Regarding NGTs final issue relating to certain requirements being met before commencement of construction near its assets, the applicant contests that NGT has the benefit of various controls in other parts of the PPs in respect of controlling impacts of works in addition to indemnity provisions. The applicant therefore believes that with these provisions in place there is no realistic prospect that proposed works will have a detrimental impact on the ability of NGTs apparatus to be protected and therefore the proposed additional paragraph is not required.

6.8.19. NGT did not formally withdraw its objection at the end of the examination.

6.8.20. The applicant submitted a final version of the PPs at Schedule 20 within its final APV of the dDCO [REP7a-003] and Schedule 19 of its WCBAV of the dDCO [REP7a-006] in favour of NGT.

ExA's Consideration regarding National Gas Transmission Plc

6.8.21. The ExA considers that NGT and the applicant have continued negotiations through the examination period and we have been updated on progress through submissions from both NGT and the applicant.

6.8.22. On the substantive issues which were not resolved at the close of the examination, we consider them as follows:

- The additional wording that the applicant wishes to introduce to add limitations to the restrictions on CA and TP powers has the effect of reducing the effectiveness of the protection to NGT unnecessarily and could compromise its ability to provide its undertaking; we therefore consider changes to NGTs preferred PPs unwarranted in this regard.
- The inference on the phrasing of paragraph 7(3) which in the applicant's preferred PPs would state that NGT '*must*' take certain steps to assist to secure alternatives in such circumstances puts an onus on NGT that may be unreasonable or require them to undertake actions which conflict with its undertaking. Although the applicant states that it would not make NGT do something which would conflict with its undertaking, the ExA considers that NGTs concern is justified.
- Paragraph 11(5), where the applicant seeks to require NGT to substantiate costs or compensation, has some merit, however we agree with NGT that there is already a requirement for them to use reasonable endeavours to mitigate and to minimise any costs which we consider is adequate in this case.
- That NGTs proposed additional paragraph at 11(7) to require certain conditions to be met before commencement of construction within 15m of NGTs asset is wholly reasonable to ensure there is sufficient security to that asset.

6.8.23. Although we consider most of the outstanding matters in favour of NGT, we are conscious that there is a requirement at 13(2) for any approval or agreement not to be unreasonably withheld or delayed by NGT, therefore overall the applicant can rely on this in its dealings with NGT.

6.8.24. We conclude our considerations such that we agree with NGT that if its preferred PPs are not inserted on the face of the Order, there is potential of serious detriment to its undertaking.

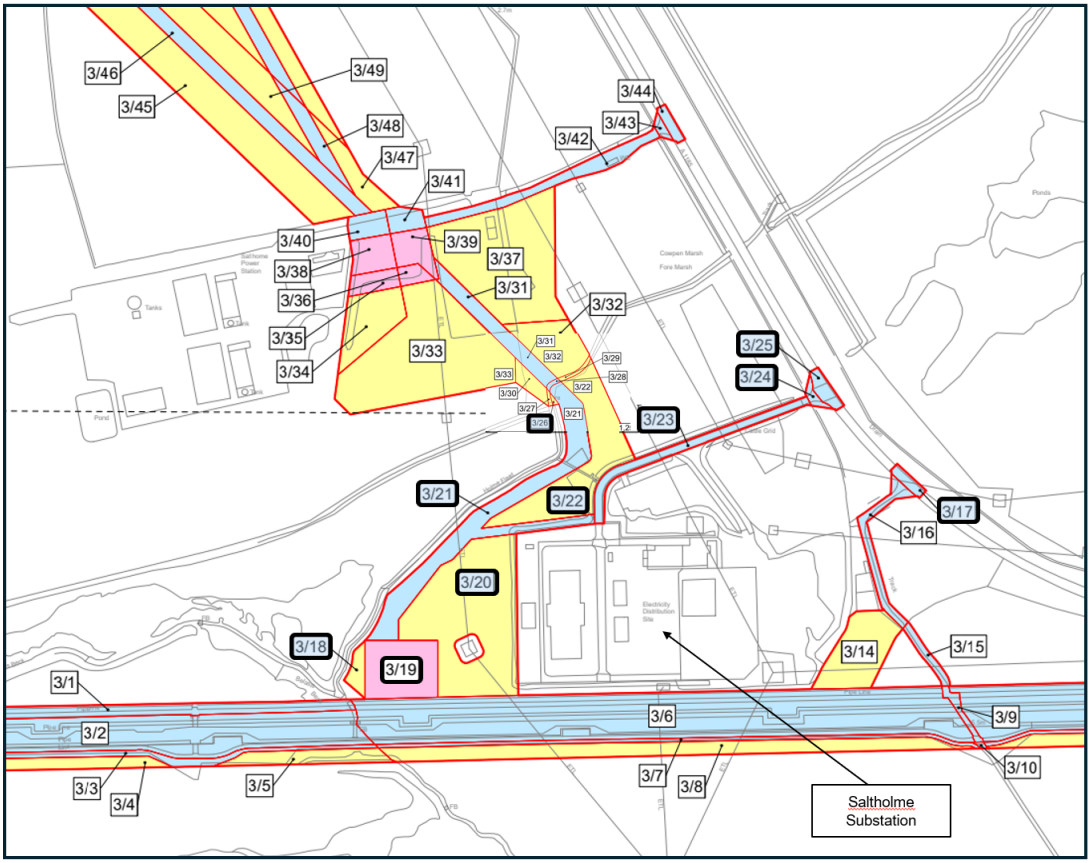
6.8.25. NGT did not formally withdraw its objection at the end of the examination, and the ExA considers that the PPs provided in the applicant's dDCO for the benefit of NGT are not sufficient to ensure that there would be no serious detriment to the carrying on of its undertaking and we consider that the applicant has not provided sufficient evidence that NGTs standard provisions should not apply in this case. As such, the ExA considers the tests set out in s127 and s138 of the PA2008 would be met only with the inclusion of NGTs preferred PPs at Schedule 19 of the rDCO or Schedule 20 of the APV of the dDCO.

National Grid Electricity Transmission Plc

6.8.26. National Grid Electricity Transmission (NGET) have Category 1 and 2 interest, with CA and TP powers being sought over this land by the applicant. NGET submitted a RR [RR-024] and further WRs throughout the examination; it also attended CAH2.

6.8.27. In its RR, NGET detailed a number of issues primarily related to potential development of its Saltholme Substation and the need to protect the land which it owns adjacent to it, which the applicant is seeking to CA, these plots being 3/17 to, 3/23 and 3/24 to 3/26 of the original Land Plan [APP-008], an extract of which is shown in figure 7. NGET concluded its RR stating that it considered it is essential that the bespoke PPs contain a suitable consent mechanism which enables NGET to deliver planned reinforcements to the electricity transmission network and to accommodate connection requests received from electricity generation customers. NGET also state that it was liaising with the applicant but in the absence of an agreed form of PPs, NGET strongly objects to the CA, TP of, or interference with, its assets, land or rights over its land.

Figure 7: Application version of NGET land requirements in the vicinity of Saltholme Substation (extract of Land Plans [APP-008])



6.8.28. NGET submitted a further WR at DL2 which included responses to our question to them in ExQ1 [REP2-068]. In this WR, NGET explain in further detail the responsibilities it has for securing the future of the electricity network and at paragraphs 2.4 and 2.5 state that it must upgrade the network and are therefore unable to release for third party development any land adjacent to existing operating assets. NGET explain that land it owns at Saltholme Substation is required in this regard and at paragraph 6.11 state that it anticipates bringing forward proposals for a new 275kV air insulated double busbar substation with an anticipated minimum footprint of 80m by 280m, excluding areas required for construction activities. NGET go on in paragraph 6.12 to state that "*It is reasonably foreseeable that land to both the east and to the west of the existing Substation will be required in the future to accommodate such works*."

6.8.29. NGET go on to state at paragraph 6.23 that, notwithstanding ongoing discussions, the applicant's position at that time "…*overlooks the ultimate position, which the applicant is already cognisant of, that the Authorised Development in the form proposed and under consideration as part of this Examination is fundamentally incompatible with the effective discharge of NGET's regulatory obligations and statutory duties, including those related to net zero*."

6.8.30. In the applicant's responses to RRs [REP1-007] it states that it was aware of NGET's intention to consider the extension of Saltholme Substation and had expressed a willingness to collaborate to ensure that interactions between the proposed development and NGET's expansion plans are mitigated. The applicant goes on to say in its response to DL2 submission from NGET [REP3-006] that it

was made aware of NGET's potential expansion plans at the Saltholme Substation on 27 June 2024 and had requested further details from NGET.

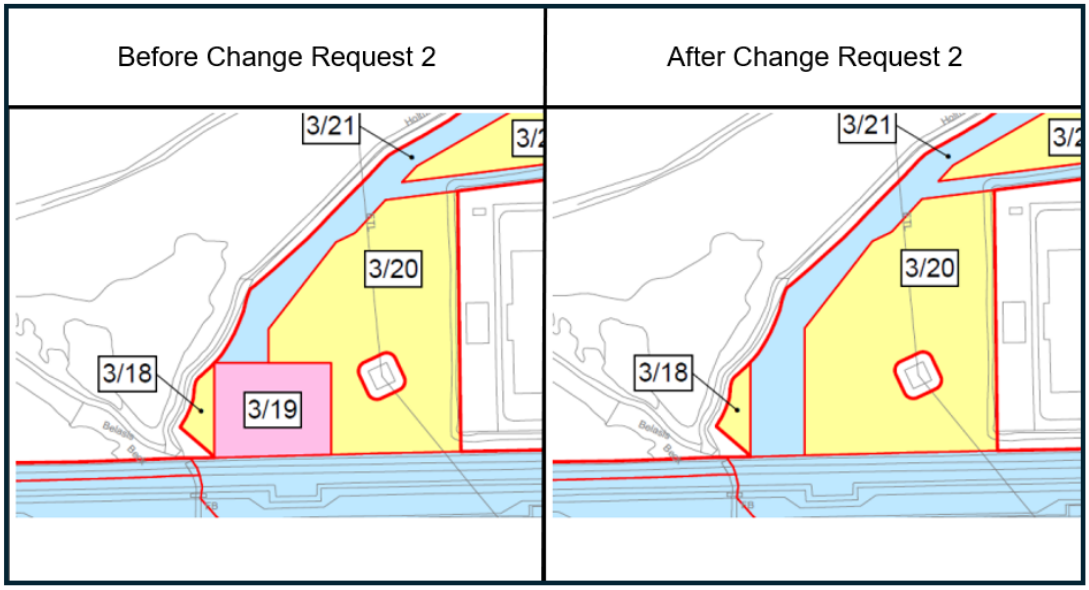
6.8.31. At DL5 on 18 December 2024, NGET submitted a WR [REP5-064] and stated that it continues to strongly object to the works in relation to Saltholme Substation and also regarding PPs relating to all of its undertakings. In the submission, NGET provided a comprehensive engineering constraints report on the future new substation at Saltholme. This report details the requirements, location options, technical challenges, design solutions and substation layout options for the expansion and upgrade for the substation. It also assesses the conflict with the proposed development. The report concludes by stating:

- *The land owned by NGET at Saltholme substation is already constrained due to the size, shape and fixed boundaries of the site. This restricts the options for new substation placement and although all three of the proposed options in this report are technically feasible, there are no other options that could be explored.*
- *The introduction of the proposed H2 Teesside Limited's pipeline (including AGI) would render all three options unviable through the extra constraints applied via both by the pipeline and the AGI. This would force NGET and NPG to look elsewhere in the vicinity for other land parcels which have been shown, through constraints mapping and other tools, to be limited in nature in the area around Saltholme.*
- *The introduction of the proposed pipeline onto NGET's land will prevent the development of a new substation. This will in turn stop NGET from discharging its statutory duties and from fulfilling its transmission licence obligations as set out by OFGEM.*

6.8.32. Our second CAH and DL6 were both timetabled for 13 January 2025, shortly following DL5 and the submission of the detailed report from NGET. In its DL6 submission replying to DL5 submissions [REP6-006], the applicant explained that it was working closely with NGET and considered that a compromise solution could be found that would allow the Saltholme Substation expansion to come forward as well as the proposed development. At CAH2 the applicant elaborated on this and explained that it was developing a compromise solution for the hydrogen pipeline and AGI which it believed would be able to be constructed and not compromise the future plans of NGET. In reply at CAH2 and after detailing its position, NGET committed to continue to work with the applicant to endeavour to reach a solution. The ExA emphasised that with the close of the examination imminent, the parties were asked to work collaboratively to see if an agreed compromise position were achievable.

6.8.33. On 17 January 2025 the applicant submitted its second CR notification [AS-045] which included notification of a change in the area of the Saltholme Substation. The CR was subsequently submitted on 6 February 2025 and the change relating to the substation was detailed within it. The applicant acknowledged at paragraph 2.2.21 of the change report [REP7-011] that NGET considered that this new design solution was not compatible with the substation expansion plans, but nevertheless due to time considerations relating to the examination, the applicant put forward the change, which is shown in figure 8 being an extract of the CR report.

Figure 8: Change in land plots at Saltholme Substation at CR2



6.8.34. In putting forward the CR, the applicant has removed the AGI facility which was proposed to be located in plot 3/19 and required CA of freehold and rights, it also made design modifications to another AGI and pipelines in the vicinity to facilitate this. In doing this, the applicant considers that it has reduced the required CA which would allow NGET to expand the substation within its remaining land, whilst accepting there would be additional constraints for NGET in doing this due to the presence of the hydrogen pipeline.

6.8.35. NGET made further representations at DL7 [REP7-049] and DL8 [REP8-058] and reiterated its position that it cannot agree that a compromise solution would be possible, even though the applicant at DL7a stated that it could provide a substation design that was feasible; NGET ultimately stated that as the national experts, it was confident that it had explored the options for compromise but it was not possible.

6.8.36. NGET provided its preferred version of PPs in appendix 2 of its DL8 submission [REP8-058].

6.8.37. At the close of the examination NGET stated that its position remained that that the applicant's proposals in respect of the acquisition of rights over NGET's land will give rise to serious detriment to NGET's statutory undertaking, such that the test in s127(6) is not satisfied and that the applicant has not demonstrated that this is not the case.

6.8.38. Notwithstanding the explanation of the proposed change in CR2, the applicant submitted a report entitled 'the Saltholme Interaction Report' [REP7a-019] in which it provided details of the consultation undertaken with NGET along with details of optioneering and its own considerations of potential substation designs. Subsequent to this and NGETs DL8 submission, the applicant provided further details in response to NGET at DL9 on the last day of the examination [REP9-022].

6.8.39. In these two submissions, the applicant makes the following arguments:

- That NGET have introduced the requirement to expand Saltholme Substation after the DCO application, so it was not in a position to consider alternatives in the application development stage.

- That there are a number of alternative designs, as detailed, which are possible for the expansion of Saltholme Substation. Building on these alternatives would allow for the revised design brought forward in CR2 to be feasible; it states that therefore a compromise solution is possible.
- Regarding NGETs statement that it considers the proposed development as proposed would lead to serious detriment in its undertaking, the applicant disagrees. It discusses and counter-argues on a number of matters which are in response to NGETs DL5 and DL8 submissions, explaining the options and alternatives that it believes are potential in regard to the substation expansion options. At paragraph 1.4.9 of its DL9 submission [REP9-022] it states '…*it is clear that various approaches could be taken to deal with the concerns raised by NGET, but none of them mean that the expansion is not deliverable. As such, no serious detriment can be said to arise from these practical matters*.' The applicant also notes that the expansion proposal is not in the business plan submitted by NGET for approval by Ofgem in 2025 under its regulatory framework 'RIIO-3'.
- That serious detriment is not one of equivalence, meaning the applicant is not required to leave NGET in a position where there is equal position relating to cost and programme of expanding the substation with the proposed development coming forward.
- That it has updated PPs for the benefit of NGET to provide greater reassurance to NGET on the matters raised by them. This includes NGET having the right of approval over the design of a compromise solution to ensure that it can be constructed and designed in a way that can align with a modified design for a substation extension brought forward by NGET.

6.8.40. The applicant concludes its DL9 submission with a number of statements. It considers that NGETs statutory duties are not static and will be able to respond to the applicant's proposed solution, and the solution itself would not mean a breach of its duties. The applicant also states that there is *'…no credible claim that can be made that a 'serious detriment' to NGET's undertaking arises'.*

6.8.41. The applicant submitted a version of the PPs at Schedule 19 within its final version of the APV of the dDCO [REP7a-003] and Schedule 18 the WCBAV of the dDCO [REP7a-006] in favour of NGET however, this was subsequently updated with a final version at DL9 [REP9-009].

ExA's Consideration regarding National Grid Electricity Transmission Plc

6.8.42. The ExA considers that NGET and the applicant have continued negotiations through the examination period and we have been updated on progress through submissions from both NGET and the applicant.

6.8.43. In consideration of NGETs objection, we only consider the matters of the CA and TP of NGETs land at Saltholme Substation; we consider NGETs other assets are protected by the PPs in the rDCO. Subsequent considerations of the further implications and consequences of our conclusions in regard to NGET are detailed in section 6.10 of this report, titled 'Consideration of the Cowpen Bewley Arm'.

6.8.44. The ExA accepts that NGET were less than clear about its plans for expansion of the Saltholme Substation in the consultation stage of the proposed development. Although there appear to be references to this, it is likely that the applicant was not made fully aware of the potential impacts on its proposals until after the application was submitted for examination; however reference was made to this in NGETs RR.

6.8.45. Notwithstanding this, we consider that discussions and negotiations did not progress with the urgency that may be considered necessary in the light of this information; we do not offer a reason as to why this may be the case.

6.8.46. We consider that NGET have provided a substantive and detailed report which has considered the options available to them for the expansion of the substation, and in doing so have concluded that to enable this work to happen, irrespective of timescales for implementation of such work, it requires all the land in its ownership. We acknowledge that the applicant has used its best endeavours to provide alternative options for the substation expansion design within a limited timeframe and NGET have engaged in this process. Ultimately, there has not been agreement on a workable alternative which would allow both the proposed development and Saltholme Substation expansion plans to be delivered within NGETs available land and within the Order limits of the proposed development.

6.8.47. In considering the applicant's attempt to show that there are alternatives to NGETs substation design option, we cannot accept that in this case the applicant is in a better position than NGET to determine the solution for the expansion. In essence, with the limited time and lack of genuine collaboration between the parties, the ExA cannot accept that as the national electricity transmission provider, NGET are less able to arrive at a workable solution than the applicant. Therefore we give no weight to the applicant's proposed designs for Saltholme substation.

6.8.48. This being the case, the ExA considers that there is currently not a viable alternative solution for the AGI and pipeline routing for the proposed development on and through NGETs land at Saltholme that the applicant can prove would meet the requirements of its proposal and satisfy NGET that it is able to facilitate its expansion plans. Indeed, by the close of the examination the ExA are in a position to only be able to conclude that NGET does require all land parcels in and around the substation to provide its undertaking, which includes future upgrades of the transmission network.

6.8.49. NGET have stated clearly that it considers s127(6) is not met and if the right to CA its land at Saltholme were approved, there would be serious detriment to the carrying on of its undertaking. The applicant has raised arguments against NGETs assertion on this matter which are based primarily on the potential of providing alternatives to which NGET have not, or cannot, agree to plus matters of non-equivalence in cost and programme.

6.8.50. In assessing these arguments, the ExA considers that the applicant has not proven that serious detriment would not be possible. The applicant has conjectured on its considerations of what it believes is possible and although these alternatives may ultimately have merit, NGET currently state with clarity that it is not viable. The ExA considers that NGET are in the best position to make this assessment which we believe it has done in good faith and at speed to assist the applicant.

6.8.51. The applicant has endeavoured to overcome the objection of NGET by providing updated PPs [REP9-009] which specifically addresses Saltholme Substation expansion. This was presented into the examination at DL9 on the last day of the examination and NGET have not been able to present to the ExA its assessment of the applicant's final PPs therefore we give little weight to them in our consideration. Notwithstanding this, the ExA considers that although these proposed PPs attempt to protect NGET from agreeing works in its land, we cannot agree that these would sufficiently protect NGET from the potential of serious detriment to the carrying out of its undertaking. NGET provided its preferred PPs to the ExA at DL8 which taking

the above into account, we consider are the only appropriate PPs to include in the Order.

6.8.52. NGET did not formally withdraw its objection at the end of the examination and continue to state that it would suffer serious detriment if the Order were to be approved in the form proposed by the applicant.

6.8.53. Taking all considerations into account, the ExA considers the tests set out in s127 and s138 of the PA2008 would not be met if the applicant's proposals were approved. Therefore we conclude that plots 3/18; 3/20; and 3/21 should not be approved for CA within the Order. We highlight that this has implications for other plots north of the Saltholme station and this matter is detailed later in this chapter.

6.8.54. For completeness and to protect NGETs assets, the ExA have included NGETs preferred version of PPs in the rDCO at Schedule 18 and Schedule 19 of the APV of the dDCO.

6.8.55. We recommend that the SoS seeks confirmation from NGET and the applicant as to the status of negotiations regarding alternatives at Saltholme Substation, any side agreement and PPs. The outcome of such enquiries may assist the SoS in consideration of matters relating to the Cowpen Bewley Arm of the proposed development, which is detailed in section 6.10 of this report, where the implications of our conclusion on NGETs land at Saltholme Substation on the proposed development and the Order are considered.

Network Rail Infrastructure Limited

6.8.56. Network Rail Infrastructure Limited (NR) have Category 1 and 2 interest, with CA and TP powers being sought over this land by the applicant. NR did not submit a RR but did submit WRs at DL4 [REP4-030] and DL7 [REP7-051]; NR did not attend either of the two CAHs.

6.8.57. In its DL4 WR, NR detail its undertakings and state its objection to the proposed development unless it is able to reach agreement on PPs, of which it provided its standard, preferred version.

6.8.58. In its DL7 submission, NR states that negotiations have continued with the applicant, however the PPs shown in the dDCO at that time were not agreeable and it maintained its objection. Its issues with the applicant's PPs were detailed, these were regarding the unrestricted CA and TP powers and the need for unrestricted access to all NR property for NR employees and contractors.

6.8.59. In its closing statement at DL8 [REP8-045], NR state that it remains in negotiation with the applicant and a draft side agreement was being discussed between the parties; however in the absence of an agreement its objection remains.

6.8.60. The applicant states in its DL7 PP statement [REP7-026] that it remains in discussion with NR regarding PPs and a side agreement. At DL7a the applicant provided a version of the PPs for the protection of Railway Interests and statements on the outstanding issues that had prevented PPs being agreed [REP7a-018]. The applicant states that the PPs are based on the consented NZT Order which did not include the protections sought by NR; the applicant also says the impact on NR property of the proposed applicant and NZT are similar and therefore there is no justification for a different approach.

6.8.61. In response to NRs DL8 closing statement [REP9-023] the applicant confirmed it had not been able to conclude negotiations by the close of the examination but agreement was continuing to be sought.

6.8.62. NR did not formally withdraw its initial objection at the end of the examination.

6.8.63. The applicant submitted a final version of the PPs at Schedule 21 within its final version of the APV of the DCO [REP7a-003] and Schedule 20 the WCBAV of the dDCO [REP7a-006] in favour of Railway Interests.

ExA's Consideration regarding Network Rail

6.8.64. The ExA considers that NR and the applicant have continued negotiations through the examination period and we have been updated on progress through submissions from both NR and the applicant.

6.8.65. The ExA agrees with the position of the applicant in regard to the additional protections sought by NR. The SoS in the NZT Order did not agree to include NRs standard PPs and we accept that there is no material difference in impact between the two projects, therefore there is no obvious reason to review the precedent set in the consented NZT Order in this particular circumstance.

6.8.66. NR did not formally withdraw its objection at the end of the examination, and the ExA considers that the PPs provided at Schedule 21 of the APV of the DCO [REP7a-003] and Schedule 20 the WCBAV of the dDCO [REP7a-006] for the protection of Railway Interests are sufficient to ensure that there would be no serious detriment to the carrying out of its undertaking.

6.8.67. Taking the above matters into account and with the PPs included at Schedule 20 in the rDCO and Schedule 21 of the APV of the dDCO, we consider that tests set out in s127 and s138 of the PA2008 to be met.

Northern Gas Networks

6.8.68. Northern Gas Networks (NGN) have Category 1 Person interest, with CA and TP powers being sought over this land by the applicant. NGN did not submit a RR and have also not submitted WRs into the examination nor did it attend either of the two CAHs. NGN have not stated an objection to the Order.

6.8.69. The applicant has agreed to provide PPs for the benefit of NGN in the Order. It stated in its DL7 PP statement [REP7-026] that the parties remain in discussion regarding PPs and a side agreement. At DL7a the applicant provided a version of the PPs for NGN and statements on the outstanding issues that had prevented PPs being agreed [REP7a-033].

6.8.70. The applicant submitted a version of the PPs at Schedule 38 within its final version of the APV of the dDCO [REP7a-003] and Schedule 37 the WCBAV of the dDCO [REP7a-006] in favour of NGN.

ExA's Consideration regarding Northern Gas Networks

6.8.71. The ExA considers that NGN have chosen not to engage in the examination in writing or orally at the CAH hearings. In these circumstances we consider that the PPs set out at Schedule 38 of the APV of the DCO and Schedule 37 of the WCBAV of the dDCO gives a reasonable protection to NGN's undertaking, apparatus, rights and land interests.

6.8.72. Consequently, the ExA is satisfied that the inclusion of PPs in the rDCO at Schedule 37 of the rDCO and Schedule 38 of the APV of the dDCO in favour of NGN are sufficient to ensure that there would be no serious detriment to the carrying out of its undertaking. As such, the ExA considers the tests set out in s127 and s138 of the PA2008 are met.

Northern Powergrid (Northeast) Plc

6.8.73. Northern Powergrid (Northeast) Plc (Northern Powergrid) have Category 1 and 2 Person interest, with CA and TP powers being sought over this land by the applicant. Northern Powergrid submitted a RR [RR-027] but have not submitted further WRs into the examination nor did it attend either of the two CAHs.

6.8.74. In its RR, Northern Powergrid detailed the apparatus and undertakings it has within the Order limits and stated its objection to the proposed development unless it is able to reach agreement that its equipment can be sufficiently protected. The primary concern from Northern Powergrid was in relation to unrestricted CA and TP powers.

6.8.75. In its DL7 PP Statement [REP7-026] the applicant stated that it was continuing to negotiate PPs and a side agreement with Northern Powergrid. Further to this at DL7a, the applicant submitted a form of PPs in favour of Northern Powergrid [REP7a-024] and state that the PPs are based on the consented NZT Order which did not include the protections sought by Northern Powergrid but which is believes gives adequate protection.

6.8.76. Northern Powergrid did not formally withdraw its initial objection at the end of the examination.

6.8.77. The applicant submitted a final version of the PPs at Schedule 28 within its final version of the APV of the dDCO [REP7a-003] and Schedule 27 the WCBAV of the dDCO [REP7a-006] in favour of Northern Powergrid.

ExA's Consideration regarding Northern Powergrid (Northeast) Plc

6.8.78. The ExA considers that Northern Powergrid have chosen not to engage in the examination beyond its initial RR submission either in writing or orally at the CAH hearings, however we accept that negotiations have been progressed and the ExA has been updated on these through the applicant's submissions.

6.8.79. We are disappointed that Northern Powergrid did not submit its preferred version of PPs as requested and as such we are not in a position to fully understand its remaining issues beyond those given by the applicant at DL7a [REP7a-024].

6.8.80. The ExA agrees with the position of the applicant in regard to the additional protections sought by Northern Powergrid. The SoS in the NZT Order did not agree to include Northern PowerGrid's standard PPs and we accept that there is no material difference in impact between the two projects, therefore there is no obvious reason to review the precedent set in the consented NZT Order in this particular circumstance. Therefore in these circumstances we consider that the PPs set out at Schedule 28 of the dDCO appear to be a reasonable response to the protection of Northern Powergrid's undertaking, apparatus, rights and land interests.

6.8.81. Northern Powergrid did not formally withdraw its objection at the end of the examination however, the ExA considers that the PPs provided at Schedule 28 of the APV of the DCO [REP7a-003] and Schedule 27 the WCBAV of the dDCO

[REP7a-006] for the protection of Northern Powergrid are sufficient to ensure that there would be no serious detriment to the carrying on of its undertaking.

6.8.82. Taking the above matters into account and with the PPs included at Schedule 27 in the rDCO and Schedule 28 of the APV of the dDCO, we consider that tests set out in s127 and s138 of the PA2008 to be met.

Northumbrian Water Ltd

6.8.83. Northumbrian Water Ltd (NWL) are operators of Bran Sands Waste Water Treatment Plant and have interests in numerous plots of land both north and south of the River Tees which contain its apparatus both for water supply and waste water, as well as land which it has rights and access over for its operations and maintenance. NWL have Category 1 Person interest, with CA and TP powers being sought over this land by the applicant. Northumbrian Water did not submit a RR but did submit WRs during the examination; it did not attend either of the two CAHs.

6.8.84. In its DL2 WR [REP2-092], NWL stated its objection to the proposed development unless it is able to reach agreement on PPs and/ or an asset protective agreement. NWL also stated that the matter of raw water supply to the proposed development during operation required resolution. In its DL7 submission [REP7-056], NWL stated that negotiations have continued with the applicant however, the PPs shown in the dDCO in the applicant's DL6a submission were not agreeable and it maintained its objection.

6.8.85. In its final submission at DL8 [REP8-071], NWL stated that due to lack of engagement from the applicant it has not been able to finalise agreements in relation to the impact on its undertaking and therefore provided the ExA with its own version of preferred PPs. NWL's DL8 submission gave detail of its issues for the first time in the examination, which related to unrestricted use of CA and TA powers and the permanent acquisition of plots 11/128 and 11/129; changes to NWL asset; consent times for approval of proposals; stopping up of access; and indemnity. NWL also state that the applicant makes various references to the PPs in relation to the NZT consented Order and state that using these in an entirely identical manner has no justification.

6.8.86. At DL7a the applicant submitted a letter it had received from NWL on 6 February 2025 [REP7a-042], which confirmed that NWL have sufficient capacity to supply the proposed development with raw water subject to no further increase in demand levels and changes to programme delivery.

6.8.87. In regard to NWLs other concerns raised at DL8, the applicant confirmed [REP9-023] it had not been able to conclude negotiations by the close of the examination but agreement was continuing to be sought.

6.8.88. The applicant responded to the individual issues by arguing that CA powers are required to ensure the proposed development can be constructed and where it has agreed to these being restricted in other PPs there have been specific circumstances. Regarding protection of alterations to NWL assets, the applicant again states that the PPs for NWL in the NZT Order have been used and expanded to include additional protections. The applicant submits that a 28 day timeframe for consenting of proposals is a common part of the approval regime, but it is willing to continue to discuss this detail. Regarding stopping up of access, the applicant argues that NWL have not confirmed if any apparatus will be affected by stopping up and as such, the applicant disagrees with NWL that this needs to be included.

Finally, the applicant argues that its proposed PPs offer adequate indemnity to NWL and contest that other than a small number of proposed amendments, the majority of the indemnity clause is agreed.

6.8.89. NWL did not formally withdraw its objection at the end of the examination.

6.8.90. The applicant submitted a version of the PPs at Schedule 31 within its final version of the APV of the dDCO [REP7a-003] and Schedule 30 the WCBAV of the dDCO [REP7a-006] in favour of NWL.

ExA's Consideration regarding Northumbrian Water Ltd

6.8.91. The ExA considers that NWL and the applicant have continued negotiations through the examination period and we have been updated on progress through submissions from both NWL and the applicant. We acknowledge that the agreement regarding raw water supply was concluded by the parties during the examination period.

6.8.92. The ExA agrees with the position of the applicant in regard to the additional protections sought by NWL. Although we agree that each project must be treated on its merits, the NZT Order is a recently consented Order with very similar factors that affect NWL and in this instance, we consider it is an acceptable precedent to propose.

6.8.93. We also accept that in this situation, giving additional protection against unrestricted CA and TP powers is not warranted and the protection afforded in the applicant's proposed PPs are adequate. We also accept that a standard 28 day notice period is common for consenting and not unreasonable. The powers of stopping up and removal of apparatus due to this are less clear. The applicant suggests that NWL cannot prove that it has apparatus in areas that will be affected, but neither can the applicant state that there are not, which it should be able to do. Regarding the matter of indemnity, we consider the PPs provided are similar to those in the NZT Order and as such set a reasonable precedent.

6.8.94. Therefore, taking account of these matters, we consider that the PPs set out at Schedule 31 of the APV of the dDCO [REP7a-003] and Schedule 30 the WCBAV of the dDCO [REP7a-006] appear to be a reasonable response to the protection of NWL undertaking, apparatus, rights and land interests.

6.8.95. NWL did not formally withdraw its objection at the end of the examination however, the ExA considers that the PPs provided at Schedule 31 of the APV of the DCO [REP7a-003] and Schedule 30 the WCBAV of the dDCO [REP7a-006] for the protection of NWL are sufficient to ensure that there would be no serious detriment to the carrying on of its undertaking.

6.8.96. Taking the above matters into account and with the PPs included at Schedule 30 in the rDCO and Schedule 31 of the APV of the dDCO, we consider that tests set out in s127 and s138 of the PA2008 to be met.

PD Teesport Ltd

6.8.97. PD Teesport Ltd (PDT) is the statutory harbour authority for the part of the River Tees within its limits of jurisdiction and has the powers and duties conferred on it by the Teesport Acts and Orders 1966 to 2008 and by general public legislation relevant to harbour authorities. PDT have Category 1 Person interest, with CA and

TP powers being sought over this land by the applicant. PDT submitted a RR and engaged with the examination throughout including attendance at both CAHs.

6.8.98. In its RR [REP-014] PDT state the importance of Teesport both locally and nationally. PDT confirm that it does not object in principle to the proposed development however, it must ensure that it does not adversely affect the harbour undertaking, other harbour users or surrounding occupiers and businesses. PDT conclude that it must object to the DCO however, it anticipates that its concerns should be capable of being addressed by the inclusion of appropriate PPs.

6.8.99. Although PDT consider the need for agreements and/ or PPs, it raised a number of specific concerns in both its RR and oral representations at CAH1 [REP4-049]. These include access rights, powers in the Order regarding land rights and the need for the removal of certain plots from the Order.

6.8.100. One of PDTs primary concerns relates to the disapplication of certain parts of the Tees and Hartlepools Port Authority Act 1966. This is considered in section 3.16 of this report and not repeated here to avoid duplication.

6.8.101. A further concern related to PDTs own development proposals which are consented via the Teesport Harbour Revision Order 2008. These proposals include for construction of a new berth at Teesport which is within the Order limits, specifically relating to plots 11/102 to 11/110 and 11/115 to 11/120. In its RR, PDT state that if the relevant land is not removed then PDT considers that material detriment may be caused to its undertaking, within the meaning set out in s127 of PA2008.

6.8.102. In its response to RRs, the applicant explained that the plots highlighted by PDT relate to the new pipeline crossing under the River Tees which would be constructed either as a microtunnel or using horizontal directional drilling under the riverbed, thereby avoiding interference with the surface infrastructure; the applicant believes the concerns of PDT can be addressed with PPs.

6.8.103. This issue was raised further by PDT in subsequent WRs and at the CAHs. Throughout the examination the applicant stated that it was in active discussions relating to this. However, at CAH2 [EV8-007] PDT explained to the ExA that although these general concerns were being discussed, there was a specific issue relating to the installation of piling in the river which is currently in the same location as the proposed pipeline. PDT continued at DL7 [REP7-058] to state that it considers PPs require the inclusion of a restriction as to provide a minimum depth for the pipeline tunnel infrastructure of the proposed development to ensure it is below any piling as part of the PDT works.

6.8.104. In its final submission [REP8-072] PDT stated that this issue was still outstanding. To this end, the ExA asked the applicant in its Rule 17 letter of 19 February 2025 [PD-022] to confirm how the proposed pipeline below the proposed piling would be protected in the Order for the benefit of both parties. In its reply [REP8-021] the applicant stated that technical meetings have been ongoing and it seeks to arrive at a solution that enables both projects to be brought forward without impediment.

6.8.105. The applicant also advised that the parties have agreed, in principle, to an approach which would allow the proposed trenchless crossing to be constructed whilst also providing PD Teesport with sufficient comfort that the proposed trenchless crossing will not adversely impact its proposed container port development piling. The applicant states that although PDT proposed a limit to the minimum depth of the pipeline, the applicant is unable to commit to this as the crossing remains subject to

detailed design. which is progressing having regard to the existing assets within the River Tees and PDTs container port development, including the piling. The applicant concluded that it is confident that a mutually acceptable solution will be able to be reached.

6.8.106. Overall, the applicant and PDT confirmed that negotiations have continued through the examination. At DL5, PDT provided the ExA with a version of its preferred PPs [REP5-082] as requested by the ExA.

6.8.107. At DL7a the applicant provided statements on the outstanding issues that had prevented PPs being agreed [REP7a-031].

6.8.108. A final submission from PDT was received at DL8 [REP8-072] stating the negotiations regarding PPs continue and the majority of its objections can be overcome by its proposed PPs. However, PDT did not formally withdraw its objection by the close of the examination.

6.8.109. In its DL9 submission [REP9-023] the applicant provided a closing joint statement on behalf of both parties. In summary, the applicant and PDT have exchanged drafts and updates of a side agreement which are being reviewed. It is also in active discussion regarding the application of the Tees and Hartlepools Port Authority Act 1966 and the interactions between the proposed trenchless crossing of the River Tees and PDTs proposed port container development. The applicant concludes that both parties are committed to resolving the remaining issues and anticipate these to be completed shortly after the close of the examination.

6.8.110. The applicant submitted a final version of the PPs at Schedule 35 within the APV final version of the dDCO [REP7a-003] and Schedule 34 of the WCBAV of the dDCO [REP7a-006] in favour of PDT.

ExA's Consideration regarding the objection from PD Teesport Ltd

6.8.111. The ExA considers that PDT and the applicant have continued negotiations through the examination and we have been updated on progress through submissions from both parties.

6.8.112. PDT have been clear that it would not withdraw its objection, which was not an objection to the proposed development but to CA rights being sought, without appropriate PPs or a commercial agreement being agreed; we note that PDT's objection was not withdrawn by the close of the examination.

6.8.113. On the matter of land required which was raised by PDT in its RR, we consider that the applicant has considered these points and given commentary on this which allows us to confirm that the land is required and/ or addressed via PPs.

6.8.114. We have not laid in detail all of the drafting differences in the preferred PPs between the parties but we have focused on those matters seen as still in dispute at the close of the examination.

6.8.115. We have, however, been clear that we will include one set of PPs in our rDCO, therefore we have compared the final PPs provided by the applicant and PDT which still have some divergence and differences. We note however, that without further commentary on the detail of the remaining differences between the parties from PDT after DL5, the ExA has not had confirmation of the progress on narrowing the differences or amendments that have been submitted by the applicant.

6.8.116. Although we consider that the PPs provided by the applicant at DL7a and included in its final dDCO have taken into account many of the points raised by PDT at DL5, we do not believe they adequately protect PDT in relation to its proposed piling work and we do not consider it is acceptable for the applicant to state it will be resolved in the detailed design and remove the protection sought.

6.8.117. On balance, we consider that PDTs preferred PPs are most suitable and provide protection for its undertaking and the matter of piling for its proposed jetty.

6.8.118. PDT did not formally withdraw its objection at the end of the examination however, the ExA considers that with the inclusion of PDTs preferred version of PPs in the rDCO and the APV of the DCO are sufficient to ensure that there would be no serious detriment to the carrying on of its undertaking.

6.8.119. Taking the above matters into account and with the PPs included at Schedule 34 in the rDCO and Schedule 35 of the APV of the dDCO, we consider that tests set out in s127 and s138 of the PA2008 to be met.

6.9. CONSIDERATION OF CROWN LAND AND SPECIAL CATEGORY LAND

6.9.1. The applicant has highlighted areas of crown land and special category land, which is open space, which are within the Order limits, these are detailed on in the Land Plans [REP7-003] and [REP8-030]; BoR parts 4 and 5 [REP7-041] and [REP8-035]; Special Category Land and Crown Land Plans [REP7-004] and [REP8-031]; chapter 9 of the SoR [APP-024] and the supplementary SoR at CR1 [CR1-013].

Crown Land

6.9.2. New rights are sought over crown land by the applicant; no comments were made in RRs or LIRs.

6.9.3. We requested updates on obtaining s135 consent in our written questions and at CAHs. At CAH2 the applicant stated that it was waiting for comments on the land agreement from the Crown Estate. Pursuant to this, we asked a further question of both parties in our Rule 17 letter of 10 February 2025 [PD-020] as to the progress towards concluding this before the close of the examination.

6.9.4. In the applicant's DL7a response to our Rule 17 letter [REP7a-040] it was stated that heads of terms had largely been agreed following a meeting between the parties on 11th February 2025, subject to a small number of clarifications. It was also stated that both parties agreed that it was realistic to have the heads of terms agreed prior to the end of examination. The Crown Estate further confirmed at that meeting that the s135 consent process will be started once the matter has been passed to the lawyers.

6.9.5. At the end of the examination the position stated at DL7a had not changed and therefore the s135 consent was not finalised by the close of the examination.

ExA's Consideration regarding Crown Land

6.9.6. The ExA considers that the applicant has used its best endeavours to reach agreement with the Crown Estate and at DL7a it confirmed that lawyers had been instructed, however final agreements were not in place by the end of the examination.

6.9.7. This being the case, the ExA considers that the powers sought in connection with crown land and/ or crown rights should not be granted until it has been confirmed that the necessary crown authority, consistent with the BoR [REP7-041] and [REP8-035] and in accordance with s135(1) and s135(2) of the PA2008, has been obtained.

Coatham Marsh Open Space Land

6.9.8. The Coatham Marsh Open Space Land is part of the Coatham Marsh Local Nature Reserve and is used by the public for recreational purposes. The applicant states that this is open space land for which no replacement land is required to be provided. There were no comments relating to this area of land in RRs or LIRs. The location of works that would impact Coatham Marsh Open Space Land is shown in figure 9.

Figure 9: Coatham Marsh Open Space

6.9.9. The SoR [APP-024] states that the works proposed at this location comprise one or two water pipelines of up to 1,100mm diameter each which will supply water to the main site. It goes on to state that the pipeline will be installed using open cut techniques with the corridor width being between 10m and 25m.

6.9.10. The SoR confirms that there will be no permanent surface installation works and future maintenance activities will principally be by way of an occasional walkover, consisting of mainly non-intrusive inspections with no restriction on public access expected during these inspections. Intrusive maintenance would only occur if there was a necessity for replacement or repairs to the pipeline, in which case maintenance would be infrequent and of limited duration.

6.9.11. The applicant summarises the use of Coatham Marsh Open Space Land by stating that:

- the physical appearance of the Coatham Marsh Open Space Land will be unaffected;

- the use of the Coatham Marsh Open Space Land for recreation will carry on uninterrupted except for temporary restrictions over limited areas of the open space land during construction; and
- public access to the Coatham Marsh Open Space Land will not be permanently affected.

6.9.12. In response to our written question ExQ1, Q1.6.43 [REP2-024], the applicant confirmed that it has undertaken thorough investigation to identify common land rights holders in relation to the proposed development, and no persons with such rights have been identified.

6.9.13. The applicant considers that the test under s132(3) of the PA2008 is satisfied. The Coatham Marsh Open Space Land, when burdened with the rights to install, inspect and maintain the elements of the proposed development will not be any less advantageous to persons in whom it is vested, other persons, if any, if entitled to rights of common or other rights, and to the public.

ExA's Consideration regarding Coatham Marsh Open Space Land

6.9.14. The ExA considers that the applicant has detailed the full likely impacts seen on the open space land at Coatham Marshes and agrees that these impacts will be short term during construction and thereafter infrequent and limited in impact and the physical appearance will be unaffected.

6.9.15. We further consider that all ownership and common rights have been assessed and all persons with rights have been identified.

6.9.16. We therefore agree with the applicant that the test under s132(3) of the PA2008 is satisfied in relation to Coatham Marsh Open Space Land.

Cowpen Bewley Access Track Open Space Land

6.9.17. The Cowpen Bewley Access Track open space land is part of the Cowpen Bewley Woodland Park and is used by the public for recreational purposes. The applicant states that this is open space land for which no replacement land is required to be provided and is plot 4/24. There were no comments relating to this area of land in RRs or LIRs. The location of Cowpen Bewley Access Track open space land is shown in figure 10 with photographs of the existing track shown in figure 11.

6.9.18. The SoR [APP-024] states that an access track will be used for access to the Cowpen Bewley AGI site for construction and maintenance and at paragraph 9.1.36 the SoR states that the plots required are plots over which the public currently have access but form access tracks rather than woodland. Access proposals can be seen in at figure 12, being an excerpt from the Access and Rights plan [REP7-006].

Figure 10: Cowpen Bewley Access Track Open Space land location plan

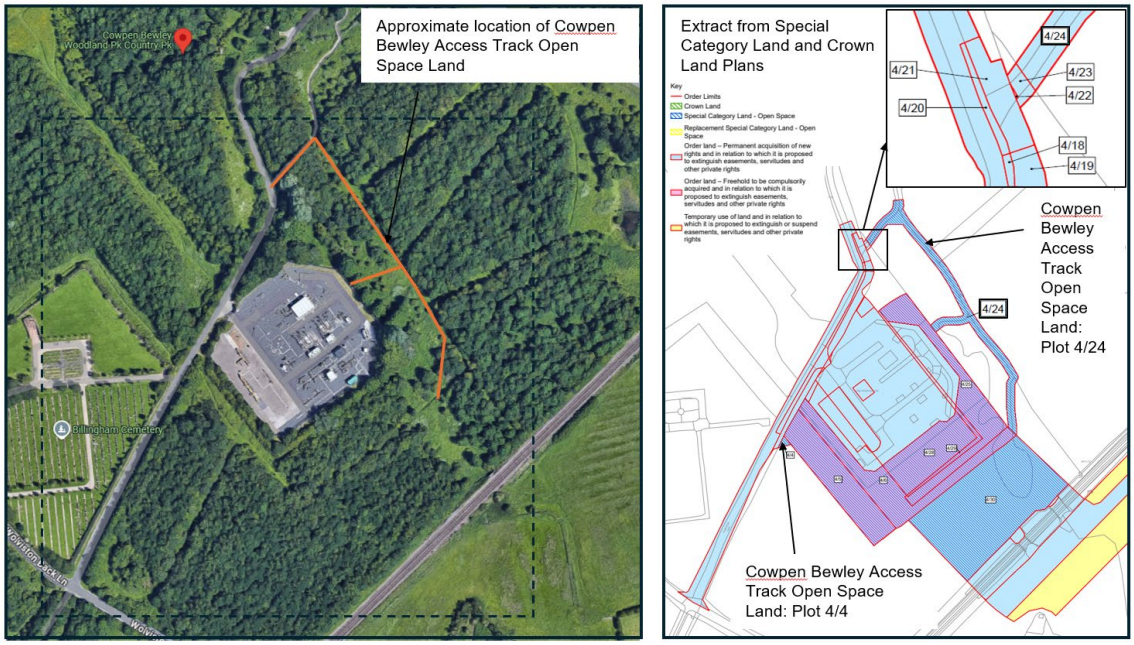
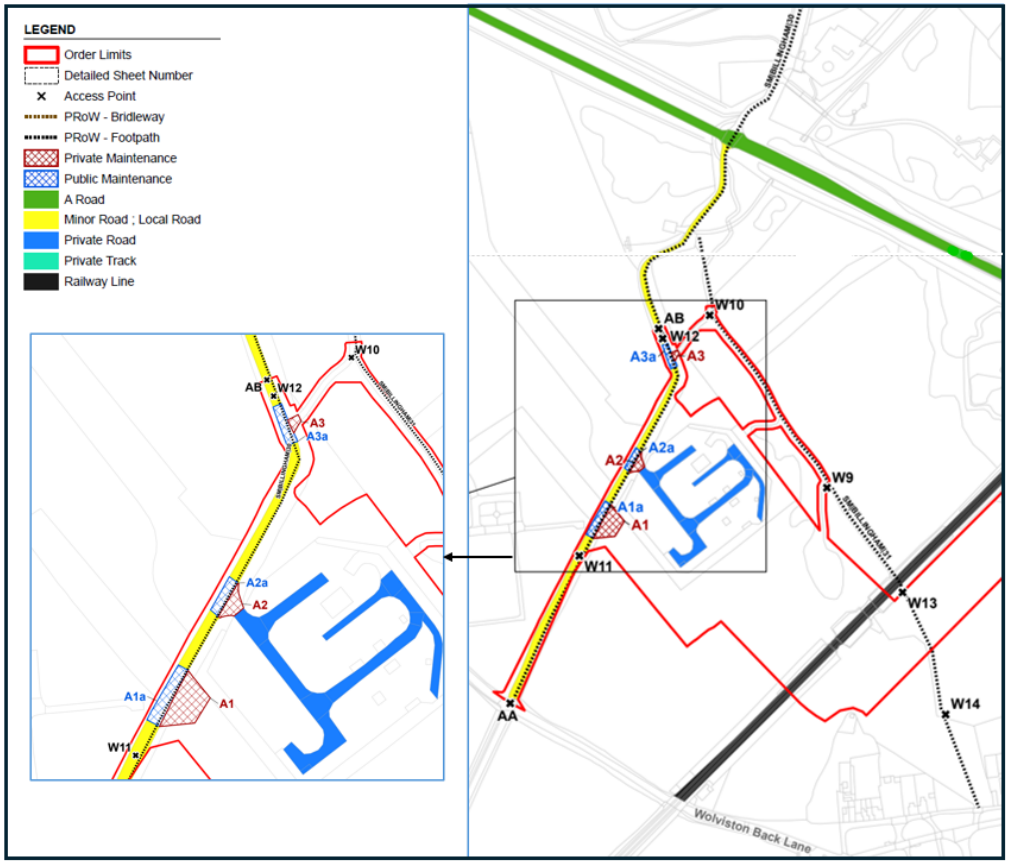


Figure 11: Photographs of existing track at Cowpen Bewley Access Open Space land

Figure 12: Proposed access arrangements to Cowpen Bewley Access Track



6.9.19. The SoR goes on to state that no permanent surface installation works will be required within the Cowpen Bewley Access Track open space and that following construction the land will be available for use by the public as it is at present. Maintenance access to the AGI will principally be by way of occasional vehicular access and no restrictions on access to the land are expected and any access requirement would be short in duration and infrequent.

6.9.20. The applicant summarises the use of Cowpen Bewley Access Track open space land by stating that:

- the physical appearance of the Cowpen Bewley Access Track open space will be unaffected;
- the use of the Cowpen Bewley Access Track open space for recreation will carry on uninterrupted except for temporary restrictions over limited areas of the open space land during construction; and
- public access to the Cowpen Bewley Access Track open space will not be permanently affected.

6.9.21. The applicant considers that the test under s132(3) of the PA2008 is satisfied and that the Cowpen Bewley Access Track open space, when burdened with the access rights detailed, will not be any less advantageous to persons in whom it is vested, other persons, if any, if entitled to rights of common or other rights, and to the public.

Examination of Cowpen Bewley Access Track Open Space Land

6.9.22. The ExA held a third ASI [PD-016] which included viewing the Cowpen Bewley Access Track open space land. This visit highlighted that an existing access track was not clearly defined and possibly not suitable to be used for construction and maintenance of the proposed development without additional infrastructure.

6.9.23. The ExA examined the issue further at CAH2 and asked the applicant to explain the need for this access in the light of other access options to the AGI facility. The applicant reiterated that access was needed for construction and maintenance and although there were other possible access points, it was considered that this access was necessary due to design development still being undertaken with regards to the AGI layout.

6.9.24. During CAH2, the ExA asked the representative from STBC for a view on the usage of this track. The response, which is available on the recording of the hearing at 1:03:40 [EV8-006], stated that there was a concern about the impact on National Cycle Route 14 and general public access, concluding that any reduction in impact would be welcomed, especially with an alternative access available.

6.9.25. In its summary of oral representation at CAH2 [REP6a-018] the applicant gave further details of the need for the access track and detailed a one-way maintenance route required within the open space land. The applicant also states that the ability to provide a one-way route around the tracks will aid any congestion on the public highway with egress and access.

6.9.26. The ExA considered that this requirement may not be compatible with the details in the SoR and in a Rule 17 letter of 19 February [PD-022] requested further details of how the proposed access track would be constructed as required for construction and maintenance access without surface construction and without changing the physical appearance of the Cowpen Bewley Access Track open space.

6.9.27. In its response [REP8-021] the applicant explained that only trimming of overhanging trees and bushes will be required to facilitate the use of the access and that temporary trackway ground protection mats could be used to facilitate construction access or alternatively localised placement of hardcore to re-enforce the tracks if necessary. The applicant goes on to state that upon completion of construction any re-enforcement placed could be left to facilitate ongoing use of the tracks by the local community or removed. The applicant concludes by stating that it considers that either situation will be no less advantageous to STBC or the public and it would be possible to use the land in the same way following the applicant's works and may support usage by the public.

ExA's Consideration regarding Cowpen Bewley Access Track Open Space Land

6.9.28. Following ASI3 to the Cowpen Bewley Open Space Land, where we saw the location of the existing and proposed access track, we have asked a number of questions of both the applicant and those with vested rights in the land. Our overarching consideration in these questions has been regarding both the need for this land and whether it will conform with both the SoRs statement that there will be no physical change to the land and if we consider that the Order as presented satisfies the test under s132(3) of the PA2008.

6.9.29. Firstly turning to need. The applicant has explained that there would be two access points to the extended Cowpen Bewley AGI, as shown in figure 12 which would act

as a one-way system by exiting Billingham Road from access A1 and entering Billingham Road, after an anticlockwise circuit, at access A3. The applicant contests that this will reduce bottlenecks on the road.

6.9.30. The ExA considers that the new access A1, which would access land to be permanently acquired, along with potential use of the existing access A2 into the AGI, gives the applicant adequate and full access and egress optionality in both the construction and operational phases. Furthermore, the argument that the applicant makes regarding reduced congestion and avoiding bottlenecks and the need for a one-way system, we consider to be very unlikely due to the low traffic volumes on Billingham Road, the existing access arrangements and usage to the AGI site.

6.9.31. We consider that the applicant has not given sufficient evidence of the need for this land and there are adequate alternative access options into the extended AGI; furthermore, with detailed design still to be undertaken we consider that there is adequate optionality available for the applicant to design internal access arrangements within the adjacent land available within the Order.

6.9.32. Now turning to whether the proposal for the Cowpen Bewley Access Track land satisfies s132(3) of the PA2008. The test states that the land will be no less advantageous than it was before for those in whom it is vested, other persons entitled to rights and the public.

6.9.33. We consider that the applicant has provided less detail than necessary, despite a number of questions from us, to enable us to know how the land will change and by extension how the land may be used by those persons listed above. In its DL8 answer to our Rule 17 question, the applicant was not clear as to how the track would be constructed and suggested that matting may be placed which may remain for maintenance access, along with possible hard construction techniques.

6.9.34. The ExA considers that the existing track, as shown in figure 11, is not suitable either in width, construction or access points, to be used as a construction track and inevitably changes would need to be made to make it such. We do not consider that simple matting would be adequate and that there would be a potential for a greater level of construction required than the applicant suggests. We further consider that any change which makes this track a more permanent construction feature than exists now could lead to a change in the pattern of use and result in it being less advantageous than it currently is.

6.9.35. We therefore consider that the applicant has not sufficiently proven that the Cowpen Bewley Access Track open space land would satisfy s132(3) of the PA2008.

6.9.36. In consequence of this conclusion, we have to also conclude that plots 4/22 and 4/23, as seen in figure 10, would not meet the test in s122 of PA2008 as they would not be required for the development nor be incidental to it with the omission of plot 4/24.

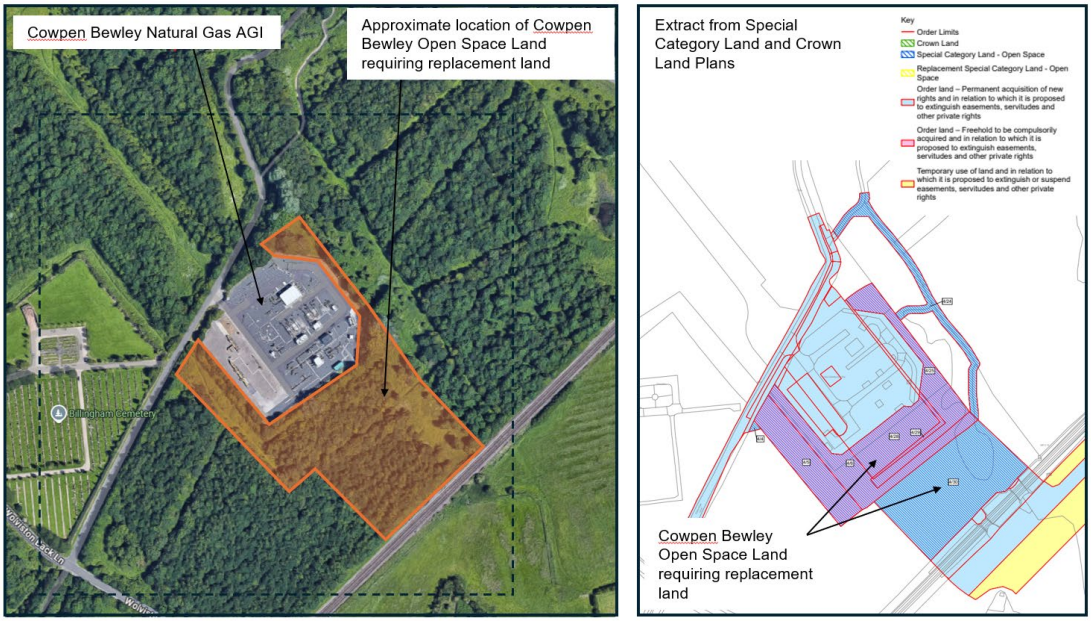
6.9.37. In conclusion, the ExA considers that plots 4/22, 4/23 and 4/24 should be excluded from the Order.

Cowpen Bewley Open Space Land and Replacement Land

6.9.38. The Cowpen Bewley Open Space Land is part of the Cowpen Bewley Woodland Park and is used by the public for recreational purposes. Excluding the Cowpen Bewley Access Track land discussed above, the applicant states that this is open space land for which replacement land is to be provided. There were no comments

relating to this area of land in RRs or LIRs. The location of Cowpen Bewley Open Space Land is shown in figure 13.

Figure 13: Cowpen Bewley Open Space land

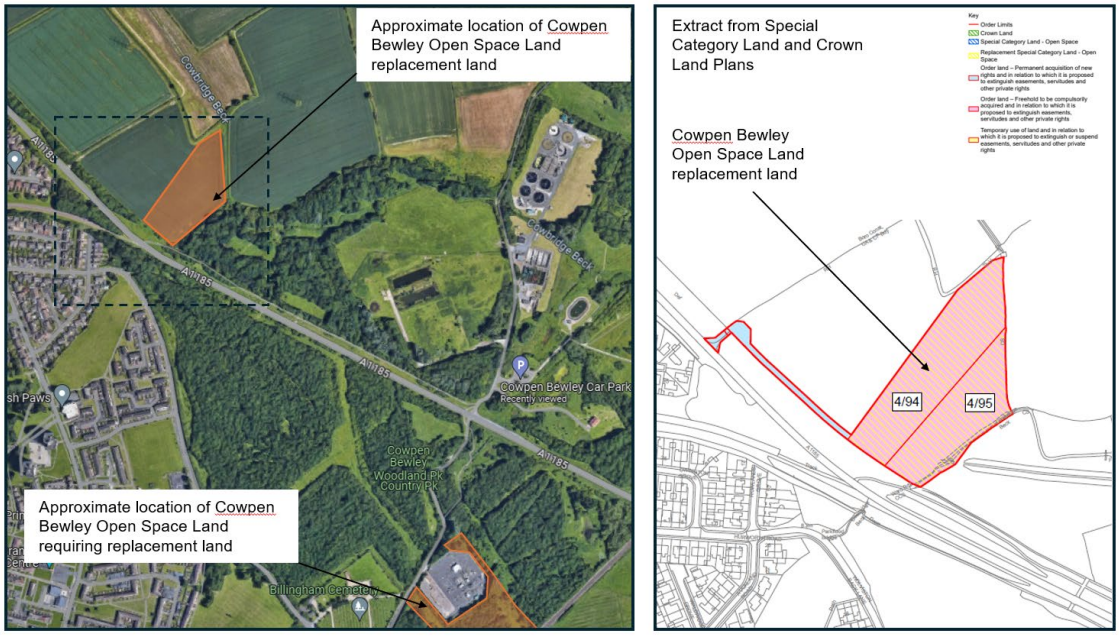


6.9.39. The SoR [APP-024] states that the open space land within the Order limits is to be used for the construction and maintenance of the hydrogen distribution network and connection to the existing Cowpen Bewley Natural Gas AGI. At paragraph 9.1.27 the SoR states that the works will in part prevent access to the public to areas of existing open space for health and safety and security reasons where there will need to be a new permanent fence in certain areas.

6.9.40. It goes on to state that in addition to the areas of permanent acquisition of land, shown in pink on the Land Plan, the hydrogen distribution pipeline will pass through plot 4/30 where acquisition of rights is proposed. In this location it will be necessary for the applicant to remove trees and to prevent their re-growth over the hydrogen pipeline. This area of Cowpen Bewley Woodland Park will therefore be altered by the nature of the works and ongoing restrictions, and whilst the applicant may be able to permit some public access, the extent or amenity of this may be reduced.

6.9.41. The applicant states that the open space land lost will equate to 1.945ha and has highlighted replacement land totalling 1.964ha; the location of the proposed replacement land is shown in figure 14.

Figure 14: Cowpen Bewley Open Space land replacement land location



6.9.42. The SoR states that the applicant has also considered qualitative factors, in considering the statutory tests for replacement land and considers the factors support the PA2008 tests appropriately:

- the replacement land is contiguous with Cowpen Bewley Woodland Park;
- the replacement land will become part of Cowpen Bewley Woodland Park, with those in whom the lost open space is vested and the public able to enjoy the replacement land alongside and as part of using the existing parts of Cowpen Bewley Woodland Park;
- the DCO would oblige the applicant to obtain the LPA's approval to a scheme for the layout and implementation of the replacement land; and
- the public will be able to use the replacement land in the same manner and for the same recreational purposes as the lost open space.

ExA's Consideration regarding Cowpen Bewley Open Space Land

6.9.43. The ExA has assessed the Cowpen Bewley open space land and replacement land as presented to the examination. The ExA considers that the applicant has detailed the full likely impacts seen on the open space land at Cowpen Bewley and agrees that these impacts will be both permanent and restrict access to land which is currently open space. The ExA also agrees that replacement land is required.

6.9.44. We have considered the agreement between those with whom the land is vested and will be vested and have asked questions of those parties affected. At the close of the examination all parties have stated that agreements are progressing and will be in place by the time the land would be required. Matters relating to the replacement land are secured by article 29 of the rDCO.

6.9.45. The ExA notes that there are no objections from any relevant parties.

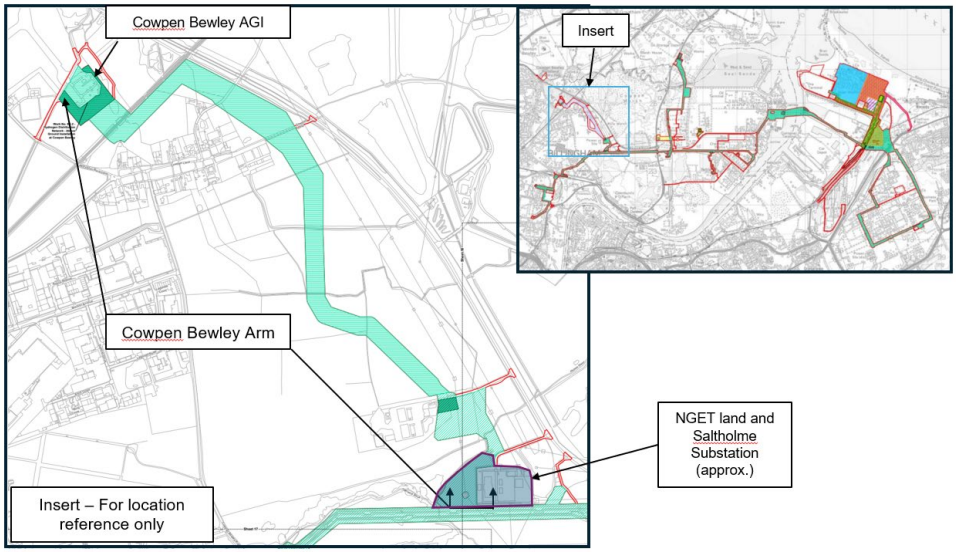
6.9.46. The ExA consider that the replacement land proposed is sufficient in quantity and quality to satisfy the tests under the PA2008.

6.9.47. We therefore agree with the applicant that the test under s131 and s132 of the PA2008 is satisfied in relation to Cowpen Bewley Open Space Land, excluding that part detailed in the Cowpen Bewley Access Track land, being Plot 4/24, as discussed above, and that the proposed replacement land also meets the relevant tests.

6.10. CONSIDERATION OF THE 'COWPEN BEWLEY ARM'

6.10.1. The Cowpen Bewley Arm refers to the section of pipeline in the proposed development that would run from the main pipeline intersection at the Saltholme Substation through to the natural gas AGI at Cowpen Bewley. This is shown in figure 15.

Figure 15: Cowpen Bewley Arm location plan

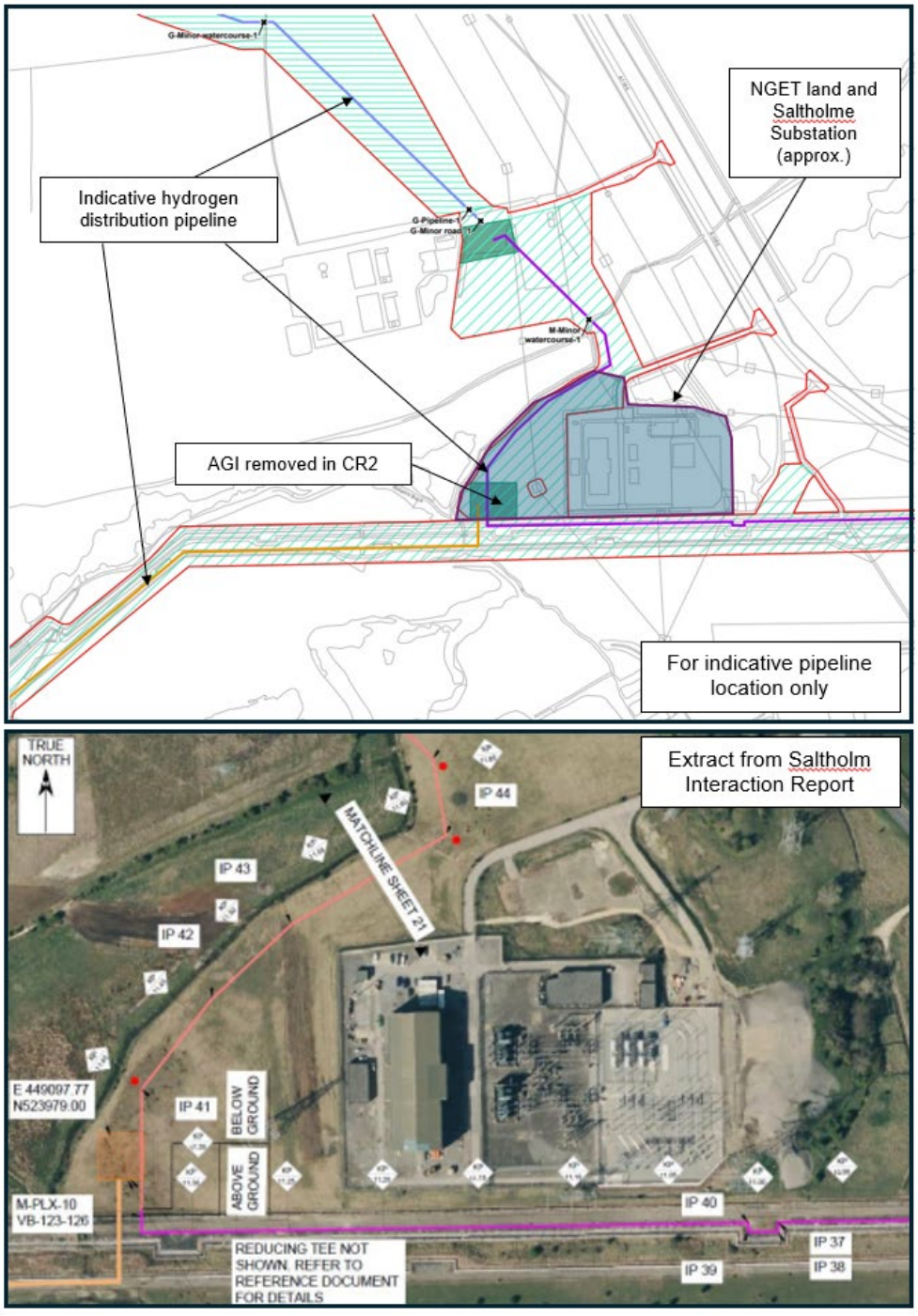


6.10.2. We detailed previously in this chapter our consideration of the objection from NGET in relation to its land at Saltholme Substation. We concluded that the objection was not withdrawn at the close of the examination and that the application in the form presented by the applicant could lead to serious detriment of NGETs current and future undertakings and therefore did not meet the relevant tests in s127 and s138 of the PA2008. This being the case we recommended that plots 3/18; 3/20; and 3/21 should not be approved for CA within the Order.

6.10.3. During the examination and after CAH2, the ExA foresaw the potential for this outcome due to negotiations between NGET and the applicant not progressing positively, along with submissions from NGET that it was not able to agree to the applicant's alternative proposals that would impact their land at Saltholme. Therefore in the latter part of the examination period we sought extensive information from the applicant and other interested parties regarding the impact of this on the proposed development, in particular the Cowpen Bewley Arm.

6.10.4. The reason for focusing on the Cowpen Bewley Arm is that the proposed hydrogen pipeline must pass through NGET land at Saltholme in order to continue its path to the Copwen Bewley AGI, irrespective of the changes made at CR2 which were discussed previously in this report. This is shown for reference in figure 16. Please note that this figure is an extract of the proposed hydrogen distribution network before changes were made in CR2, whereupon this indicative network plan was not updated.

Figure 16: Proposed works at Saltholme Substation land



6.10.5. The ExA issued a request for further information on 10 February 2025 [PD-020] to seek views from the applicant and other IPs on whether there was a case remaining for CA and TP powers to be exercised on any land north of Saltholme. We also sought views on whether land to the north of Saltholme would meet the tests in the PA2008 in the eventuality that we recommended the NGET land were removed from the order. NGET responded to this [REP8-058] stating it was concerned that the applicant's Without Cowpen Bewley Arm proposals submitted at DL7a still included proposals for pipeline through the substation land.

6.10.6. Additionally, in its DL7 WR at paragraph 3.6, NGET raise the matter of s122 tests. It states that the applicant has admitted there are alternatives for connection to the gas grid and therefore alternatives to the need for the Cowpen Bewley Arm; therefore it believes that the applicant can exercise this alternative to avoid Saltholme Substation and the entirety of the Cowpen Bewley Arm.

6.10.7. The applicant's statements at chapter 3 in its DL7a submission titled Saltholme Substation Interaction Report [REP7a-015] addressed both the ExAs request for further information and NGETs commentary about the s122 test. Firstly, at paragraph 3.1.1 the applicant addresses NGETs commentary about alternatives, stating that there is no optionality for one of the off-takers who would not be supplied if the Copwen Bewley Arm were to be removed and the option of connecting to the AGI is also fixed.

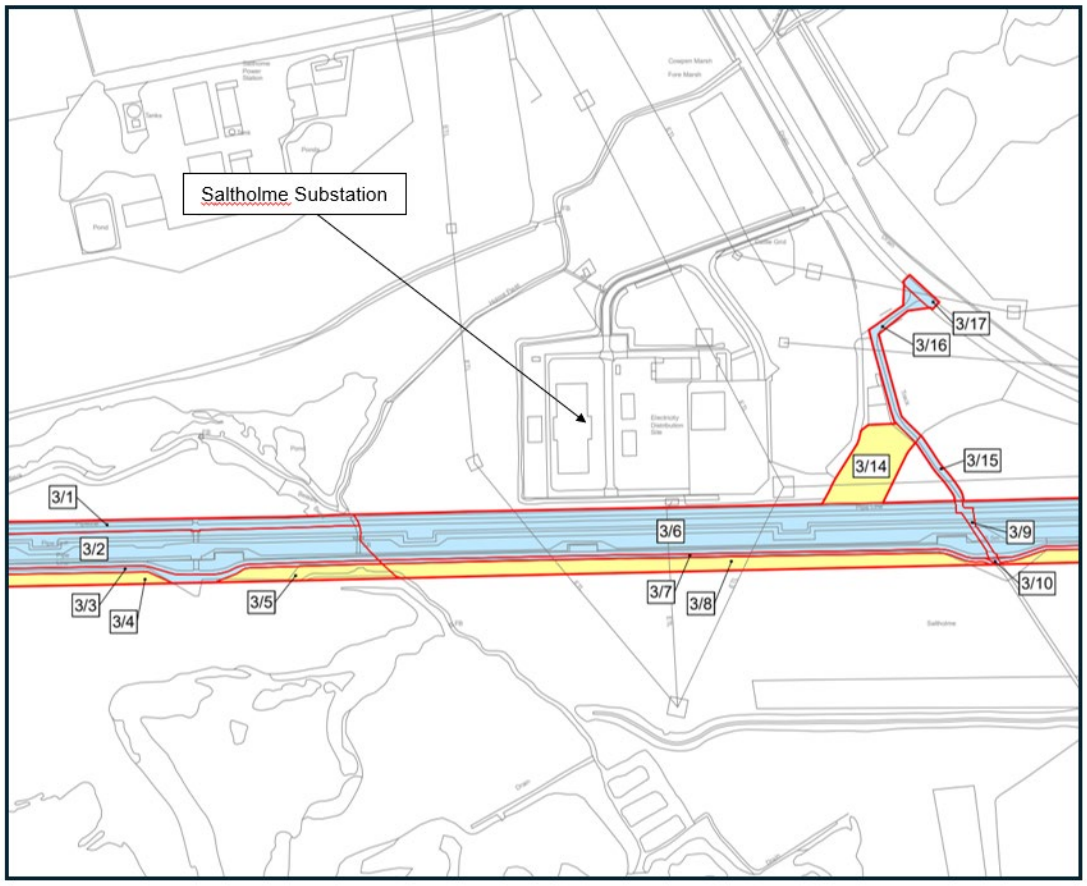
6.10.8. The applicant continues at paragraph 3.1.2 to repeat, with clarifications, its post hearing note following CAH2 [REP6a-018]. This states that loss of the Cowpen Bewley arm would not materially affect the compelling case in the public interest for CA powers over the rest of the Order land. The applicant would have an alternative, although not preferred, option to use the Billingham option for connection/ blending to Project Union and the regional hydrogen distribution network and therefore the applicant does not rely solely on the Cowpen Bewley arm to make its case for the benefits of the proposed development. The applicant concludes by stating that the remaining hydrogen distribution network would still act as a catalyst to the decarbonisation of Teesside and beyond where low carbon hydrogen is introduced to a grid/ distribution network.

6.10.9. In addition to the above, in its summary of CAH2 [REP6a-018], the applicant acknowledges that if the ExA and SoS do not grant CA powers over land that is currently in the Order limits in and around the Saltholme Substation, the applicant would not be able to run a pipeline to the Cowpen Bewley AGI. The applicant further acknowledges that the ExA would have no certainty of that part of the proposed development being delivered and would need to take that into account in considering the CA case and open space impacts of that arm.

6.10.10. The ExA issued a subsequent request for further information on 11 February 2025 [PD-021] seeking, on a without prejudice basis, an alternative version of the dDCO and accompanying documents that excludes plots numbers 3/18, 3/20 and 3/21 and all plots numbers north of those plot numbers, ie the entirety of the Cowpen Bewley Arm. This was provided at DL7a and updated variously at DL8.

6.10.11. As part of the without prejudice submissions at DL8, the applicant provided Works Plans [REP8-032] and Land Plans [REP8-030], an extract of the lands plans in the vicinity of the Saltholme Substation is provided here for reference in figure 17.

Figure 17: Land plan extract without the Cowpen Bewley arm in the vicinity of Saltholme Substation



6.10.12. The removal of the Cowpen Bewley Arm would remove the impact on the Cowpen Bewley Open Space Land in its entirety and would negate the need for the proposed exchange land at Cowpen Bewley; this matter has been highlighted briefly by the applicant but not commented upon by IPs.

ExA's Consideration regarding The Copwen Bewley Arm

6.10.13. The ExA have previously considered in this report the issue of NGET land at Saltholme, its expansion plans and alternatives to both this proposed expansion and the proposed development. We have recommended that NGETs land at plots 3/18, 3/20 and 3/21 are not included in the Order.

6.10.14. We consider that the applicant has agreed to the ExAs request to provide without prejudice versions of the dDCO and other relevant documents into the examination and conclude that these would avoid NGET's land which it requires for its future development plans.

6.10.15. This being the case, the ExA needs to consider the impact of this decision on the remainder of the Cowpen Bewley Arm and we conclude the following:

- The ExA have no certainty that the proposed pipeline to Cowpen Bewley would be capable of being delivered as it will not be able to pass through NGET land at Saltholme.

- As the pipeline has no certainty of being constructed through NGETs land a Saltholme, the land north of NETGs land would not comply with s122 as it would not be required for the development nor be incidental to it.
- We also consider that NGETs statement that even with the removal of the Cowpen Bewley Arm the applicant would seek to authorise a pipeline through its land is incorrect. Having reviewed this matter, including studying the WCBAV of the Land Plans [REP8-030] and the WCBAV of the BoR [REP8-035-], the ExA concludes there is no evidence that adequately supports NGET's position in this regard and the ExA give it no weight. The rDCO, along with the plans and reports secured in it exclude all works related to the Saltholme substation.
- We agree with the applicant that the removal of the Cowpen Bewley Arm would not materially affect the compelling case in the public interest for CA powers over the rest of the Order land nor the need for the proposed development.
- There will be impacts for one potential off-taker by removing the Cowpen Bewley Arm from the proposed development.
- We understand that there may be an alternative option for the applicant regarding the connection/ blending to Project Union/ regional hydrogen distribution network at Billingham but we have no information as to whether this is possible or would require further changes to the proposed development and therefore, we have given no weight to this option.
- That in removing the Cowpen Bewley Arm from the proposed development, the impact on the Cowpen Bewley Open Space Land and subsequent exchange land is negated and is therefore not a consideration in our rDCO.

6.10.16. In summary, the ExA recommends that the entirety of the Cowpen Bewley Arm is removed from the proposed development from the southern border of NGETs land for the reasons set above. This is as detailed in the applicant's submissions as listed in paragraph 6.12.2 of this report. In recommending this, the ExA has included the applicant's without prejudice DL8 and DL9 submissions, as relevant to the DCO, in its rDCO.

6.10.17. Whilst the ExA recommends the rDCO attached at appendix D is made, the SoS may wish to seek clarification from the Applicant and NGET as to whether the parties have reached agreement in terms of NGET's objection, especially in regard to the matter of serious detriment.

6.10.18. Should the SoS not agree with the ExA in regard to this matter or the SoS is informed that NGET has withdrawn its objection since the close of the examination, an alternative version of the DCO, being the APV of the DCO that includes the Cowpen Bewley Arm (as amended by the alterations to PPs mentioned above and any other modification) is appended to this report at appendix E.

6.11. CONSIDERATION OF OTHER PARTICULAR ISSUES

Reasonable alternative to Compulsory Acquisition

6.11.1. The CA Guidance states that the applicant should be able to demonstrate that all reasonable alternatives to CA (including modifications to the scheme) have been explored.

6.11.2. Alternatives to CA are considered at paragraphs 6.1.32 to 6.1.48 of the SoR [APP-024]. This states that the proposed development requires the acquisition of land and rights to construct operate and maintain the proposed development and that there is no alternative to this. The SoR also states that that a 'do nothing' scenario is not appropriate given the established national need for low carbon hydrogen production and the urgent need to transition to a low carbon economy and meet Net Zero 2050

commitments. The applicant states that the other key disadvantage of the 'do nothing' scenario would be the lack of additional investment in the local economy.

6.11.3. The applicant states that the selection of the location of the main site, as opposed to other potentially available sites, has been based on a number of factors including proximity to existing infrastructure and users, size and utilisation of brownfield land. Alternatives to connection corridors, which included the hydrogen distribution network, have been explored and utilise existing connection corridors where possible. In the case of both the main site and connection corridors, the applicant has retained some flexibility to allow refinement during the detailed design stage.

6.11.4. The applicant concluded its case on alternatives by stating that none of the alternatives would provide the compelling benefits delivered by the proposed development and/ or they would involve additional impacts or disadvantages in terms of land take, environmental, technical or other considerations.

6.11.5. The applicant is also seeking to acquire the necessary land and rights by agreement. Whilst it will continue to seek to acquire the land and rights by voluntary agreement, the applicant requires the powers of CA sought in order to provide certainty that all the land required to construct and operate the proposed development is available in order to realise the public benefits.

ExA's Consideration regarding Reasonable alternative to Compulsory Acquisition

6.11.6. Throughout the examination a number of IPs raised issues regarding alternatives to both design details and CA. We have covered these issues in this report in the planning issues chapter and/ or, where relevant, in individual objections within this chapter.

6.11.7. We have taken into account the points made by various parties in relation to alternatives and are satisfied that the applicant has explored all reasonable alternatives to CA, including efforts to secure acquisition by negotiation and voluntary agreements; these negotiations with third parties will continue following the close of the examination.

6.11.8. We acknowledge that modifications to the proposed development, including through two change requests, have been developed by the applicant throughout the examination and refinements are likely to continue post close of the examination.

6.11.9. The objections raised do not dissuade us from the conclusion that there are no alternatives to the CA powers sought which ought to be preferred.

The availability and adequacy of funding

6.11.10. The applicant submitted a Funding Statement [APP-025] and a Supplementary Funding Statement with CR1 [CR1-014]. There was no further Funding Statement at CR2. The Funding Statement at CR1 stated that there were no changes to the details submitted in the original statement, therefore we will only reference the original Funding Statement in this section.

6.11.11. The Funding Statement details that the applicant for the proposed development is H2 Teesside Ltd which is registered in England and Wales. The proposed development is being promoted by two project partners being BP Plc. which is listed on the Main Market of the London Stock Exchange and Abu Dhabi National Oil

Company (ADNOC) P.J.S.C., a company existing under the laws of the Emirate of Abu Dhabi. BP Plc will be appointed as the operator of the proposed development.

6.11.12. The applicant's Funding Statement and response to our written questions explain that the applicant has access to finance to fund the works to be authorised by the Order. The current cost estimate of the project is stated as being £2,300 million for Phase 1 and £2,200 million for Phase 2.

ExA's Consideration regarding the availability and adequacy of funding

6.11.13. During the examination, we asked a number of questions regarding the adequacy of funding, primarily in ExQ1 [PD-008]. We highlighted in ExQ1, Q1.6.32 that the Funding Statement gave detailed information of the accounts of BP Plc but not ADNOC. The applicant gave assurance [REP2-024] that ADNOC is one of the world's largest companies and is wholly state-owned by the Emirate of Abu Dhabi, ADNOC operates with the strong financial support and backing of the Government of Abu Dhabi which through its various sovereign wealth funds manages assets exceeding $1 trillion.

6.11.14. In addition to this, a number of IPs raised questions regarding the basis of the assumptions of compensation values within the estimate in relation to interruption to business for companies operating in and near the proposed development. We asked the applicant its view on this in ExQ2, Q2.6.11 [PD-015]. In its reply [REP5-044] the applicant referred to Article 47(1) of the DCO, stating that the SoS is required to determine the amount of security required in light of the CA powers sought. The applicant also states that the Funding Statement included provision for compensation and ultimately the project partners have adequate funds to fund the development.

6.11.15. The ExA accepts that at CR1 and CR2 there was no material difference to the details contained in the application version of the Funding Statement. We did nevertheless ask questions in this regard at ExQ2 and were content with the answers provided.

6.11.16. Having had regard to the information in the Funding Statement and the net assets of the project partners stated, we consider that there is security of funding for the implementation of the proposed development within the statutory period following the Order being made. Article 47 of the Order secures this in terms of CA and TP matters.

Human Rights

6.11.17. The Human Rights Act 1998 incorporates the European Convention on Human Rights (ECHR) into UK statute. The ECHR is subscribed to by member states of the Council of Europe. ECHR rights are enforceable in the domestic courts but with final recourse to the European Court of Human Rights. The ECHR, the Council of Europe and the European Court of Human Rights are not European Union (EU) institutions and are unaffected by the decision to leave the EU.

6.11.18. Relevant provisions of the ECHR that are normally engaged by CA and/ or TP proposals include:

- Protocol 1, Article 1: the right to peaceful enjoyment of possessions and not to be deprived of this except in the public interest;
- Article 6: the right to due process in civil proceedings, including a public hearing before an independent and impartial tribunal;

- Article 8: the right to respect for private and family life, home and correspondence, relevant where property that is a home is affected.

6.11.19. Section 11 of the applicant's SoR [APP-024] deals with Human Rights. It acknowledges that the Order has the potential to infringe the rights of persons who hold interests in land within the Order limits under Article 1 of the First Protocol and Article 6.

6.11.20. In terms of Article 1, the applicant sets out that it considers there would be very significant public benefits arising from the making of the Order for the proposed development which can only be realised with the grant of powers of CA. The applicant further considers that the significant public benefits outweigh the effects on persons who own interests in land or who may be affected by the proposed development and compensation is payable in accordance with the statutory compensation code.

6.11.21. Turning to Article 6, the applicant states in the SoR that there has been opportunity to make representations on the application both before and after the submission of the application to the SoS and should the Order be made, any person aggrieved may challenge this in the High Court pursuant to s118 of the PA2008 or the Upper Tribunal (Lands Chamber) in relation to compensation.

6.11.22. The applicant did not comment on Article 8 within the SoR and confirmed in response to ExQ1, Q1.6.34 [REP2-024] that no private dwelling or areas used as part of a dwelling are subject to CA powers sought.

ExA's Consideration regarding Human Rights

6.11.23. The ExA consider that individual rights would be interfered with by the approval of CA powers.

6.11.24. We are satisfied that the applicant has endeavoured to minimise the impact that CA would have upon businesses affected by the proposed development, including through use of PPs. In addition, compensation would be payable for both CA of land and rights and other land would be impacted by temporary use required to construct the development. We accept that in relation to Article 1 of the First Protocol, the proposed interference with rights would be for legitimate purpose that would justify such interference in the public interest. The extent of that interference would be proportionate.

6.11.25. In relation to Article 6 the ExA is satisfied that all objections which were submitted to the examination have either been resolved with the AP, and/ or the AP has had the opportunity to present its case to the ExA in writing and/ or at the CAHs. The application and its examination procedurally accord with the PA2008 and related guidance. There is therefore nothing to suggest that parties have not had a reasonable chance to put their case or been put at a substantial disadvantage in relation to other parties.

6.11.26. We therefore consider that the public benefits to be derived from the proposed CA would decisively outweigh the private loss that would be suffered by those whose land or interests would be acquired, and therefore justifies interfering with that land or those rights.

6.11.27. If the SoS does not agree with our recommendation in relation to excluding the Cowpen Bewley Arm from the Order we conclude, based on the evidence before

the ExA at the close of the examination, the human rights of the land owners who have plots north of the NGETs land at Saltholme would be infringed.

Equality Act 2010

6.11.28. S149 of the Equality Act 2010 requires a public authority, in the exercise of its functions to have regard to the principles of the public sector equality duty (PSED). In doing so it must have due regard to the need to eliminate discrimination harassment and victimisation; advance equality of opportunity, and foster good relations, between persons who share a relevant protected characteristic and persons who do not share it.

6.11.29. The applicant is not a public body in respect of s149 Equality Act 2010 and made no specific mention of this in the application; no RRs or LIR highlighted matters relating to this.

ExA's Consideration regarding Equality Act 2010

6.11.30. In our written questions, we sought clarification from the applicant in regard to any APs who it was aware of who could share characteristics protected by the Equalities Act. In response the applicant confirmed that it was not aware of any.

6.11.31. Taking account of there being no representations to the contrary and confirmation from the applicant, the ExA is satisfied that the application and examination have complied with s149 of the Equality Act 2010. In exercising our functions as the ExA, we have had due regard to the PSED contained in s149 Equality Act 2010.

6.11.32. We consider that there is no evidence that implementation of the proposed development would disproportionately affect persons who share a protected characteristic, nor would there be any adverse effect on the relationship between such persons and persons who do not share a protected characteristic.

6.12. CONCLUSIONS

6.12.1. The ExA has taken into account all the information, submissions and representations made, including the matters considered above, noting that agreements had not been reached with all APs and SUs by the end of the examination, meaning that CA powers may be required should the landowners' position not change.

6.12.2. The final versions of the relevant plans and documents that the ExA rely on in conclusion are:

- Statement of Reasons [APP-024]
- Change Request - Supplementary Statement of Reasons [CR1-013]
- Land Plans – Without Cowpen Bewley Arm [REP8-030]
- Special Category Land and Crown Land Plans – Without Cowpen Bewley Arm [REP8-031].
- Works Plans – Without Cowpen Bewley Arm [REP8-032].
- Book of Reference – Without Cowpen Bewley Arm [REP8-035],
- Funding Statement [APP-025]
- Explanatory Memorandum [REP7a-008]

Purpose for which CA may be authorised - s122(2) of the PA2008

6.12.3. The ExA is satisfied that the CA sought in all the plots of land included in the updated BoR and shown on the updated Land Plans would be required for, or to

facilitate or be incidental to, the proposed development to which the development consent relates. These Land Plans and the BoR are those which exclude the Cowpen Bewley Arm. The applicant's preferred Land Plans and BoR would include land which the ExA is not satisfied would meet these requirements of s122(2). Both the principal development, and the associated development, identified in the application, as amended by CR1 and CR2, would be needed for that purpose. The requirements of s122(2)(a) and (b) of the PA2008 are, therefore, met in the ExAs rDCO.

Whether there is a compelling case in the public interest - s122(3) of the PA2008

6.12.4. With regard to s122(3), we have had regard to all objections raised. We are content that the applicant has endeavoured to minimise the impact that CA would have on those APs affected by the proposed development and hence the extent of their private loss. The private loss to those affected would be mitigated by limiting the use of CA powers to land necessary to deliver the proposed development and by the use of TP powers wherever possible to minimise both land take and the extent of rights and interests to be acquired.

Land to which authorisation of compulsory acquisition can relate – s123 of the PA2008

6.12.5. Turning to s123 of the PA2008, the ExA confirms that we are content that the application for the Order includes a request for CA of the land to be authorised. Also, we confirm that the SoS can be satisfied that at least one of the prescribed conditions have been met with regards diligent enquiry and the right for an AP to be heard regarding CA matters.

Statutory Undertakers Land

6.12.6. S127 and s138 of the PA2008 objections have been made and not withdrawn. These objections have been considered as reported earlier. The ExA has included versions of PPs which it considers would allow s127 and s138 tests to be met for all SU with the exception of NGET. Should the SoS receive agreed wording between the parties regarding the PPs, which differs from that recommended by the ExA, it would be appropriate for the SoS to give weight to the agreed wording and consider amending the rDCO.

Status of Outstanding Objections

6.12.7. Should the SoS receive agreed wording between the parties regarding the PPs, which differs from that recommended by the ExA, it would be appropriate for the SoS to give weight to the agreed wording and consider amending the rDCO. Where we consider that the SoS may wish to clarify agreements with relevant parties we have itemise this in chapter 7.

Crown Land

6.12.8. The powers sought in connection with crown land and/ or crown rights should not be granted until it has been confirmed that the necessary crown authority, consistent with the BoR and in accordance with s135(1) and s135(2) of the PA2008, has been obtained.

Special Category Land

6.12.9. We conclude the following relating to the Special Category Land included in the ExAs rDCO, which excludes the Cowpen Bewley Arm:

- that the test under s132(3) of the PA2008 is satisfied in relation to Coatham Marsh Open Space Land;
- that without the Cowpen Bewley Arm, matters relating to Cowpen Bewley Open Space Land are removed from the application and therefore not considered.

6.12.10. If the SoS does not agree with our recommendation in relation to excluding the Cowpen Bewley Arm from the Order we conclude the following:

- that the test under s131 and s132 of the PA2008 is satisfied in relation to Cowpen Bewley Open Space Land, excluding that part detailed as the Cowpen Bewley Access Track land, and that the proposed replacement land also meets the relevant tests.
- that the tests under s132(3) for the Cowpen Bewley Access Track open space land have not been met and there is insufficient evidence to prove that this land is needed as there are adequate alternative access options into the extended Cowpen Bewley AGI.
- In light of the above, plot 4/24 which relates to Cowpen Bewley Access Track open space land, and the associated plots 4/22, 4/23 should not be given CA rights and have not been included in the alternative version of the Order.

Cowpen Bewley Arm

6.12.11. The ExA has recommended that the Cowpen Bewley Arm is removed from the Order and to this end, the rDCO excludes this and relies on the applicant's submissions which amend its dDCO and associated plans accordingly. Should the SoS receive information that the applicant and NGET have reached an agreement to allow both developments to proceed or an agreement to PPs which differs from that recommended by the ExA, it would be appropriate for the SoS to give weight to the agreed wording and consider amending the rDCO and relevant plans and documents.

The Human Rights Act and Equality Act

6.12.12. The ExA is satisfied that, in relation to the inclusion of CA and TP powers in the rDCO, any interference with human rights would be for legitimate purposes, would be proportionate and would be justified in the public interest. We are also satisfied that there is no evidence that the proposed development would not accord with s149 of the Equality Act 2010. In this regard we are content that the SoS can be satisfied that they would comply with the principles of the PSED in decision-making.

6.12.13. If the SoS does not agree with our recommendation in relation to excluding the Cowpen Bewley Arm from the Order we conclude, based on the evidence before the ExA at the close of the examination the human rights of the land owners who have plots north of the NGETs land at Saltholme would be infringed.

Recommendations

6.12.14. In the event that the SoS is minded to grant development consent for the proposed development, the ExA recommends that:

- the CA powers included in the rDCO be granted;
- the TP powers included in the rDCO be granted;

- the powers authorising the CA of SUs land and rights over land included in the rDCO be granted;
- the powers authorising the extinguishment of rights, and removal of apparatus, of SUs included in the rDCO be granted;
- PPs should be included in the Order in the form set out in the rDCO (unless the SoS is aware of evidence of agreement having been reached that would lead to agreed different wording); and
- the powers included in the rDCO to apply, modify or exclude a statutory provision be granted.

7. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

7.1. INTRODUCTION

7.1.1. The application draft Development Consent Order (dDCO) [APP-027] and the Explanatory Memorandum (EM) [APP-028] were submitted by the applicant as part of the application for development consent. Both the dDCO and EM were updated throughout the examination with optionality, of two versions being introduced at Deadline (DL) 7a (see paragraph 7.1.5 below).

7.1.2. The introduction of the alternative version, submitted by the applicant on a without prejudice basis, was provided in response to the Examining Authority's (ExA) request for further information under Rule 17 of the Infrastructure Planning (Examination Procedure) Rule 2010 (EPR) dated 11 February 2025 [PD-021].

7.1.3. The ExA sought this alternative version of the dDCO due to National Grid Electricity Transmission PLC's (NGET) strong objection to the proposed development in regard to Compulsory Acquisition (CA)/ Temporary Possession (TP) of, or interference with, its assets, land or rights over its land. NGET, as a Statutory Undertaker (SU), set out its strong objections in its Relevant Representation (RR) [RR-024] and Written Representation (WR) [REP2-068] and maintained them throughout the examination, including in regard to the applicant's compromise solution (see NGET's submissions at DL5 [REP5-064], DL6a [REP6a-033], [REP7-049], [AS-047] and [REP8-058]).

7.1.4. NGET's strong objections are set out in chapter 6 (CA/ TP) of this report and not repeated here, so as to avoid duplication, other than to note it considered serious detriment to the carrying on of its undertaking would occur in terms of either version of the dDCO.

7.1.5. The latest versions of the dDCO prior to the close of the examination, submitted by the applicant, were its preferred dDCO Version (APV) [REP7a-003]) and the alternative version of the dDCO (Without Cowpen Bewley Arm Version (WCBAV)) [REP7a-006]. The latest version of the EM submitted at DL7a relates to the APV of the dDCO [REP7a-008] and explains each of its articles and schedules.

7.1.6. The application dDCO [APP-027], and subsequent versions, are broadly based on the Model Provisions, as set out in the (now withdrawn) Infrastructure Planning (Model Provisions) (England and Wales) Order 2009, but with differences. The original EM [APP-028] and subsequent versions note and explain variations made in the dDCO compared to the Model Provisions. These variations are drawn from the drafting used in other orders for similar developments made under the Planning Act 2008 (PA2008), the Transport and Works Act 1992 and other Acts authorising development. The original application dDCO [APP-027] and subsequent iterations (the most recent versions of the dDCO being the APV [REP7a-003] and the dDCO WCBAV [REP7a-006]) are in the form of a statutory instrument as required by section (s) 117(4) of the PA2008.

7.1.7. During the examination, several further drafts of the Development Consent Order (DCO) were submitted by the applicant incorporating progressive changes arising from the ExA's written questions, points made by Interested Parties (IP), and from the proceedings at the hearings. Issue Specific Hearing (ISH) 1 was held as a fully virtual event on the afternoon of the 28 August 2024, following the close of the

preliminary meeting. CA Hearing (CAH) 1 and ISH2 were held as blended events (in-person and virtually) during the week commencing 11 November 2024, whilst CAH2, ISH3 and ISH4 were held as fully virtual events during the week commencing 13 January 2025. Recordings and transcripts of these Hearings (CAH1, CAH2, ISH1, ISH2, ISH3 and ISH4) are available in the examination library (EL)). Details of these hearings, including weblinks, are set out in paragraphs 1.4.9 and 1.4.10 of this report.

7.1.8. For the reasons set out in chapter 6 above, the ExA acknowledges the objections raised by NGET and considers the APV of the dDCO to be unacceptable. This is due the proposed development resulting in serious detriment to the carrying on of NGET's undertaking as an SU contrary to s127 of the PA2008. However, for the reason expressed above, the ExA does not consider serious detriment to NGETs undertaking, as an SU, would occur as a result of the WCBAV of the dDCO [REP7a-006]. Therefore, the ExA has proceeded on the basis of the WCBAV of the dDCO [REP7a-006], submitted at DL7a.

7.1.9. This chapter provides an overview of the changes made to the dDCO during the examination process, between the application dDCO [APP 027] and the WCBAV of the dDCO [REP7a-006], which the ExA has taken as the final version, submitted at DL7a, as amended by updates to Schedule 13 (Documents and Plans to be Certified) [REP9-003] of the WCBAV of the dDCO (In the APV of the dDCO this would be Schedule 14 (Documents and Plans to be Certified) [REP9-006]) for the reasons set out above. It then considers changes made to the final dDCO in order to arrive at the recommended DCO (rDCO) in appendix D to this report.

7.1.10. The ExA do not report on every change made in the updated versions of the dDCO, as some were the result of typographical, grammatical or other minor simple errors, were minor changes, reflected updated documents, or were changes in the interests of clarity or consistency following discussion between the applicant and relevant IP, or as a result of its written questions. Accordingly, and in the interest of conciseness, the ExA has focussed on key changes made in the updated versions of the dDCO.

7.2. THE ORDER AS APPLIED FOR

7.2.1. This section records the structure of the dDCO. It is based on the WCBAV of the dDCO [REP7a-006], as updated in regard to applicant's corrections to Schedule 13 (Documents and Plans to be Certified) [REP9-003] of the WCBAV of the dDCO, which the ExA has taken as the final version, and is as follows:

- Part 1, Article 1 sets out how the Order may be cited and when it comes into force, whilst Article 2 sets out the meaning of the various terms, including the terms 'Commence', 'Maintain' and 'Order limits'. Article 2 also defines: distances, directions and lengths; areas described in square metres in the Book of Reference (BoR) being approximate; references to numbered work (Work No.) being to the works numbered in Schedule 1 (Authorised Development) and as shown on the works plans; the expression "includes" be construed without limitation; and references to plots being references to the plots shown on the Land Plans and described in the BoR. Article 3 sets out procedures in relation to electronic communications.

- Part 2, Articles 4 to 6 provides development consent for the proposed development and allows it to be constructed, maintained and operated. Articles 7 and 8 sets out who has the benefit of the powers of the Order and how those

powers can be transferred, whilst Article 9 relates to the application and modification of legislative provisions, confirming which statutory provisions are modified and their subsequent application in the context of exercising powers under the Order.

- Part 3, Articles 10 to 16 provide for the applicant or a person who has the benefit of the Order the ability: to alter street layout; to carry out street works to and within streets; to construct and maintain new or altered means of access; to temporarily close streets and public rights of way; to form and lay out the means of access, or improve existing means of access to works; to enter into agreements with the Street Authority; to make temporary provision for traffic regulation measures.

- Part 4, Articles 17 to 21 set out supplemental powers relating to the discharge of water, the ability to fell or lop trees and remove hedgerows, the ability to undertake protective works to buildings, authority to survey and investigate land and the ability to remove human remains.

- Part 5, Articles 22 to 37 provide for the applicant or a person who has the benefit of the Order the ability:

    - to acquire so much of the Order land for the authorised development, or to facilitate it, or as is incidental to it;
    - to override easements and other rights enabling interference with any easement, liberty, privilege, right or advantage annexed to land and affecting other land, as well as providing compensation may be payable for any such interference or breach;
    - to compulsorily acquire right, including in relation to wayleaves, easements and new rights over the land;
    - to extinguish or suspend existing private rights or restrictive covenants where land is compulsorily acquired;
    - to acquire subsoil and/ or airspace only;
    - enable the acquisition of land and rights in the Cowpen Bewley Special Category Land (SCL) and provide Replacement SCL, as well as the mechanism to acquire rights in the Coatham Marsh SCL;
    - to appropriate and use land above or below streets within the Order limits;
    - to be able to temporarily use parts of the Order land for the construction and maintenance of the proposed development; and
    - to CA land and extinguish/ suspend rights or restrictions belonging to SUs within the Order land and remove or reposition their apparatus.

    The provisions within many of these Articles also:

    - provides a time limit of 5 years from the Order being made for the exercise of authority to acquire land compulsorily;
    - enables compensation to be payable to affected persons in respect of affected persons (if not covered elsewhere); and
    - provides powers in relation to the recovery of reasonable costs in regard to new connections required where SUs apparatus is removed and this halts supply from that apparatus to owners or occupiers of premises such that they have to seek a connection to other apparatus.

    This Part of the Order also:

- modifies the provisions of Part 1 of the Compulsory Purchase Act 1965 as applied to the Order by section 125 of the PA2008, whilst reflecting changes introduced by the Housing and Planning Act 2016.
- make provision for SUs in respect of the apparatus and rights of SUs in streets which are altered or diverted or where use is temporarily prohibited or restricted under specified articles.
- provides that persons who have to create a new connection to SU apparatus may recover the costs of the new connections.
- prevents existing minerals under land being automatically acquired.

- Part 6, Articles 38 to 48 are concerned with miscellaneous and various general matters/ provisions. They relate to:

  - the application of landlord and tenant law;
  - preventing a breach of the Order if development is carried out or used within the Order limits in accordance with any permission granted under the Town and Country Planning Act 1990;
  - the defence to proceedings in respect of statutory nuisance.
  - provides protection for SUs, and other IPs, through the Protective Provisions (PP), as set out in Schedule 10;
  - confirmation that crown rights are not affected by the CA powers provided for in the Order;
  - the provision of a procedure in relation to consents and approvals required pursuant to the Order
  - certification of documents;
  - notices served under the Order;
  - arbitration in the case of dispute;
  - the provision of a guarantee or other form of security for the payment of compensation to be put in place prior to exercising the CA powers granted by the Order;
  - the provision of an interface with the Anglo American (AA) Environmental Permit (EP), such that the carrying out of an 'authorised activity' shall not constitute a breach of or non-compliance with such EPs. (Note, the PP in favour of AA provides for the undertaker to obtain approval or consent of AA before it can carry out works in the Shared Area (where H2T project and AA's interests interface). The PP is clear that it would be reasonable for AA to refuse consent if it would *"cause a breach of the obligations under, or conditions attached to, the Environment Agency* (EA) *Permit or render compliance with the obligations under, or conditions attached to, the EA Permit (i) more difficult; and/or (ii) more expensive."*).

7.2.2. There are forty-three Schedules to the Order. Schedule 1 provides for the description of the authorised development, whilst Schedule 2 sets out the requirements which apply to it.

7.2.3. Schedule 3 provides modifications and amendments to the York Potash Harbour Facilities Order 2016 (YPHFO);

7.2.4. Schedules 4 to 7 are linked, as they relate to matters concerning streets, creation of accesses, the temporary closure of streets and public rights of way and the provision of specified traffic regulation measures. Streets subject to street works are identified in Schedule 4, whilst Schedule 5 identifies those parts of the access to be maintained by the Highways Authority (Schedule 5, Part 1) and those parts of the access to be maintained by the Street Authority (Schedule 5, Part 2). Schedule 6 relates to streets (Part 1) and Public Right(s) of Way (PRoW) (Part 2) to be

temporarily closed. Schedule 7 sets out the location and description of the traffic regulation measures.

7.2.5. Schedules 8 to 10 are also linked insomuch as they concern land in which new rights may be acquired, the modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants and land of which TP may be taken.

7.2.6. Schedule 11 provides the procedure for appeals to the Secretary of State (SoS), in relation to certain local authority approvals post-DCO consent, whilst Schedule 12 sets out the procedure in relation to certain approvals for discharge of requirements. Schedule 13 specified and documents and plans to be certified by the SoS, whilst Schedule 14 specifies the design parameters of the authorised development.

7.2.7. The PPs for specified SUs and IPs are set out in Schedules 15 to 43, as specified below:

- Schedule 15 for the protection of Electricity, Gas, Water and Sewerage Undertakers.
- Schedule 16 for the protection of Operators of Electronic Communications Code Networks.
- Schedule 17 for the protection of Third-Party Apparatus.
- Schedule 18 for the protection of National Grid Electricity Transmission PLC as Electricity Undertaker.
- Schedule 19 for the protection of National Gas Transmission PLC as Gas Undertaker.
- Schedule 20 for the protection of Railway Interests.
- Schedule 21 for the protection of the EA.
- Schedule 22 for the protection of Suez Recycling and Recovery UK Ltd.
- Schedule 23 for the protection of INEOS Nitriles (UK) Ltd.
- Schedule 24 for the protection of Navigator Terminals Seal Sands Ltd.
- Schedule 25 for the protection of Air Products PLC.
- Schedule 26 for the protection of CF Fertilisers UK Ltd.
- Schedule 27 for the protection of Northern Powergrid (Northeast) PLC.
- Schedule 28 for the protection of AA.
- Schedule 29 for the protection of South Tees Group (the STG).
- Schedule 30 for the protection of Northumbrian Water Ltd.
- Schedule 31 for the protection of the Breagh Pipeline Owners.
- Schedule 32 for the protection of CATS North Sea Ltd.
- Schedule 33 for the protection of SABIC Petrochemicals UK Ltd.
- Schedule 34 for the protection of PD Teesport Ltd.
- Schedule 35 for the protection of Redcar Bulk Terminal Ltd.
- Schedule 36 for the protection of Teesside Gas & Liquids Processing, Teesside Gas Processing Plant Ltd & Northern Gas Processing Ltd.
- Schedule 37 for the protection of Northern Gas Networks Ltd.
- Schedule 38 for the protection of Lighthouse Green Fuels Ltd.
- Schedule 39 for the protection of Venator Materials UK Ltd.
- Schedule 40 for the protection of North Tees Ltd, North Tees Land Ltd, North Tees Landfill Sites Ltd and North Tees Rail Ltd.
- Schedule 41 for the protection of the Sembcorp Protection Corridor.
- Schedule 42 for the Protection of Net Zero Teesside (NZT) Power Ltd.
- Schedule 43 for the protection of Net Zero North Sea Storage Ltd.

7.2.8. The ExA finds the structure of the applicant's dDCO WCBAV [REP7a-006], submitted at DL7a, as updated with the applicant's corrections to Schedule 13

(Documents and Plans to be Certified) outlined above, is fit for purpose and no changes to the structure are recommended.

7.2.9. In terms of requirements, set out in Schedule 2 of the dDCO, no areas of disagreement remained between the applicant and the relevant local authorities by the close of the examination. Indeed, in the applicant's completed Statement of Common Ground (SoCG) with Redcar and Cleveland Borough Council (RCBC) [REP5-057] and Hartlepool Borough Council (HBC) [REP8-025] agreed the *"…drafting of the DCO requirements as set out at Schedule 2 of the dDCO … is appropriate…"* (RCBC) [REP5-057] and HBC [REP8-025] both at table 3.1 Item 14), as is the procedure for discharging them (RCBC [REP5-057] and HBC [REP8-025] both at table 3.1 Item 15). The applicant SoCG completed with Durham County Council [REP4-018] agreed it was for the SoS to determine the appropriateness in regard to the requirements and procedures to discharge them (table 3.1 Items 13 and 14).

7.2.10. The applicant's completed SoCG with STBC [REP8-027], confirmed STBC was satisfied in regard to clarification on construction hours it had sought (table 3.1, Item 32) and, similar to RCBC, also *"…agreed that the drafting of the DCO requirements at Schedule 2 of the Draft DCO… is appropriate..."* (table 3.1, Item 33), as is the procedure for discharging them (table 3.1 Item 36).

7.2.11. AA in its closing submission [REP8-046] repeated previous requests for a requirement related to operational noise. The matter of operational noise is addressed in section 3.12 (Noise and Vibration) above and is not repeated here to avoid duplication. AA also sought to be included as a consultee in regard to a number of Schedule 2 requirements. These were requirements 3 (Detailed design), 15 (CEMP), 18 (Construction traffic management plan), 22 (Restoration of land used temporarily for construction) and 28 (Decommissioning).

7.2.12. At DL9, the applicant in its response to DL8 submissions [REP9-023] referred back to a previous response it had made on this matter at DL8 [REP8-018], where it advised it considered the protections afforded in Schedule 29 of the APV of the DCO [REP7a-003]/ Schedule 28 of the WCBAV of the dDCO [REP7a-006]. Irrespective of this, for reasons set out in Chapter 6, the ExA is recommending AA's PPs are included in the rDCO contained in Annex D to this report. The applicant argued the PP's in the respective versions of the schedule adequately address AA's concerns regarding consultation as they would secure:

- Submitting details to AA for AA's approval of a construction programme and construction traffic and access management (paragraph 7(1)(c)(i)).
- The provision of updates to the construction programme on an monthly basis (paragraph 7(1)(d)).
- Constructing the Specified Works in accordance with the construction programme and construction traffic and access management plan (paragraph 7(1)(e)).
- The restoration of land (paragraph 7(1)(i)).
- Strict control over the design process and consent mechanisms (paragraphs 3, 5, 8 and 9), whilst also detailing requirements the Applicant must comply with when constructing, operating and maintaining the Specified Works (paragraphs 6 and 10) in the respective versions.

7.2.13. Bearing in mind the above mentioned controls the ExA considers the PPs in favour of AA provide sufficient protection so that AA does not need to be a consultee in relation to requirements 3, 15, 18 or 22. In terms of Schedule 2, requirement 28

(Decommissioning), the applicant at DL8 [REP8-018] confirmed it was agreeable to the inclusion of AA as a consultee in that requirement and provided a form of wording to be incorporated. The ExA considers this appropriate and has included the revised wording in the APV of the dDCO [REP7a-003] and the WCBAV of the dDCO [REP7a-006], as set out in tables 6 and 7 below.

7.2.14. With the exception of the above and reflecting on all the submissions made regarding requirements during the examination, the only requirement that remains of concern to the ExA is requirement 33 (requirements deemed to be discharged under the Net Zero Teesside Order 2024). With regard to that requirement, the ExA noted the Net Zero Teesside Order 2024 relates to a completely different development with a differing red line boundary/ Order limit.

7.2.15. As such the ExA considers it would be unreasonable to enable the discharge of requirements in the H2Teesside Order, if made, though the Net Zero Teesside Order 2024, especially in regard to requirement 3 (Detailed design) and requirement 10 (Surface and foul water drainage). To enable such a deemed discharge would mean the relevant Local Authority/ Local Authorities may not be able to consider the specifics of detailed design in relation to the H2Teesside proposed development and would remove the ability to take any enforcement action should such action be necessary. Therefore, the ExA considers requirement 33 fails, as a minimum, to meet the tests of reasonableness and enforceability and should be removed from the dDCO.

7.2.16. With regard to all other requirements set out in Schedule 2 of the dDCO, the ExA considers they adequately meet the tests of necessity, precision, enforceability, relevance to planning and the development proposed and to be reasonable in all other respects. Additionally, the ExA is satisfied in regard to the procedures related to the discharge of requirements, as set out on Schedule 12 of the WCBAV of the dDCO [REP7a-006]/ Schedule 13 of the APV of the dDCO [REP7a-003], as the schedule adequately sets out: how approvals are to be given; how any amendments are to be treated; provides clear time limits for decisions to be made; and provides for circumstances where the discharging authority requires further information to be provided, in relation to an application for the discharge of requirements.

7.2.17. Having considered all the submissions made in the examination in relation to the requirements included in the dDCO, the ExA finds, with the exception of requirement 33, the requirements proposed are reasonable, necessary, precise, enforceable, and relevant to the development and planning and reasonable in all other respects, especially in terms of what they seek to accomplish.

7.2.18. Furthermore, the ExA finds Schedule 12 of the WCBAV of the dDCO ([REP7a-006]/ Schedule 13 of the APV of the dDCO [REP7a-003]) set out a clear procedure for the discharge of requirements to be reasonable, necessary, and relevant to the development. Furthermore, it considers the above mentioned schedules related to the discharge of requirements to be precise, enforceable, and reasonable in all other respects.

7.2.19. Turning to PPs, as set out in Schedules 15 to 43 of the dDCO (WCBAV)/ Schedules 16 to 44 of the dDCO (APV), these do not follow a conventional approach of PPs being presented in a single schedule of the DCO, which is contrary to the approach in Advice Note 15 (AN15) at 8.2. However, the applicant points out AN15, at 4.5, also states that separate schedules for PPs can be acceptable. The applicant was questioned on this approach by the ExA during ISH2, into the DCO, with it arguing the approach taken is justified because of the large number of PPs expected for this

project. It also argued its approach was precedented in the YPHFO and The East Midlands Gateway Rail Freight Interchange and Highway Order 2016.

7.2.20. The PPs as set out below, have been agreed or there was no engagement from the relevant IP's in regard to them:

- Schedule 15 of the dDCO (WCBAV) and Schedule 16 of the dDCO (APV) (For the Protection of Electricity, Gas, Water and Sewage Undertakers), as generic PP to cover those undertakers for whom there are no tailored PP. These PP take a form which is consistent with that contained in other DCOs and Transport and Work Act Orders and no representations on them have been received throughout the examination process. In the absence of any evidence to the contrary the ExA considers the PP in favour of Electricity, Gas, Water and Sewage Undertakers are fit and appropriate for inclusion in, the rDCO.

- Schedule 16 of the dDCO (WCBAV) and Schedule 17 of the dDCO (APV) (For the Protection of Operators of Electronic Communications Code Networks), as generic PP to cover for electronic communications code network operators where there are no tailored PP. These PP take a form which is consistent with that contained in other DCOs and Transport and Work Act Orders.

  Irrespective of the above, and whilst there was no other engagement with the ExA from other operators of electronic communications code networks during the examination, Vodafone submitted a representation at DL4 advising of a 'qualified objection' in relation to a 'Stopping Up Order at the H2Teesside Project' [REP4-058]. This representation was accompanied by plans entitled "…built records showing our apparatus…" [REP4-059], [REP4-060] and [REP4-061], and a copy of its document entitled 'Special Requirements relating to the External Plant Network of Vodafone' [REP4-062]. The letter clearly sought written assurances as to the safeguarding of its apparatus and the reimbursement of costs for any works necessary.

  The applicant in its response to the DL4 submissions [REP5-051] advised it considered the PPs for the protection of operators of electronic communications code networks provide sufficient protection for Vodafone and welcome further discussions with Vodafone if it considers any bespoke protections are needed. Vodafone made no further submissions into the examination and in the absence of any evidence to the contrary the ExA considers the PP in favour of Operators of Electronic Communications Code Networks are fit and appropriate for inclusion in the rDCO.

- Schedule 17 of the dDCO (WCBAV) and Schedule 18 of the dDCO (APV) seek to provide generic PPs in regard to third-party apparatus. These include other third parties with affected apparatus, who are not SUs and to whom sections 127 and 138 of the PA2008 do not apply and seeks to ensure these parties are able to continue their operation. No IP sought to engage with the ExA in regard to this specific PP and in the absence of any evidence to the contrary, the ExA considers the PPs in favour of third-party apparatus are fit and appropriate for inclusion in, the rDCO.

- Schedule 21 of the dDCO (WCBAV) and Schedule 22 of the dDCO (APV) are PPs for the protection of the EA as SU, especially in terms of its responsibilities in regard to flood risk, including from main rivers and the sea, and relevant drainage work responsibilities. The applicant's completed SoCG with the EA [REP8-024] confirmed the applicant *"…agreed to accept that standard set of*

protective provisions as being able to be included in the main DCO." It also confirmed the EA grants s150 consent to the dis-applications contained in Article 9(3) of the dDCO.

Bearing this in mind the PP in favour of EA, as set out in the applicant's final versions of the dDCO (The APV [REP7a-003]/ The WCBAV [REP7a-006]), both submitted at DL7a, require no updating and are considered fit and appropriate for inclusion in the rDCO.

- Schedule 31 of the dDCO (WCBAV) and Schedule 32 of the dDCO (APV) are PPs for the protection of the Breagh Pipeline Owners (BPO), who own and operate a number of pipelines, along with a fibre optic cable, for the passage of natural gas at various times, together with 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.

  The applicant provided the PPs to the BPO on 17 December 2024 and included them in the dDCO submitted into the examination at DL5. The applicant confirmed at DL7a [REP7a-029] it had not received comments from the BPO in respect of the form of the PPs and it considered them appropriate PPs to ensure the protection of the BPO interests, having regard to the interactions between the property and operations of the BPO and the proposed development. The BPO did not engage with the ExA during the examination and in the absence of any evidence to the contrary the ExA considers the PP in favour of BPO are fit and appropriate for inclusion in the rDCO.

- Schedule 36 of the dDCO (WCBAV) and Schedule 37 of the dDCO (APV) are PPs for the protection of Teesside Gas & Liquids Processing, Teesside Gas Processing Plant Ltd & Northern Gas Processing Ltd, who own and enjoyment rights and property, as well as operate energy and other infrastructure in Teesside comprising a plant to process gas from the UK North Sea and includes low and high pressure pipelines used for the passage of natural gas and/or liquid natural gas and/or other products (including butane, propane and condensate output) at various times, together with 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.

  The North Sea Midstream Partnership (NSMP) Entities, who is formed of the above-mentioned companies, confirmed no objection to the DCO being granted at DL8 [REP8-066], [REP8-076] and [REP8-077]. It also confirmed *"The NSMP Entities are satisfied that the updated draft development consent order provided at DL7a… contains appropriate PPs… and requirements to address* [its] *interests."* Bearing this in mind, the ExA does not consider the PPs in favour of the above mentioned companies, who form the NSMP Entities, require updating and considered them fit and appropriate for inclusion in the rDCO.

- Schedule 37 of the dDCO (WCBAV) and Schedule 38 of the dDCO (APV) are PPs for the protection of Northern Gas Networks (NGN), who as a gas utility provider, with land interests within the Order limits, safeguarding the protection of the undertaker's assets, whilst seeking to ensure no serious detriment to it carrying on its undertaking.

The NGN did not engage with the ExA during the examination. Irrespective of this the applicant has set out clear explanations of the proposed PPs in it DL7a submission [REP7a-033]. In the absence of any evidence to the contrary the ExA considers the PPs in favour of NGN are fit and appropriate for inclusion in the rDCO.

- Schedule 41 of the dDCO (WCBAV) and Schedule 42 of the dDCO (APV) are PPs for the protection of the Sembcorp Protection Corridor, who are owners and operators in the Sembcorp Protection Corridor, as well as owners and operators in the Wilton Complex and Sembcorp.

  Sembcorp confirmed in its DL9 submission [REP9-031] *"Agreement has… been reached with regard to PPs and a side agreement. Please therefore take this letter as a withdrawal of Sembcorp's objection to the application, subject to the inclusion within the Order of the PPs submitted by the Applicant at DL8."* The PPs as set out in the rDCO and the APV of the DCO have been updated using the version of the PPs submitted by the applicant at DL8 and are considered fit and appropriate for inclusion in the rDCO.

7.2.21. The following PPs remained outstanding at the close of the examination and had not been agreed:

- Schedule 18 (dDCO WCBAV) and Schedule 19 (dDCO (APV) for the Protection of National Grid as Electricity undertaker (NGET) and Schedule 19 (rDCO WCBAV) and Schedule 20 (APV of the DCO) for the Protection of National Grid as Gas Undertaker (National Grid Gas PLC (NGG). These are PP for the benefit of NGET and NGG and affords them appropriate protection for any land or assets owned or in their control within or located close to the Order limits, whilst seeking to ensure no serious detriment to them carrying on their undertakings.

- Schedule 20 (dDCO WCBAV) and Schedule 21 (dDCO (APV) for the Protection of Railway Interests. These are PP for the benefit of Network Rail (England and Wales) (NR) and afford NR protection for any works to be carried out within a set distance of railway property, whilst seeking to ensure no serious detriment to it carrying on its undertaking.

- Schedule 27 (dDCO WCBAV) and Schedule 28 (dDCO (APV) for the protection of Northern Powergrid (Northeast) PLC who as an electricity utility provider, with land interests within the Order limits, safeguarding the protection of the undertaker's assets, whilst seeking to ensure no serious detriment to it carrying on its undertaking.

- Schedule 30 (dDCO WCBAV) and Schedule 31 (dDCO (APV) for the protection of Northumbrian Water Ltd, as the statutory sewerage and water undertaker having a number of assets within or close to the Order limits, seeking to safeguard/ protect the undertaker's assets, whilst ensuring no serious detriment to it carrying on its undertaking.

7.2.22. Also outstanding at the close of the examination were the PPs listed below. They are for the benefit of the named IP and seek to ensure they have the ability to continue their operations, access their property and have the ability to exercise approval in relation to aspects of the proposed development that have the potential to affect or interact with their interests or assets:

- Schedule 22 (dDCO (WCBAV)) and Schedule 23 (dDCO (APV)) for the Protection of Suez Recycling and Recovery UK Ltd.
- Schedule 23 (dDCO (WCBAV)) and Schedule 24 (dDCO (APV)) for the protection of INEOS Nitriles (UK) Ltd.
- Schedule 24 (dDCO (WCBAV)) and Schedule 25 (dDCO (APV)) for the protection of Navigator Terminals Seal Sands Ltd.
- Schedule 25 (dDCO (WCBAV)) and Schedule 26 (dDCO (APV)) for the protection of Air Products PLC.
- Schedule 26 (dDCO (WCBAV)) and Schedule 27 (dDCO (APV)) for the protection of CF Fertilisers UK Ltd.
- Schedule 28 (dDCO (WCBAV)) and Schedule 29 (dDCO (APV)) for the protection of AA.
- Schedule 29 (dDCO (WCBAV)) and Schedule 30 (dDCO (APV)) for the protection of the STG.
- Schedule 32 (dDCO (WCBAV)) and Schedule 33 (dDCO (APV)) for the protection of CATS North Sea Ltd.
- Schedule 33 (dDCO (WCBAV)) and Schedule 34 (dDCO (APV)) for the protection of SABIC Petrochemicals UK Ltd.
- Schedule 34 (dDCO (WCBAV)) and Schedule 35 (dDCO (APV)) for the protection of PD Teesport Ltd.
- Schedule 35 (dDCO (WCBAV)) and Schedule 36 (dDCO (APV)) for the protection of Redcar Bulk Terminal Ltd.
- Schedule 38 (dDCO (WCBAV)) and Schedule 39 (dDCO (APV)) for the protection of Lighthouse Green Fuels Ltd.
- Schedule 39 (dDCO (WCBAV)) and Schedule 40 (dDCO (APV)) for the protection of Venator Materials UK Ltd.
- Schedule 40 (dDCO (WCBAV)) and Schedule 41 (dDCO (APV)) for the protection of North Tees Ltd, North Tees Land Ltd, North Tees Landfill Sites Ltd and North Tees Rail Ltd.
- Schedule 42 (dDCO (WCBAV)) and Schedule 43 (dDCO (APV)) for the Protection of NZT Power Ltd.
- Schedule 43 (dDCO (WCBAV)) and Schedule 44 (dDCO (APV)) for the protection of Net Zero North Sea Storage Ltd.
- Schedule 44 (dDCO (WCBAV)) and Schedule 45 (dDCO (APV)) for the Protection of Natara Global Ltd.

7.2.23. In addition to the above, the ExA notes PPs were included for the protection of BOC Ltd in drafts of the DCO up until DL7, when they were removed. This is discussed further below.

Conclusion of Protective Provision Schedules

7.2.24. Having considered all matters, the ExA concludes that the position in regard to the IPs and the most reasonable option of PPs presented to the ExA is as stated in table 4. The ExA considers that these preferred PPs provide a suitable level of protection in favour of the IPs, which are considered fit and appropriate for inclusion in the rDCO.

Table 4: Protective Provisions included in the Order

Title of Protective Provision	Schedule Number : rDCO	Schedule Number : APV of the DCO	Version of Schedule submitted into the examination for inclusion in the Orders	Notes
Electricity Gas Water and Sewerage Undertakers	15	16	REP7a-003/ REP7a-006	Applicant's version submitted in dDCOs
Electronic Communication Code Networks	16	17	REP7a-003/ REP7a-006	Applicant's version submitted in dDCOs
Third Party Apparatus	17	18	REP7a-003/ REP7a-006	Applicant's version submitted in dDCOs
National Grid Electricity Transmission PLC	18	19	REP8-058	NGETs version submitted at DL8 appendix 2
National Gas Transmission PLC	19	20	REP7a-059	National Gas Transmission PLC's (NGT) version submitted at DL7a
Railway Interests	20	21	REP7a-003/ REP7a-006	Applicant's version submitted in dDCOs
Environment Agency	21	22	REP7a-003/ REP7a-006	Applicant's version submitted in dDCOs
Suez Recycling and Recovery UK Ltd	22	23	REP7a-003/ REP7a-006	Applicant's version submitted in dDCOs
INEOS Nitriles (UK) Ltd	23	24	REP7a-003/ REP7a-006	Applicant's version submitted in dDCOs
Navigator Terminals Seal Sands Ltd	24	25	REP7a-003/ REP7a-006	Applicant's version submitted in dDCOs
Air Products	25	26	REP7a-003/ REP7a-006	Applicant's version submitted in dDCOs
CF Fertilisers	26	27	REP7a-003/ REP7a-006	Applicant's version

Title of Protective Provision	Schedule Number : rDCO	Schedule Number : APV of the DCO	Version of Schedule submitted into the examination for inclusion in the Orders	Notes
				submitted in dDCOs
Northern Powergrid Northeast PLC	27	28	REP7a-003/ REP7a-006	Applicant's version submitted in dDCOs
Anglo American	28	29	REP8-046	AAs version submitted at DL8 amended by ExA to remove paragraph 9(c)
South Tees Group	29	30	REP9-010	Applicant's updated version not in final dDCOs
Northumbrian Water Ltd	30	31	REP7a-003/ REP7a-006	Applicant's version submitted in dDCOs
The Breagh Pipeline Owners	31	32	REP7a-003/ REP7a-006	Applicant's version submitted in dDCOs
CATS North Sea Ltd	32	33	AS-049	Applicant's updated version submitted as an AS
SABIC Petrochemicals UK Ltd	33	34	REP8-009	Applicant's updated version submitted at DL8
PD Teesport Ltd	34	35	REP5-082	PD Teesports version submitted at DL5
Redcar Bulk Terminal Ltd	35	36	REP7a-003/ REP7a-006	Applicant's version submitted in dDCOs
NSMP Entities	36	37	REP7a-003/ REP7a-006	Applicant's version submitted in dDCOs agreed by parties
Northern Gas Networks Ltd	37	38	REP7a-003/ REP7a-006	Applicant's version submitted in dDCOs

Title of Protective Provision	Schedule Number : rDCO	Schedule Number : APV of the DCO	Version of Schedule submitted into the examination for inclusion in the Orders	Notes
Lighthouse Green Fuels Ltd	38	39	REP9-012	Applicant's updated version submitted at DL9
Venator Materials UK Ltd	39	40	REP7a-003/ REP7a-006	Applicant's version submitted in dDCOs
North Tees Group	40	41	REP9-014	Applicant's updated version submitted at DL9
Sembcorp Protection Corridor	41	42	REP7a-003/ REP7a-006	Applicant's version submitted in dDCOs agreed by parties
Net Zero Power Ltd	42	43	REP8-065	NZPs version amended by ExA to remove paragraph 9(7) and (8)
Net Zero North Sea Storage Ltd	43	44	REP8-062	NZNSSs version amended by ExA to remove paragraph 9(7) and (8)
Natara Global	44	45	REP9-016	Applicant's updated version submitted at DL9
BOC	45	46	REP7-018	Applicant's version submitted at DL7 within rev 7 of dDCO at Schedule 38

7.2.25. Irrespective of the ExA's position on this matter, should the SoS for Energy Security and Net Zero be minded to make the DCO, they may wish to satisfy themselves that the wording of the PPs contained at Schedules 18 to 20 (inclusive); 22 to 35 (inclusive); 37 to 40 (inclusive) and 42 to 45 (inclusive) of the rDCO, as set out in appendix D of this report, are the most up to date version presented by IPs; as a number of PPs may have been progressed to agreement since the close of the examination. The SoS may also wish to satisfy themselves as to the final agreement in relation to any side agreement(s) completed between these parties.

7.3. CHANGES DURING EXAMINATION

7.3.1. The applicant updated the dDCO prior to the start of and several times during the examination. These updates responded to issues raised in the ExA's written questions, RRs and WRs and as a consequence of the hearing process. It also submitted updated versions of the dDCO with its first Change Request (CR1). The applicant at each revision submitted a clean copy and a copy showing tracked changes from the previous clean copy version, up until and including DL7. There were four exceptions to this, as no versions of the dDCO were submitted at DL1, DL3, DL5a or DL6.

7.3.2. It should be noted that at DL7 the applicant submitted two versions of the dDCO, one was related to the Order limits including the Cowpen Bewley Arm of the Hydrogen Production Corridor and related works (the APV) and the other was the WCBAV. This was done at the request to the ExA, due to the objections raised by NGET and its position regarding its allegation that the proposed development would result in a serious detriment to the carrying on of its undertaking.

7.3.3. The versions of the updated dDCO submitted by the applicant were as follows:

- Submitted prior to the commencement of the examination [AS-013] (Clean) and [AS-014] (tracked).
- DL2 version [REP2-004] (clean) and [REP2-005] (tracked).
- CR1 version [CR1-015] (clean) and [CR1-016] (tracked).
- DL4 version [REP4-004] (clean) and [REP4-005] (tracked).
- DL5 version [REP5-006] (clean) and [REP5-007] (tracked).
- DL6a version [REP6a-007] (clean) and [REP6a-008] (tracked).
- DL7 version [REP7-018] (clean) and [REP7-019] (tracked).
- DL7a versions:
  - APV [REP7a-003] (clean) and [REP7a-004] (tracked);
  - WCBAV [REP7a-006] (clean) and [REP7a-007] (tracked).

7.3.4. In addition to the above, at DL8, the applicant provided its updated preferred form of Schedule 3 of the dDCO [REP8-006], along with its updated preferred form of PPs with AA [REP8-005]; the STG [REP8-007]; SABIC Petrochemicals UK Ltd [REP8-009] (Clean)/ [REP8-010] (Tracked); Natara Global Ltd [REP8-014]; NZT Power Ltd [REP8-016]; and Net Zero North Sea Storage Ltd [REP8-017]. The applicant also submitted at DL8 its agreed form of PPs with Sembcorp [REP8-013].

7.3.5. At DL9 the applicant submitted its updated preferred form of PPs with NGET [REP9-009], a further updated set of PPs with the STG [REP9-010] (Clean)/ [REP9-011] (Tracked); as well as PPs in favour of Lighthouse Green Fuels Ltd [REP9-012] (Clean)/ [REP9-013] (Tracked); North Tees Group (NTG) [REP9-014] (Clean)/ [REP9-015] (Tracked); and Natara Global Ltd [REP9-016] (Clean)/ [REP9-017] (Tracked);

7.3.6. The applicant submitted a 'Schedule of Changes to the dDCO' documenting the changes to the dDCO at various DLs throughout the examination. This enabled the changes to various iterations of the dDCO to be followed as the examination progressed. The applicant's 'Schedule of changes to the dDCO' were submitted as follows:

- during the examination at:
  - DL2 [REP2-006];
  - acceptance of CR1 [CR1-017],
  - DL4 [REP4-006],
  - DL5 [REP5-008],

- DL6a [REP6a-009]
- DL7 [REP7-020].
- DL7a [REP7a-005] providing a schedule of changes to the APV of the dDCO. It did not include any reference to the WCBAV of the dDCO and the applicant did not submit a similar document solely in relation to the WCBAV of the dDCO.

7.3.7. No schedule of change to the dDCO was provided in relation to any of the applications submissions made at DL8 or DL9 concerning the dDCO. This includes in relation to the applicant's updated preferred form of Schedule 3 of the dDCO [REP8-006], any of the updated preferred form of PPs and new PPs it proposed to be included.

7.3.8. The key changes to the dDCO during the examination, and the reasons for these changes, are set out in the table below. The table does not detail minor amendments made in relation to typographical errors, formatting and style errors (including the movement of existing text) and updates in cross-referencing:

Table 5: Key Changes to the dDCO made during the Examination

Version of dDCO	Key Changes
Prior to the start of the examination Additional Submission [AS-014] (Tracked Version)	Article 2(1) (Interpretation) – definition of: ▪ "traffic regulation measures plans" amended to read "temporary traffic regulation measures plan", together with subsequent reference to 'plans' changed to the word 'plan'. Schedule 4 (Streets Subject to Street Works) – New row added at end in relation to Tees Road (A178) being works for the improvement of the access at the point marked M1 and M1a on sheet 5 of the access and rights of way plans. Schedule 5 (Access) Part 1 – (Those parts of the Accesses to be Maintained by the Highway Authority) – New row added at end in relation to Tees Road (A178)/ PD Teesport Ltd's (PDT) private access track being that part of the access cross-hatched in blue at the point marked M1a on sheet 5 of the access and rights of way plans. Part 2 – (Those parts of the Accesses to be Maintained by the Street Authority) – New row added at end in relation to Tees Road (A178)/ PDT private access track being that part of the access cross-hatched in red at the point marked M1 on sheet 5 of the access and rights of way plans. Schedule 6 (Temporary Closure of Streets and Public Rights of Way) Part 1 – (Those Parts of the Street to be Temporarily Closed) – New row inserted below row 20 in relation to

Version of dDCO	Key Changes
	Tees Road (A178) to temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked MA and MB on sheet 5 of the access and rights of way plans. Schedule 7 Traffic Regulation Measures – Description in Column 4 amended to refer to 'temporary traffic regulation measures plan' to reflect the definition change set out above in relation to Article 2(1) above. Schedule 14 (Documents and Plans to be Certified) – updated throughout to reflect correct document names, document references, revision numbers and the date of the document.
DL2 Version [REP2-005] (Tracked)	Contents – Reference to 'Temporary Traffic Measures' for Schedule 7 amended to 'Traffic Regulation Measures'. Amendment made for consistency with the relevant article and Schedule further to the ExA's First Written Questions (ExQ1). Reference to 'National Grid Electricity Transmission' amended to 'National Grid Electricity Transmission PLC'. Amendment made for consistency with the relevant set of PP further to the ExQ1. Reference to 'National Grid Gas PLC' amended to 'National Gas Transmission PLC'. Amendment made to correct error further to the ExQ1. Preamble – Deleted square brackets and optionality in '[a single appointed person / a panel]' in the second paragraph so that it refers only to 'a panel'. Amendment made further to the ExQ1. Deleted reference to s149A of the Planning Act 2008. Amendment to correct error further to the ExQ1 Article 2 (Interpretation) – Definition of 'flood risk assessment' amended to 'means the document of that description which is certified as part of the ES by the SoS under Article 44 for the purposes of this Order'. The definition has been amended for consistency following consideration of the ExQ1. Definition of '"maintain" amended to include, inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part of, but not remove,

Version of dDCO	Key Changes
	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;’. This amendment has been made in response to the ExQ1 and provides consistency between the ‘tailpiece’ used in the ‘maintain’ definition and in the definition for ‘permitted preliminary works’ (PPW). Definition of permitted preliminary work inserted ‘(including archaeological investigations)’ after ‘environmental surveys’. Insertion for clarity that archaeological surveys can be undertaken as part of the PPWs after consideration of ExQ1. Inserted a new definition of ‘The York Potash Harbour Facilities Order 2016’. Insertion made further to the ExQ1. Article 7 (Benefit of this Order) Deleted ‘sub-paragraph (2) of’, so it reads ‘subject to Article 8’. Deletion made to improve clarity and following consideration of the ExQ1 and comments about Article 8. Article 8 (Consent to transfer benefit of this Order) – Amended Article 8(1) to change reference to paragraph 4 to paragraph 2. Amended Article 8(2) to the following: ‘The consent of the SoS is required for a transfer or lease pursuant to this article, except where paragraph (6) applies.’ Amended Article 8(3) to change reference to paragraph 6 to ‘…paragraph 3’. Amendments Article 8, as set out above were made to improve clarity of drafting and following consideration of the ExQ1 and comments about Article 8. Additionally, the amendment to Article 8(2) is to ensure it is clear that the SoS’s consent is required for a transfer or lease pursuant to the article, unless any of the exceptions in Article 8(6) apply. Article 16 (Traffic Regulation Measures) Inserted a new Article 16(4), which required the undertaker to consult with the chief officer of police in whose area the road is situated; and obtain the written consent of the traffic authority, prior to exercising the

Version of dDCO	Key Changes
	power conferred in Article 16(2). Inserted following ExQ1 for clarity Article 18 (Felling or lopping of trees and removal of hedgerows) – The reference to Schedule title in Article 18(5) has been amended from '(removal of important hedgerows)' to '(important hedgerows to be removed)'. This amendment was made further to the ExQ1. Deleted the definition of 'authorised development' from Article 18(6). Amendment made further to consideration of the ExQ1. Article 25 (Compulsory acquisition of rights etc.) – In Article 25(3), deleted reference to Article 7 and amended to: 'The SoS's consent is not required for any SUs to whom the benefit of the Order has been transferred pursuant to Article 8(6) (consent to transfer benefit of this Order)'. This amendment was made for clarity and to cross-reference to the correct part of the DCO, as the previous drafting referred to SUs in Article 7 where there were none. In Article 25(4) inserted reference to paragraph (3) alongside paragraph (2). Amendment was made further to the ExQ1 to make it clear that the liability for the payment of compensation 'must remain with the undertaker' whether the SoS's consent is required or not to transfer the power to a SU as defined in the article. Article 29 (Special category land and replacement special category land) – Inserted the words 'the undertaker has exercised a relevant Order power over the replacement special category land' into Article 29(1) so that it reads: 'The undertaker must not exercise the relevant Order powers in respect of the Cowpen Bewley special category land until the undertaker has exercised a relevant Order power over the replacement special category land and the relevant planning authority has approved a scheme for the layout of the replacement special category land.' Inserted at the beginning of Article 29(3): 'The undertaker must lay out and provide the replacement special category land in accordance with the scheme approved under paragraph (1) and on the date….' In Article 29(7), inserted reference to paragraph (3) alongside paragraph (1).

Version of dDCO	Key Changes
	These amendments were made pursuant to the ExQ1 to provide further certainty that the Replacement Special Category Land will be laid out by the applicant. Article 48 (Interface with AA permit) Inserted new Article 48 to make it clear that the 'carrying out of an authorised activity by the undertaker shall not constitute a breach of, or non-compliance with the AA permit' and provides a definition of the 'AA permit' as being 'EP number FB3601GS'. It also provided a definition of 'authorised activity' The applicant explains this article has been inserted to address AA's concerns that its EP covers land that could be compulsorily acquired by the applicant using the DCO, potentially leaving AA responsible for the operation of the permit despite the compulsory acquisition of the land. The new Article 48 ensures that authorised activity undertaken by the undertaker does not constitute a breach of its permit and that the PPs (following the example in The NZT Order 2024 and to be agreed between the parties) would provide for how the AA is consulted on how the project is built in this area and provide for any access arrangements required for monitoring and for the continued operation of the permit. Schedule 1 (Authorised development) – Deleted 'approximately' from Work No. 1 so it reads 'hydrogen production facility of up to 1.2 Gigawatt Thermal (GWth)'. Amendment has been made to improve clarity further to the ExQs. Work No. 1E.1, inserted reference to carbon dioxide vents in Work No. 1E.1. This was missed in error from the application DCO. Deleted comma between "and" and "closed circuit television" in Work No. 9. This has been amended to provide further clarity. References to chemical symbols in Schedule 1 have been amended to the full name of the chemical. This amendment has been made for consistency with the rest of the dDCO further to ExQ1 Amended the last paragraph to: 'In connection with and in addition to Work Nos. 1 to 11, further ancillary development comprising such other works or operations for the purposes of or in connection with the construction, operation and maintenance of the authorised development but only within the Order limits and insofar as they are unlikely to give rise to any materially new or

Version of dDCO	Key Changes
	materially different environmental effects which are worse than those assessed in the environmental statement including…' This amendment was made consideration of the ExQ1 for improved clarity. Schedule 2 (Requirements) – At the start of the Schedule, deleted 'Article 4' and inserted 'Article 2'. This amendment was made following receipt of the ExQ1. Amended article reference at the start of the Schedule to also include 'Article 4' so it reads 'Article 2 and Article 4'. After additional reflection, this amendment has been made for accuracy and clarity. Requirement 5 (PRoW) In requirement 5(1) amended "relevant section of public rights of way" to "relevant section of the public right of way". This has been amended to provide further clarity. Requirement 6 (External lighting) In requirement 6(2) moved "in that part" to after "installed" and before the brackets to be consistent in style with requirement 6(1). This has been amended to provide further clarity. Deadline 2 Schedule 2 – Requirement 8 (Site security) In requirement 8(1) amended "brought into use" to "commissioned". This has been amended to ensure a defined term from Article 2 is used to provide greater clarity. Requirement 8(2) has been amended to 'The scheme must be implemented as approved and must be maintained and operated throughout the operation of the relevant part of the authorised development.' This amendment has been made further to the ExQ1. Schedule 2 - requirement 9 (Fire prevention) Requirement 9(1) amended to: "No part of Work No. 1 may commence, save for the PPWs, until a fire prevention method statement providing details of fire detection measures, fire suppression measures <u>including measures to contain and treat water used to suppress any fire</u> 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~~,~~

Version of dDCO	Key Changes
	~~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." (Text underlined has been inserted; text in strikethrough has been removed) This amendment was made to provide further clarity. Requirement 10 (Surface and foul water drainage) In requirement 10(3), STDC inserted as a consultee. Insertion added following consideration of the ExQ1. Requirement 11 (Flood risk mitigation) Lead Local Flood Authority inserted as consultee in requirements 11(1), 11(3) and 11(6). These amendments have been made to ensure the Lead Local Flood Authority is consulted on the schemes for the mitigation of flood risk during construction and operation as well as the Flood Management Plan. Requirement 11 (Flood risk mitigation) Amended requirement 11(7) to state that the flood management plan 'must be implemented and maintained'. Inserted for greater clarity after consideration of the ExQ1. Requirement 12 (Contaminated land and groundwater) In requirement 12(1), inserted 'the preparation of facilities for the use of contractors and the provision of temporary means of enclosure and site security for construction (where no foundations are required)' after 'assessing ground conditions'. Following consideration of ExQ1 and consideration of the requirement, the applicant has inserted carve outs from this requirement for preparing facilities for contractors and temporary means of enclosure and site security where no foundations are required. This is on the basis that these will not require any foundation or interference with the ground conditions but enable the construction workforce to take steps to mobilise. Requirement 12 (Contaminated land and groundwater) Requirement 12(2)(f) amended to: 'an update to the environmental risk assessment including contaminated land conceptual site model that is informed by any further ground investigation reports and groundwater monitoring

Version of dDCO	Key Changes
	in addition to the information in chapter 10 of the environmental statement'. This amendment was made to clarify the assessment and model to be updated as part of this requirement further to the ExQ1. In requirement 12(4) amended reference from subparagraph (1) to sub-paragraph (2)(c). This amendment has been made to provide further clarity Requirement 19 (Construction hours) Amended construction working hours on a Saturday in requirement 19(1)(b) to 0700 to 1300. Amendment made in response to comments received about construction hours from relevant planning authorities in the LIR. Amended requirement 19(4)(a) to replace reference to "start-up" and "shut-down" periods with "mobilisation and de-mobilisation periods" as follows: '(a) mobilisation and de-mobilisation periods from 0600 to 0700 and from 1900 to 2000 Monday to Friday; (b) mobilisation and de-mobilisation periods from 0600 to 0700 and from 1300 to 1400 on a Saturday.' This amendment made for greater consistency with the terms used in the ES following consideration of ExQ1. The hours for Saturday have also been amended to reflect the change to Saturday construction hours in requirement 19(1)(b). Schedule 2 – requirement 19 (Construction hours) Amended requirement 19(4)(b) from 'maintenance at any time of plant and machinery engaged in the construction of the authorised development'. To: 'maintenance at any time of plant and machinery engaged in the construction of the authorised development where such activities do not exceed a noise limit measured at the Order limits agreed with the relevant planning authority in accordance with requirement 20.' This amendment was made to provide clarity further to ExQ1. Requirement 22 (Restoration of land used temporarily for construction) In requirement 22(1) replaced "for each part of the authorised development" with "for each relevant Work No. of the authorised development". This amendment has been made to provide further clarity and so that this drafting is consistent with the drafting at the start of the requirement.

Version of dDCO	Key Changes
	Requirement 25 (Local liaison group) Reference to ‘contactor’ has been amended to ‘contractor’ in requirement 25(4)(a). This amendment has been made further to the ExQ1. Requirement 26 (Employment, skills and training) Insertion of the word ‘authority’ after ‘relevant planning’ at the end of requirement 26(3). This amendment has been made further to ExQ1. Requirement 28 (Decommissioning) Inserted as new points (j) and (k) in requirement 28(6): ‘(j) waste management measures required; and (k) how the undertaker has applied the waste hierarchy.’ Amendment to set out that the Decommissioning Environmental Management Plan (DEMP) will include waste management measures and state how the applicant has applied the waste hierarchy further to the ExQ1. Schedule 8 (Important hedgerows to be removed) Moved Schedule from Schedule 11 to Schedule 8. This amendment has been made to comply with PINS AN15 at 8.2 where Schedules should be numbered according to the order in which they are mentioned in the substantive articles in the dDCO. This Schedule is given effect by Article 18 and so should come after the Traffic Regulation Measures in Schedule 7 but before the Land Schedules. Schedules from this point have been renumbered accordingly and updates made to cross-references throughout the dDCO. In table 7, amended reference to ‘2 x hedgerows’ to ‘5 x hedgerows’. This amendment reflects the latest version of 2.15 Important Hedgerows to be Removed Plan (rev. 2). Schedule 9 (Land in which new rights etc. may be acquired) Moved Schedule from Schedule 8 to Schedule 9. This amendment has been made following the change to Schedule 8 (Important hedgerows to be removed) as explained above. Interpretation section - inserted: ““Work No. 3A infrastructure” means any works or development comprised within Work No. 3A, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 3A on the works plans including the alteration, diversion or construction of statutory undertakers’ apparatus;” between definitions for

Version of dDCO	Key Changes
	"Work No. 2B infrastructure" and "Work No. 3B.1 infrastructure". This has been inserted to ensure there are definitions for all Work No. infrastructure in the interpretation section of this Schedule. Schedule 9 (Land in which new rights etc. may be acquired) Interpretation section – inserted: "Work No. 3B.3 infrastructure" means any works or development comprised within Work No. 3B.3, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 3B.3 on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;" between definitions for "Work No. 3B.1 infrastructure" and "Work No. 4 infrastructure". This has been inserted to ensure there are definitions for all Work No. infrastructure in the interpretation section of this Schedule. Schedule 9 (Land in which new rights etc. may be acquired) In table 8, deleted reference to plot 13/6. Amendment made following consideration of the ExQ1. Schedule 11 (Land of which temporary possession may be taken) Moved Schedule from Schedule 10 to Schedule 11. This amendment has been made following the change to Schedule 8 (Important hedgerows to be removed) as explained above. Schedule 12 (Appeals to the SoS) Moved Schedule from Schedule 15 to Schedule 12. This amendment has been made to comply with PINS AN15 at 8.2 where Schedules should be numbered according to the order in which they are mentioned in the substantive articles in the dDCO. This Schedule is given effect by Article 43(2) and so should before the Procedure for Discharge of Requirements Schedule. This amendment also accounts for the Schedule containing PP moving to the end of the dDCO. Schedules from this point have been renumbered accordingly and updates made to cross-references throughout the dDCO. Schedule 12 (Appeals to the SoS) In paragraph 2(2)(b) inserted text in italics: '(comprising the relevant application to the local authority, a copy (where it has been provided to the undertaker) of the local authority's reason for its decision and the

Version of dDCO	Key Changes
	undertaker's reasons as to why the appeal should be granted)'. The amendment has been made for clarity further to ExQ1. Schedule 12 (Appeals to the SoS) Amended time period in paragraph 2(2)(g) from '10 working days' to '30 working days'. The amendment follows consideration of ExQ1 and provides consistency between this paragraph and the equivalent paragraph in Schedule 13 (paragraph 5(2)(e)). Schedule 12 (Appeals to the SoS) Amended paragraph 4(7) from: "In considering whether to make any such decisions and the terms on which it is to be made, the appointed person must act in accordance with the relevant Planning Practice Guidance published by the Department for Levelling Up, Housing and Communities, or such guidance as may from time to time replace it." to: "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 Planning Practice Guidance about planning appeals and award costs first published on 3 March 2014 by the Department for Communities and Local Government, as updated from time to time, or any circular or guidance which may from time to time replace it." This amendment was made to provide further clarity and to ensure the references to the Planning Practice Guidance about planning appeals and award costs are consistent between this Schedule and the equivalent paragraph in Schedule 12 (Appeals to the SoS). Schedule 13 (Procedure for discharge of requirements) In paragraph 5(5)(b) deleted "[him]" and replaced with "the appointed person". This amendment has been made to provide further clarity. Amended text in paragraph 5(11) so it reads "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 Planning Practice Guidance about planning appeals and award costs first published on 3 March 2014, by what was then the Department for Communities and Local Government, as updated from time to time, or any circular or guidance which may from time to time replace it." This amendment has been made to provide further clarity and to ensure the references to the Planning Practice Guidance about planning appeals and award costs are

Version of dDCO	Key Changes
	consistent between this Schedule and the equivalent paragraph in Schedule 13 (Procedure for discharge of requirements). Schedule 14 (Documents and plans to be certified) Various amendments to ensure document names, references, revision numbers and dates are up-to-date and accurate. The only change of significance is the deletion of the 'Flood Risk Assessment' as a separate row, as this is covered by the Environmental Statement being a certified document. These amendments reflect submissions by the applicant into the examination at Procedural Deadline A, DL1 and DL2. The amendment to the row containing the Flood Risk Assessment is in response to the ExQ1. Schedule 15 (Design parameters) Moved Schedule from Schedule 16 to Schedule 15. This amendment has been made as a result of the move of Appeals to the SoS Schedule from Schedule 15 to 12 and moving the PPs Schedule to the end of the dDCO. Schedule 15 (Design parameters) The applicant has amended the Design Parameters Schedule to the dDCO at DL2 to remove reference to 'diameter' from the Flare Stack row and has amended the entry to '4.0 (flare 1.0 and platform 4.0)' for clarity. This amendment has been made for greater consistency with ES and the Design and Access Statement further to ExQ1. Abbreviation 'ASU' has been amended to 'Air Separation Unit (ASU)'. This amendment has been made for greater clarity and further to the ExQ1. Schedules 16 to 22 (PPs) Moved Schedule from Schedule 12 to Schedule 16 and separated each Part into its own separate Schedule. This amendment has been made in order to simplify the administrative process of updating the dDCO when PPs have been agreed with individual parties. By moving them to the end of the dDCO and separating into separate Schedules the new PPs just need to be added as a new Schedule and an amendment made to contents page and reference in Article 41. If the PPs remained at Schedule 12 and in separate Parts then each time updated or new

Version of dDCO	Key Changes
	PPs are inserted requires the Schedule paragraphs to be renumbered as well as contents page being added to.
CR1 Version (Accepted CR1 Version) [CR1-016] (Tracked)	Article 2 (Interpretation) – Inserted a new definition of 'application guide', which was inserted to improve clarity. Article 8 (Consent to transfer benefit of this Order) – Deleted references to Work Nos. 6A.3 and 6B.3 from Article 8(6)(a)(iii). Deleted as Work Nos. have been removed from Schedule 1 as part of the CR1 application. Schedule 1 (Authorised Development) Deleted reference to 'air separation units' in Work No. 1A.1. Deleted as part of the CR Application as these are no longer required for Phase 1. Insertion of 'flare' in Work No. 1A.2. Inserted as part of the CR Application. Insertion of a new 'Work No. 2C'. Inserted as part of the CR1 Application. Deletion of Work No. 6A.3 and Work No. 6B.3. Deleted as part of the CR1 Application as part change involving the removal of Northern Gas Networks AGI off the A178 Seaton Carew Road. Deletion of references to Work Nos. 6A.3 and 6B.3 from Work No. 10. Deleted as part of the CR1 Application. Schedule 2 – Requirements– Requirement 3 (Detailed design) Deleted references to Work Nos. 6A.3 and 6B.3 from requirement 3(7) and 3(8). Deleted as these Work Nos. have been deleted as part of the CR1 Application. Schedule 4 (Streets subject to street works) Table 1 – deleted row for works for the improvement of access at point marked J1 and J1a on access and rights of way plans. Deleted as part of the CR1 Application. Schedule 5 (Access)

Version of dDCO	Key Changes
	Table 2 – deleted row for part of access marked J1a on access and rights of way plans. Deleted as part of the CR1 Application. Table 3 – deleted row for part of access marked J1 on access and rights of way plans. Deleted as part of the CR1 Application. Schedule 6 (Temporary closure of streets and public rights of way) Table 4 – deleted row showing temporary closure, restriction or diversion between i) points JA and JB; and ii) points JC and JD on access and rights of way plans. Deleted as part of the CR1 Application. Schedule 9 (Land in which new rights etc. may be acquired) Interpretation section – inserted: ""Work No. 2C infrastructure" means any works or development comprised within Work No. 2C, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 2C on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;" In table 8 – inserted a row for plots relating to Work No. 2C and inserted new rights relating to Work No. 2C. Inserted as part of the CR Application to account for new rights in respect of new Work No. 2C. Interpretation section – deleted definitions to Work No. 6A.3 and Work No. 6B.3. In table 8 – deleted rows with plots relating to Work Nos. 6A.3 and 6B.3. Deleted as part of the CR1 Application to reflect how these works have been removed from the DCO. Table 8 – amendments to plot numbers throughout reflecting the changes, such as Order limits reduction and changes in types of rights sought, pursuant to the CR1 Application. Amendments are part of changes to plots and interests sought as a result of the CR1 Application. Schedule 11 (Land of which temporary possession may be taken) Deleted row with plots relating to 'temporary use to facilitate carrying out of Work No. 6A.3'. Deleted as part of the CR1 Application to reflect how this work has been removed from the DCO.

Version of dDCO	Key Changes
	Amendments to plot numbers throughout reflecting the changes such as Order limits reduction and changes in types of rights sought further to the CR1 Application. Amendments were part of changes to plots and interests sought as a result of the CR1 Application. Schedule 14 (Documents and plans to be certified) Deleted row referring to the 'design and access statement'. Deleted for clarity and also for consistency as the Design and Access Statement is not referred to in the rest of the DCO. Various amendments to ensure document names, references, revision numbers and dates are up-to-date and accurate. These amendments reflect submissions into the examination as part of the application for the CR. Schedule 15 (Design parameters) Amended height of carbon dioxide absorber column from 56m to 59m (Above Ordnance Datum) AOD and the height of the flash vessels from 58m to 73m AOD. These amendments were made as part of the applicant's CR1.
DL4 Version [REP4-005] (Tracked)	Article 2 (Interpretation) – Inserted a new definition of 'NSMP entities', in order to provide a definition for NSMP entities to align with the changes made to Schedule 2 – requirement 3. Article 8 (Consent to transfer benefit of this Order) – Article 8(7) inserted an obligation for the undertaker to notify STDC and Teesworks Limited, where there is a proposed transfer to a third party which is not subject to SoS approval and where the transfer or grant relates to the STDC area. This amendment was made in response to comments received from the STG as part of its Statement of Common Ground (SoCG) and reflects the position reached on the equivalent article in The NZT Order 2024. Article 25 (Compulsory acquisition of rights etc.) – At the end of Article 25(2), inserted 'pursuant to Article 8(2) (consent to transfer benefit of this Order)'. Amended Article 25(3) (underlined text has been inserted and text in strike-through has been deleted): '(3) The powers of paragraph (1) may also be exercised by a

Version of dDCO	Key Changes
	statutory undertaker in any case where the undertaker transfers the power to a statutory undertaker and the SoS's consent is not required ~~for any statutory undertakers to whom the benefit of the Order has been transferred~~ pursuant to Article 8(6) ~~(consent to transfer benefit of this Order)~~ and the undertaker has notified the Secretary of State and, where the transfer or grant relates to the STDC area, STDC and Teesworks Limited in writing pursuant to Article 8(7).' Amendments made for greater clarity so that a SU can exercise powers to compulsorily acquire rights pursuant to Article 25 so long as the SU has been granted or transferred the benefit of the Order in accordance with the process in Article 8. These amendments were made in response to comments received during ISH2. Article 32 (Temporary use of land for carrying out the authorised development) Inserted 'necessary for the authorised development within the Order land' at the end of Article 32(14). Amendment was made in response to comments from the ExA in the ISH2. It provides for consistency of drafting between Article 32(14) and Article 33(13). Article 39 (Planning permission, etc) In Articles 39(1) and 39(3), inserted 'any development consent granted (either prior to or after the Order has come into force) under the powers conferred by the 2008 Act' after the reference to the 1990 Act. In Article 39(3), inserted reference to 'or requirements' after 'conditions'. These amendments have been made for greater clarity and to be clear that these provisions operate in relation to DCOs as well as planning permissions. Article 48 (Interface with AA permit) In Article 48(1), deleted the words 'by the undertaker' to improve clarity of drafting. Schedule 2 – Requirements Requirement 3 (Detailed design) In requirement 3(8)(a), inserted 'of the hydrogen distribution network above ground installations' after the reference to 'new permanent buildings and structures'. In requirement 3(10)(a), inserted 'of the above ground

Version of dDCO	Key Changes
	installation' after the reference to 'new permanent buildings and structures'. These amendment were made to improve clarity and in response to comments made by the ExA during ISH2. Requirement 15 (Construction Environmental Management Plan) (CEMP) In requirement 15(1), inserted STDC as a consultee for the Permitted Preliminary Works CEMP. The applicant agreed to make this amendment in response to DL3 submissions and during the ISH2. Inserted the following plans to the list of plans in requirement 15(7): • Soils Management Plan; • Flood Risk Management Action Plan; • Drilling Method Statement; and • HDD Collapse Clean-up Plan. Deleted 'flood' before 'emergency response plan'. This amendments was made so that the list of plans in the DCO align and are consistent with the list of plans in paragraph 2.3.2 of the Framework CEMP [REP3-003]. Requirement 17 (Extended planned shutdown maintenance period) In requirement 17(1), inserted National Highways as a consultee 'on matters relating to traffic management'. In requirement 17(4), inserted National Highways as a consultee 'to the extent that the changes relate to traffic management'. These amendments were inserted further to the National Highways SoCG submitted at DL4. Requirement 25 (Local liaison group) In requirement 25(1), deleted 'to establish' after the reference to 'the promoter of HyGreen Teesside'. Inserted a new sub-paragraph (5) to define the term 'convened' as meaning 'either the undertaker establishing a new group or becoming part of an existing local liaison group established pursuant to requirement 29 of The NZT Order 2024'. The amendments was made in response to comments made during the ISH2. Requirement 28 (Decommissioning) In requirement 28(1), inserted National Highways as a consultee 'on matters relating to traffic management arrangements pursuant to sub-paragraph (6)(h)'.

Version of dDCO	Key Changes
	Amendment inserted further to the National Highways SoCG submitted at DL4. Requirement 33 (Disapplication of requirements discharge under the NZT Order 2024) Sub-heading of the requirement amended to 'Requirements deemed to be discharged under The NZT Order 2024'. Deleted references to requirements 25 and 26 in requirement 33. Inserted new drafting so the requirement states: '(1) requirement 3 (detailed design) or 10 (surface and foul water drainage) in this Schedule may be deemed to be discharged in respect of any part of the authorised development where— (a) the relevant part of requirement 3 (detailed design) or 11 (surface and foul water drainage) of The NZT Order 2024 has been discharged pursuant to The NZT Order 2024; (b) the discharge of that relevant part of requirement 3 or 11 in sub-sub-paragraph (a) satisfies all of the relevant requirements in relation to the relevant part of requirement 3 or 10 of this Order; and (c) the discharge of that relevant part of requirement 3 or 10 of this Order is in respect of infrastructure that is— (i) to be constructed, maintained and operated in the form as discharged pursuant to The NZT Order 2024; and (ii) also to be utilised for the purposes of the authorised development. (2) Sub-paragraph (1) is subject to obtaining the approval of the relevant planning authority. (3) Where the relevant part of requirement 3 or 10 of this Order requires the relevant planning authority to consult with a third party, then that third party must be consulted before giving approval under sub-paragraph (2).' These amendments were made in response to comments made by the ExA about the requirement in the ISH2. Requirement 34 (Highway accesses) Insertion of a new requirement 34 to provide for details of the siting, design and layout of new or modified means of access to be approved by the relevant planning authority.

Version of dDCO	Key Changes
	The insertion has been made in response to comments made by IPs in ISH2. Schedule 14 (Documents and plans to be certified) Various amendments to ensure document names, references, revision numbers and dates are up-to-date and accurate. These amendments reflect submissions made by the applicant into the examination at DL3 and DL4.
DL5 Version [REP5-007] (Tracked)	Article 2 (Interpretation) – Definitions inserted for 'Change Application Report' and 'Change Application Report – Appendices'. Inserted to reflect how these documents have been added to certified documents table in Schedule 14. Amended definition of 'commissioning' as follows (insertions underlined for ease of reference): '"commissioning" means the process of testing systems, infrastructure and components of any part of the authorised development (which ~~are~~ is installed or in relation to which installation is nearly complete) in order to ensure that part ~~they, and the authorised development as a whole,~~ functions in accordance with the plant design specifications and the undertaker's operational, contractual and safety requirements;' Amendments made to improve clarity and consistency. Inserted two new definitions: "cowpen bewley special category land (acquisition)" means the land shown as plots 4/5, 4/6. 4/25, 4/28 and 4/29 on the Special Category Land and Crown Land Plans; "cowpen bewley special category land (rights)" means the land shown as plots 4/4, 4/5. 4/6, 4/24, 4/25, 4/28, 4/29 and 4/30 on the Special Category Land and Crown Land Plans; These new definitions relate to the amendments made to Article 29 (special category land and replacement special category land). Article 9 (Application and modification of statutory provisions)

Version of dDCO	Key Changes
	In Article 9(2) deleted reference to 'authorised development' replaced with the following: 'numbered works 1, 2, 4, 5, 6A.1, 6B.1, 8, 9 or 10A.1 and works that may be carried out in association with those numbered works'. Incorporation of sections/provisions of the Land Drainage Act 1991, Water Resources Act 1991 and Environmental Permitting (England and Wales) Regulations 2016 previously disapplied pursuant to Article 9(2) into a newly inserted Article 9(3). In relation to Article 9 the amendments were made in response to PDT's concerns about the disapplication of the byelaws and directions made under the Tees and Hartlepool Port Authority Act 1966. The applicant is still engaged in negotiations with PDT on this point, but the amendment is made in response to PDT concerns about the disapplication of the byelaws and directions made under as well s22 of the Tees and Hartlepools Port Authority Act 1966. The applicant pointed out it was still engaged in negotiations with PDT on this point, but the purpose of the amendment was to narrow the scope of the disapplication from the entire "authorised development" to specified Work Number areas. Article 29 (Special category land and replacement special category land) Inserted additional text into Articles 29(1) and (2) to prevent the undertaker from exercising the relevant Order powers in respect of the Cowpen Bewley special category land until the undertaker has met the provisions specified. These amendment were made to improve clarity in respect of the provision of vesting of the Cowpen Bewley Special Category Land and the provision of the Replacement Special Category Land. Insertion of a new table 1 setting out the rights and restrictive covenants to be acquired or imposed through the powers operating in Article 29. The new table 1 sets out the rights and restrictive covenants to be acquired or imposed through the powers operating in Article 29. The corresponding entries for these plots in Schedule 9 have been deleted to avoid duplication. The applicant advised this is similar to how the DCO's main compulsory acquisition powers operate, allowing the undertaker to acquire a 'lesser' interest where possible. Minor amendments to drafting in Article 29(4), (5) and (6). Article 34 (Statutory undertakers) –

Version of dDCO	Key Changes
	Amended Schedule numbers to "16 to [39]". This amendment reflects the inclusion of draft public PPs for third parties at the end of the DCO. Article 41 (Protection of interests) Amended [22] to [39]. These amendment reflects the inclusion of draft public PPs for third parties at the end of the DCO. Schedule 1 (Authorised Development) Inserted text into both descriptions of Work No. 1A.1 and Work No. 1A.2 as follows: one carbon capture enabled hydrogen unit of 600 MW, which is designed to capture a minimum rate of 95% of the carbon dioxide emissions of this hydrogen unit operating at full load, comprising… The applicant advised the amendments to the Works descriptions was in response to comments received from Climate Emergency Planning and Policy at DL4 and during the ISH2. Inserted text into the description of Work No. 6B.1 as follows: (c) Work No. 6B.1 – above ground installations connecting Work No. 6A.1 to: (i) existing gas transmission system and gas distribution networks including tunnel head; and (ii) tie-in points to connect to premises or land to which a supply of hydrogen is to be provided; and… This amendment was made to ensure the description of Work No. 6B.1 better reflects the uses envisaged for the hydrogen above ground installations (AGI) as set out in both ES chapter 4: proposed development [APP-056] and in the Explanatory Memorandum [CR1-018]. The ES chapter 4 at paragraph 4.3.21 and the EM at paragraph 3.8.16 describe the hydrogen distribution network and explains how hydrogen "would be exported using the proposed Hydrogen Pipeline Corridor… The hydrogen pipelines would commence and finish at AGIs including metering and pigging skids and tie-in points with the relevant off-taker. The latter are likely to be, but not necessarily having to be, within the off-takers' site boundaries. Any connection works beyond these AGIs and tie-in points will be progressed and consented separately by the relevant off-taker". Requirement 11 (Flood risk mitigation) Amended first part of requirement 11(6) from 'The authorised development must not be commissioned…'

Version of dDCO	Key Changes
	To: 'No part of the authorised development may be commissioned…' The applicant stated the amendment was made for clarity and consistency in line with the amendment to definition of 'commissioning' in Article 2(1). Requirement 28 (Decommissioning) Inserted CF Fertilisers as a consultee under requirement 28(1). Amendment was made in response to CF Fertilisers' DL4 submission. Requirements (various) Inserted Sembcorp to be consultee for the following requirements: 3(2), 3(3), 3(4), 3(7), 3(8), 3(11), 15(3), 15(7) and 28(1). These amendments were made in response to Sembcorp's comments and submissions during the ISH2 and at DL4. Schedule 3 – Modifications to and Amendments of the YPHFO Insertion of a draft set of PPs (applicant's preferred version) in relation to the YPHFO. Note, the PPs were the subject of ongoing negotiations between the applicant and AA. Schedule 9 (Land in which new rights etc. may be acquired) Deletion of plots 4/4, 4/5, 4/6, 4/24, 4/25, 4/28, 4/29 and 4/30 from the Schedule. Deleted from the Schedule as part of the amendments arising from Article 29 amendments. This avoids duplication as the rights in relation to these plots will be as a result of the exercise of powers under Article 29 and not Article 25. Schedule 14 (Documents and plans to be certified) Various amendments to ensure document names, references, revision numbers and dates are up-to-date and accurate. The only changes of significance are the insertions of new rows for: ▪ 7.3 Change Application Report ▪ 7.4 Change Application Report - Appendices ▪ [H2 Teesside AA Shared Area Plan]

Version of dDCO	Key Changes
	These amendments reflect submissions made by the applicant into the examination at DL5. The H2 Teesside AA Shared Area Plan has been inserted in square brackets because it is not in an agreed form but it is mentioned in both Schedule 3 and the AA PPs. Schedule 15 (Design parameters) Inserted "(min)" beside 78 in the final height column for the Auxiliary Boiler Stack. For all other rows which did not have references to "(min)" or "(max)" next to the figure in the height column, inserted "(max)". The insertion of "(min)" next to 78 in the Auxiliary Boiler Stack height was made in response to the ExA's Second Written Questions. The applicant states the remaining insertions have been made to improve clarity. Schedules 23 to 39 (PPs) Inserted new Schedules containing PPs in favour of named SUs and/ or IPs. Inserted following ExA's comments during ISH2, albeit negotiations with those SUs and/ or IPs were ongoing.
DL6a Version [REP6a-008] (Tracked)	Article 2 (Interpretation) – Inserted a new definition of 'Sembcorp', which was inserted to provide a definition of Sembcorp to reflect changes made at DL5 to make Sembcorp a consultee for a number of requirements. Article 2 (Interpretation) Inserted a new definition of 'Teesworks Limited'. Insertion as set out in the applicant's Response to DL5 Submissions [REP6-006] to reflect changes made at DL4 to refer to Teesworks Limited in Article 8 and in response to the STG's submissions at Deadline 6. Article 29 (Special category land and replacement special category land) – In Article 29(1)(b) inserted 'and management' after 'scheme for the layout' so that it reads (additional text in bold and underline): 'obtained the approval of the relevant planning authority for a scheme for the layout <u>and management</u> of the replacement special category land'. This text was inserted in response to a query from the ExA during the ISH4 about how the commuted sum for the replacement special category land would be secured. Schedule 2 – Requirements

Version of dDCO	Key Changes
	Requirement 15 (CEMP) Inserted ‘bird mitigation and monitoring plan (produced following consultation by the undertaker with NE)’ in requirement 15(7). The amendment was made to reflect the position reached in negotiations between the applicant and NE. Requirement 33 (Disapplication of requirements discharge under the NZT Order 2024) In requirement 33(1) and 33(3) deleted ‘relevant part of’ and inserted in its place ‘the requirements in the relevant paragraph of’. In requirement 33(1)(c)(ii), inserted ‘in the form as discharged pursuant to The NZT Order 2024’ after ‘utilised’. The amended requirement reads as follows (deletions shown in strikethrough and insertions shown underlined): 33.—(1) requirement 3 (detailed design) or 10 (surface and foul water drainage) in this Schedule may be deemed to be discharged in respect of any part of the authorised development where— (a) the ~~relevant part of~~ requirements in the relevant paragraph of requirement 3 (detailed design) or 11 (surface and foul water drainage) of The NZT Order 2024 hav~~es~~ been discharged pursuant to The NZT Order 2024; (b) the discharge of ~~that relevant part of~~ the requirements in the relevant paragraph of requirement 3 or 11 in sub-sub-paragraph (a) satisfies all of the relevant requirements in relation to the ~~relevant part of~~ requirements in the relevant paragraph of requirement 3 or requirement 10 in this Order; and (c) the discharge of ~~that relevant part of~~ the requirements in the relevant paragraph of requirement 3 or 10 of this Order is in respect of infrastructure that is— (i) to be constructed, maintained and operated in the form as discharged pursuant to The NZT Order 2024; and (ii) also to be utilised in the form as discharged pursuant to The NZT Order 2024 for the purposes of the authorised development. (2) Sub-paragraph (1) is subject to obtaining the approval of the relevant planning authority.

Version of dDCO	Key Changes
	(3) Where the ~~relevant part of~~ requirements in the relevant paragraph of requirement 3 or 10 of this Order requires the relevant planning authority to consult with a third party, then that third party must be consulted before giving approval under sub-paragraph (2). Amendments made were as set out in the applicant's Response to DL5 Submissions [REP6-006]. This was in response to comments made by the STG in its DL5 submissions (and reiterated during the ISH4) that: • the term "part" appears to be used simultaneously in relation to a physical part of the H2T project, and a part of the NZT requirements – the connection between a "part" of the authorised development and the "relevant" part of NZT requirements 3 and 11 is therefore not entirely clear; and • sub-paragraph (c)(ii) needs be clear that the infrastructure is to be utilised for the purposes of the authorised development in that same form as constructed and operated under the NZT scheme. Schedule 14 (Documents and plans to be certified) Various amendments to ensure document names, references, revision numbers and dates are up-to-date and accurate. These amendments reflect submissions made by the applicant into the examination at DL6 and DL6A. Schedule 15 (Design parameters) Inserted "and max" next to "min" in the final height column for the Auxiliary Boiler Stack. In its Cover Letter to its DL6 submissions [REP6-005], the applicant informed the ExA that there had been an error in updating the Auxiliary Boiler Stack row at DL5 and the final column of this row should actually read "(min and max)" rather than just "(min)" to account for how this is both the minimum and the maximum height of the auxiliary boiler stack. This is because the figure represents the different worst-case scenarios for the environmental assessments for air quality (where this is the worst-case minimum height) and landscape and visual impact (where this is the worst-case maximum height). Schedule 16 – PPs for the Protection of Electricity, Gas, Water and Sewerage Undertakers At the end of paragraph 1, inserted 'or unless any other provisions in Schedules 17 to [39] of this Order apply to the utility undertaker concerned'.

Version of dDCO	Key Changes
	This amendment was made to ensure clarity that these generic PPs apply only if the utility undertaker is not covered by other or does not have its own bespoke set of PPs in the DCO. Schedule 17 – PPs for the Protection of Operators of Electronic Communications Code Networks At the end of paragraph 1(1), inserted 'or unless any other provisions in Schedule 16 or Schedules 18 to [39] of this Order apply to the operator'. This amendment was made to ensure clarity that these generic PPs apply only if the operator is not covered by other, or does not have its own bespoke set of PPs in the DCO. Schedule 18 – PPs for the Protection of Third Party Apparatus In paragraph 1 deleted 'this Schedule' and replaced with 'Schedules 16, 17 or 19 to [39] of this Order'. Amendment made to ensure clarity that these generic PPs apply only if the apparatus is not protected by other PPs in the DCO. Insertion of a new paragraph 5 and 6 relating to replacement rights for third party apparatus. To ensure that the generic PPs contains replacement rights for apparatus to offer same level of protection on this point as with any of the other PPs. Schedule 21 – PPs for the Protection of Railway Interests Various minor amendments have been made to the text in the Schedule. The amendments reflect further consideration of the drafting and the ongoing negotiations between the parties. Schedule 29 – PPs for the Protection of AA Various minor amendments have been made to the text in the Schedule. The applicant advised the amendments reflect further consideration of the drafting and the ongoing negotiations between the parties. Schedule 30 – PPs for the Protection of the STG Title of the Schedule amended from 'Protection of South Tees Development Corporation' to 'Protection of the STG'. There are also a number of various other amendments made to the text in the Schedule. The title amendment and various other amendments made to the text in the Schedule reflect further consideration of the drafting and the ongoing negotiations between the parties. The table of Contents has also been amended.

Version of dDCO	Key Changes
	Deletion of definitions of 'STDC', 'STDC area' and 'Teesworks Limited' from definition paragraph of the Schedule (paragraph 2). The deletions of these terms from the definition paragraph of the Schedule, reflect how these terms are already defined in Article 2(1) (interpretation) of the dDCO and have been made to avoid unnecessary duplication.
DL7 version) [REP7-019] (Tracked)	Schedule 2 – Requirements Requirement 10 (Drainage) Amended heading of requirement 10 from 'Surface and foul water drainage' to 'Drainage'. Inserted text into requirement 10(3) so that it refers to 'details of the permanent surface water, process effluent and foul water drainage systems'. Inserted at the end of requirement 10(4): '…and, in the case of the process effluent drainage system, must provide that case 1B, as described in the nutrient neutrality assessment is not to be used'. The applicant advises these amendments have been made in response to the ExA's RIES question ID 3.1.10. Requirement 35 (Operational traffic management plan) Insertion of a new requirement 35 to provide that an operational traffic management plan has to be submitted to, and in consultation with National Highways, approved by the relevant planning authority before any part of the authorised development may be commissioned. The plan submitted must include measures in relation to operational travel movements consistent with the principles of the measures set out in section 6.0 (Travel plan measures) of the Framework Construction Workers Travel Plan. The applicant advised this insertion was made in response to negotiations with National Highways. Schedule 8 (Important hedgerows to be removed) In table 8, amended reference to '5 x hedgerows' to '4 x hedgerows'. This amendment reflects the version of 2.15 Important Hedgerows to be Removed Plan (rev. 4) [REP7-008].

Version of dDCO	Key Changes
	Schedule 9 (Land in which new rights etc. may be acquired) Table 9 – amendments to plot numbers throughout reflecting the changes, such as Order limits reduction and changes in types of rights sought, pursuant to the applicant's second Change Request application (CR2). Schedule 11 (Land of which temporary possession may be taken) Table 10 – amendments to plot numbers throughout reflecting the changes, such as Order limits reduction and changes in types of rights sought, pursuant to the application for CR2. Schedule 14 (Documents and plans to be certified) Various amendments to ensure document names, references, revision numbers and dates are up-to-date and accurate. These amendments reflect submissions made by the applicant into the examination at DL7. Schedule 16 – PPs for the Protection of Electricity, Gas, Water and Sewerage Undertakers Inserted 'any indirect or consequential loss or loss of profits by a utility undertaker' to form a new paragraph 10(2)(b). Amendment made as part of a general review of the DCO's drafting in preparation for validation. Schedule 17 – PPs for the Protection of Operators of Electronic Communications Code Networks Inserted 'any indirect or consequential loss or loss of profits by an operator' to form a new paragraph 3(2)(b). Amendment made as part of a general review of the DCO's drafting in preparation for validation. Schedule 18 – PPs for the Protection of Third Party Apparatus Inserted new paragraph 3(6) which states: 'Where there has been a reference to an arbitrator in accordance with paragraph 9 and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions in the decision of the arbitrator under paragraph 9.' Inserted 'any indirect or consequential loss or loss of profits by the third party' to form a new paragraph 8(2)(b).

Version of dDCO	Key Changes
	These amendments were made as part of a general review of the DCO's drafting in preparation for validation. Schedule 20 – PPs for the Protection of National Gas Transmission PLC as Gas Undertaker Various minor amendments have been made to the text in the Schedule. The amendments reflect further consideration of the drafting and the ongoing negotiations between the parties. Schedule 22 – PPs for the Protection of the EA Various amendments to reflect the new set of standard PPs provided by the EA including: − "Submission and approval of plans" section amending the paragraph from 'deemed approval' to 'deemed refusal' should the EA not provide a decision about the plans for specified works within the specified timescales. − Insertion of additional definitions and paragraphs relating to sea defence, free passage of fish and the obligation to provide alternative means of access to the EA on demand in the case of an emergency. The applicant has also modified the new set of standard PPs as follows: − In the "Submission and approval of plans" section, inserted a new paragraph 2 to allow the undertaker to submit a request in writing to the EA asking it to confirm and provide details about which team is to receive and approve plans of the specified work in advance of submitting plans. − In the "Indemnity" section, retained previous drafting from the DCO to enable the undertaker to step-in to conduct proceedings if it does not consent to the EA settling a claim. The amendments incorporate the drafting of the new set of standard PPs provided by the EA as well as the ongoing negotiations between the applicant and the EA. Schedule 26 – PPs for the Protection of Air Products PLC Various amendments have been made to the text in the Schedule. The applicant advised the amendments reflected further consideration of the drafting and the ongoing negotiations between the parties. Schedule 30 – PPs for the Protection of the STG

Version of dDCO	Key Changes
	Various amendments have been made to the text in the Schedule. The applicant advised the amendments reflect further consideration of the drafting and the ongoing negotiations between the parties. Schedule 39 – PPs for the Protection of Northern Gas Networks Deleted paragraph 8(1)(a). The applicant advised the amendment reflected further consideration of the drafting and the ongoing negotiations between the parties. Schedules 40, 41 and 42 – PPs for the Protection of Lighthouse Green Fuels and Venator Materials UK Ltd and NTG (respectively) Inserted new Schedules into the DCO containing a set of public PPs for Lighthouse Green Fuels Ltd and Venator Materials UK Ltd and NTG (respectively). The applicant advised the insertion reflects the progress made in negotiations with the IP, albeit they are in a draft form and are not yet agreed with the IP with negotiations ongoing.
DL7a TCV (APV) [REP7a-004] (Tracked)	Article 29 (Special category land and replacement special category land) Inserted additional text into Article 29(2)(b) as shown underlined: 'the rights and restrictive covenants set out in column (2) of table 1 vest for the benefit of the undertaker in respect of the extent of each plot of the cowpen bewley special category land (rights) that was notified to the relevant planning authority under paragraph (1)(c), which are also discharged from all rights, trusts and incidents to which it was previously subject insofar as they are inconsistent with the new rights and restrictive covenants vested for the benefit of the undertaker, save for any rights held or apparatus owned or operated by statutory undertakers.' The applicant advised this amendment was made as part of the review of the Final DCO in order to improve the clarity of this provision. Article 34 (Statutory undertakers) – Amended Schedule numbers to "16 to 44". Amendment reflects the inclusion of draft public PPs for third parties at the end of the DCO. Article 41 (Protection of interests) –

Version of dDCO	Key Changes
	Amended [39] to 44 to reflect the inclusion of draft public PPs for third parties at the end of the DCO. Article 46 (Arbitration) Deleted 'President of the Institution of Civil Engineers' and replaced with 'SoS'. The amendment was made by the applicant as part of its review of the Final DCO. Schedule 2 – Requirements Requirement 3 (Detailed design) In requirement 3(2), inserted 'or Work No. 2C' after 'Work No. 2A'. In requirement 3(2), inserted new sub-paragraphs 2(c) 'surface water drainage' and 2(d) 'works involving trenchless technologies including their location' at the end of list of details to be submitted and approved by the relevant planning authority. The applicant advises this insertion was made following negotiations with the NSMP entities. Schedule 2 – Requirements Requirement 10 (Drainage) Requirement 10(4) amended to become a list of the details to be submitted and approved. Amended new requirement 10(4)(b) as follows: '~~and,~~ in the case of the process effluent drainage system, ~~must~~ provide that case 1B, as described in the nutrient neutrality assessment, is not to be used'. Inserted the following as a new requirement 10(4)(c): 'provide that amines are not disposed of via a licenced facility into the Teesmouth and Cleveland Coast Special Protection Area and Ramsar site'. These amendments have been made in response to Natural England's submissions. Requirement 18 (Construction traffic management plan) Inserted NSMP entities as a consultee in requirement 18(1). This amendment was made following further discussions between the applicant and NSMP entities. Requirement 25 (Local liaison group) Inserted NSMP entities in requirement 25(2). This amendment has been made following further discussions between the applicant and NSMP entities. Requirement 35 (Operational traffic management plan) Amended requirement 35(2) to become a list of items for the Operational Traffic Management Plan to including (a) information on the staff numbers and proposed shift times for the operational phase of the authorised development; (b) an assessment of the impacts to the strategic road

Version of dDCO	Key Changes
	network on the basis of the information provided under paragraph (a); '(d) arrangements for monitoring operational traffic impacts.' These amendments were made in response to the negotiations being undertaken with National Highways. Schedule 3 – Modifications to and Amendments of the YPHFO Various minor amendments were made to the text in the Schedule. The amendments reflect further consideration of the drafting and the ongoing negotiations between the parties. Schedule 14 (Documents and plans to be certified) Various amendments to ensure document names, references, revision numbers and dates are up-to-date and accurate. This includes additional rows for these amendments reflect submissions made by the applicant into the examination at DL7A as well as amendments required as a result of the ExA accepting CR2. Schedule 24 – PPs for the Protection of INEOS Nitriles (UK) Limited Various amendments have been made to the text in the Schedule. The applicant advised the amendments reflect further consideration of the drafting and the ongoing negotiations between the parties. Schedule 25 – PPs for the Protection of Navigator Terminals Seal Sands Limited Various amendments have been made to the text in the Schedule. The applicant advised amendments reflect further consideration of the drafting and the ongoing negotiations between the parties. Schedule 26 – PPs for the Protection of Air Products PLC Various amendments have been made to the text in the Schedule. The applicant advised the amendments reflect further consideration of the drafting and the ongoing negotiations between the parties. Schedule 28 – PPs for the Protection of Northern Powergrid (Northeast) PLC Various minor amendments have been made to the text in the Schedule. The applicant advised the amendments reflect further consideration of the drafting and the ongoing negotiations between the parties. Schedule 29 – PPs for the Protection of AA Various minor amendments have been made to the text in the Schedule. The applicant advised the amendments

Version of dDCO	Key Changes
	reflect further consideration of the drafting and the ongoing negotiations between the parties. Schedule 30 – PPs for the Protection of the STG Various amendments have been made to the text in the Schedule. The applicant advised the amendments reflect further consideration of the drafting and the ongoing negotiations between the parties. Schedule 31 – PPs for the Protection of Northumbrian Water Ltd Various amendments have been made to the text in the Schedule. The applicant advised the amendments reflect further consideration of the drafting and the ongoing negotiations between the parties. Schedules 34, 35 and 36 – PPs for the Protection of SABIC Petrochemicals UK Ltd; PD Teesport Limited; and Redcar Bulk Terminal Limited (respectively) Various amendments have been made to the text in the Schedule. Schedule 38 – PPs for the Protection of the BOC Apparatus Operator The applicant advises “Following further negotiations between the parties, this Schedule has been omitted from the Draft DCO at this deadline.” Schedules 38 and 39 – PPs for the Protection of Northern Gas Networks and Lighthouse Green Fuels (respectively) Amended Schedule numbering due to the deletion of the Schedule in favour of BOC Ltd, plus various amendments to the text in the Schedule reflecting further consideration of the drafting and the ongoing negotiations between the parties. Schedules 42, 43 and 44 – PPs for the Protection of the Sembcorp Protection Corridor, NZT Power Limited and Net Zero North Sea Storage Limited (respectively) Inserted new Schedule into the DCO containing a set of public PPs for the benefit of Sembcorp Protection Corridor, NZT Power Limited and Net Zero North Sea Storage Limited (respectively). The applicant advises its insertion reflects the progress made in negotiations with these IPs, but points out the PPs are in a draft form and are not yet agreed with the IPs with negotiations ongoing.

Version of dDCO	Key Changes
DL7a Alternative version of the dDCO (WCBAV). [REP7a-007] (Tracked)	A without prejudice version of the dDCO, as an alternative to the APV version referred to above, that incorporates all the changes referred to above, but provides for the removal of the Cowpen Bewley Spur (a without prejudice version removing the Cowpen Bewley Arm was requested by the ExA in its Rule 17 [PD-021]), deleting all relevant aspects of the dDCO in regard to all Plot Nos. north of the 'mainline' pipeline corridor (ie those plots north of Plot No. 3/6).

7.3.11. In terms of SUs and IPs, only the EA, Sembcorp and the NSMP Entities (Northern Gas Processing Limited, Teesside Gas and Liquids Processing and Teesside Gas Processing Plant Limited) formally withdrew their objections/ concerns in relation to the proposed development prior to the close of the examinations. No other SUs/ IPs objections/ concerns raised in regard to the proposed development were formally withdrawn by the close of the examination. This was primarily due to the applicant failing to agree in terms of:

- CA/ TP;
- the finalised wording of related side agreements being negotiated between the SUs/ IPs; and
- the finalised wording of a number of PP or related side agreements being agreed.

7.3.12. Turning to the inclusion of any Crown land and/ or Crown rights, the powers sought in this regard cannot be granted at this time, as the necessary Crown authority has not been provided.

7.3.13. In the light of the above, the ExA is not satisfied that the necessary Crown authority has been obtained in relation to crown land and/ or Crown rights, consistent with the BoR [REP7-014], and in accordance with s135(1) and/ or s135(2) of the PA2008.

7.3.14. Bearing all of the above in mind, should the SoS for DESNZ be minded to make the DCO the following list of non-agreed PPs may assist them in their considerations:

- Schedule 18 for the protection of NGET.
- Schedule 19 for the protection of NGT.
- Schedule 20 for the protection of Railway Interests (NR).
- Schedule 22 for the protection of Suez Recycling And Recovery UK Ltd.
- Schedule 23 for the protection of INEOS Nitriles (UK) Ltd.
- Schedule 24 for the protection of Navigator Terminals Seal Sands Ltd.
- Schedule 25 for the protection of Air Products PLC.
- Schedule 26 for the protection of CF Fertilisers UK Ltd.
- Schedule 27 for the protection of Northern Powergrid (Northeast) PLC.
- Schedule 28 for the protection of AA.
- Schedule 29 for the protection of the STG.
- Schedule 30 for the protection of Northumbrian Water Ltd.
- Schedule 32 for the protection of CATS North Sea Ltd.
- Schedule 33 for the protection of SABIC Petrochemicals UK Ltd.
- Schedule 34 for the protection of PDT.
- Schedule 35 for the protection of Redcar Bulk Terminal Ltd.
- Schedule 37 for the protection of Northern Gas Networks Ltd.

- Schedule 38 for the protection of Lighthouse Green Fuels Ltd.
- Schedule 39 for the protection of Venator Materials UK Ltd.
- Schedule 40 for the protection of North Tees Ltd, North Tees Land Ltd, North Tees Landfill Sites Ltd and North Tees Rail Ltd.
- Schedule 42 for the Protection of NZT Power Ltd.
- Schedule 43 for the protection of Net Zero North Sea Storage Ltd.
- Schedule 44 for the protection of Natara Global Ltd.
- Schedule 45 for the protection of BOC Ltd.

7.3.15. In paragraph 6.6.20, the ExA noted that it would only insert one version of the PPs presented by the applicant or an AP and these would not be altered to make a hybrid, or merged version. Whilst the ExA have sought to retain this approach, there are a small number of instances where we considered small amendments to certain PPs were required and these are noted in tables 6 and 7 below.

7.3.16. As indicated above, the provisions in respect of which the ExA have recommended changes are in relation to the applicant's WCBAV of the dDCO [REP7a-006], together with the updates PPs (where relevant) and Schedules (where relevant) in the rDCO at appendix D, and the reasons for this, are set out in table 6 below.

Table 6: rDCO Provisions Recommended to be Changed

Provision	Recommendations	Reason
Contents – Schedules.	Add the following text all in capitals "Schedule 44— Protective Provisions for the Protection of Natara Global Limited Schedule 45— Protective Provisions for the Protection of BOC Apparatus Operator.	Two additional Protective Provisions in favour of the named IPs at Schedule 44 and Schedule 45 have been added to the rDCO.
Article 41 (Protection of Interests).	Amend text "Schedules 15 to 43…" to read "Schedules 15 to 45…"	Two additional Protective Provisions have been added at Schedule 44 and Schedule 45.
Schedule 2 (Requirements) – requirement 28 (Decommissioning)	Requirement 28(1) - After the words 'CF Fertilisers' add the following text ", Anglo American"	As requested by AA and proposed to be altered by the applicant. The ExA considered the inclusion of AA as a consultee in this instance to be appropriate.
Schedule 2 (Requirements) – requirement 33 (Requirements deemed to be discharged under the Net Zero Teesside Order 2024).	Removal of requirement 33 (Requirements deemed to be discharged under the Net Zero Teesside Order 2024) from Schedule 2, with the renumbering of all the subsequent requirements	The Net Zero Teesside Order 2024 relates to a different development with different Order limits/ red line boundary. The imposition of requirement 33 would not meet the tests of reasonableness,

Provision	Recommendations	Reason
	in Schedule 2 accordingly.	precision or enforceability.
Schedule 3 Modifications to and Amendments of the York Potash Harbour Facilities Order 2016	Updated.	Amended to reflect the Applicant's preferred form of Schedule 3 of the dDCO [REP8-006], submitted at DL8 after the without prejudice basis final WCBAV of the dDCO was submitted at DL7a [REP7a-006].
Schedule 13 (Documents and Plans to be Certified)	Updated	Amended to reflect the Applicant's updated version of Schedule 13 of the dDCO [REP9-003], submitted at DL8 after the final WCBAV of the dDCO was submitted at DL7a [REP7a-006].
Schedule 18 for the Protection of NGET.	Delete Schedule 18 and replace with NGET's requested PPs submitted at DL8 ([REP8-059] appendix 2).	Replaced with NGET's requested PPs for the reasons set out in chapter 6 above and as set out NGETs in its DL8 submission [REP8-058].
Schedule 19 for the Protection of NGT.	Delete Schedule 19 and replace with NGT's requested PPs submitted at DL7 [REP7a-059] appendix 2).	Replaced with NGT's requested PPs for the reasons set out in chapter 6 above and as set out NGTs DL7a submission [REP7a-059].
Schedule 28 for the Protection of AA.	Delete Schedule 28 and replace with AA's requested PPs submitted at DL8 [REP8-046] but remove programme constraint at paragraph 9(c).	Replaced with AA's requested PPs, but with the programme constraint at paragraph 9(c) removed for the reasons set out in chapter 6 above.
Schedule 29 for the Protection of the STG.	Delete Schedule 29 and replace with applicant's updated PPs submitted at DL9 [REP9-010].	Replaced with applicant's updated PPs, being the most up to date version of the PPs that the ExA considered adequately protected the STG, for the reasons set out in chapter 6 above.

Provision	Recommendations	Reason
Schedule 32 for the Protection of CATS North Sea Ltd.	Delete Schedule 32 and replace with applicant's updated PPs [AS-049].	Replaced with applicant's updated PPs, being the most up to date version of the PPs that the ExA considered adequately protected CATS North Sea Ltd, for the reasons set out in chapter 6 above.
Schedule 33 for the Protection of SABIC Petrochemicals UK Ltd.	Delete Schedule 33 and replace with applicant's updated PPs submitted at DL9 [REP8-009].	Replaced with applicant's updated PPs, being the most up to date version of the PPs that the ExA considered adequately protected SABIC Petrochemicals UK Ltd, for the reasons set out in chapter 6 above.
Schedule 34 for the Protection of PDT.	Delete Schedule 34 and replace with PDT's requested PPs submitted at DL5 [REP5-082].	Replaced with PDT's requested PPs for the reasons set out in chapter 6 above and as set out in PDT in its DL5 submission [REP5-082].
Schedule 38 for the Protection of Lighthouse Green Fuels Ltd.	Delete Schedule 38 and replace with applicant's updated PPs submitted at DL9 [REP9-012].	Replaced with applicant's updated PPs, being the most up to date version of the PPs that the ExA considered adequately protected Lighthouse Green Fuels Ltd, for the reasons set out in chapter 6 above.
Schedule 40 for the Protection of NTG being North Tees Ltd; North Tees Land Ltd; North Tees Landfill Sites Ltd; and North Tees Rail Ltd.	Delete Schedule 40 and replace with applicant's updated PPs submitted at DL9 [REP9-014].	Replaced with applicant's updated PPs, being the most up to date version of the PPs that the ExA considered adequately protected NTG, for the reasons set out in chapter 6 above.
Schedule 42 for the Protection of Net Zero Power Ltd.	Delete Schedule 42 and replace with Net Zero Power Ltd's requested PPs submitted at DL8 [REP8-065].	Replaced with Net Zero Power Ltd's requested PPs, excluding paragraphs 9(7) and 9(8), for the reasons set out in chapter 6 above.

Provision	Recommendations	Reason
Schedule 43 for the Protection of Net Zero North Sea Storage Ltd.	Delete Schedule 43 and replace with Net Zero North Sea Storage Ltd's requested PPs submitted at DL8 [REP8-062].	Replaced with Net Zero Power Ltd's requested PPs requested PPs, excluding paragraphs 9(7) and 9(8), for the reasons set out in chapter 6 above.
Schedule 44 for the Protection of Natara Global Ltd.	Add Schedule 44 with applicant's PPs submitted at DL9 [REP9-016].	Replaced with applicant's updated PPs, being the most up to date version of the PPs that the ExA considered adequately protected Natara Global Ltd, for the reasons set out in chapter 6 above.
Schedule 45 for the Protection of BOC Ltd.	Re-insert PPs in favour of BOC Ltd at Schedule 45 which had been removed by the applicant from the draft DCO (Formerly found at Schedule 38 of the draft DCO submitted at DL7 [REP7-018].	Re-insert PPs in favour of BOC Ltd at Schedule 45 as the ExA considered in the absence of a completed side agreement/ legal agreement, PPs in favour of BOC Ltd are required, for the reasons set out in chapter 6 above.

7.3.17. In the event that the SoS considers the APV of the dDCO be made, the ExA would recommend the changes as set out in the table below, are made to the APV of the dDCO [REP7a-003], together with the updates the Schedules, including in regard to PPs (where relevant) in the dDCO at appendix E, and the reasons for this, are set out in table 7 below:

Table 7: APV DCO Provisions Recommended to be Changed

Provision	Recommendations	Reason
Contents – Schedules.	Add the following text all in capitals “Schedule 45— Protective Provisions for the Protection of Natara Global Limited Schedule 46— Protective Provisions for the Protection of BOC Apparatus Operator.	Two additional Protective Provisions in favour of the named IPs at Schedule 45 and Schedule 46 have been added.
Article 2 (Interpretation) “cowpen bewley special category land (rights)”	Removal of Plot No. 4/24	As this parcel of land (Plot No. 4/24) does not satisfy the tests within 132(3) of the PA2008.
Article 29 (Special category land and replacement special category land), table 1.	Removal of Plot No. 4/24	As this parcel of land (Plot No. 4/24) does not satisfy the tests within 132(3) of the PA2008.
Article 41 (Protection of Interests).	Amend text “Schedules 16 to 45…” to read “Schedules 16 to 46…”	Two additional Protective Provisions have been added at Schedule 45 and Schedule 46.
Schedule 2 (Requirements) – requirement 28 (Decommissioning)	Requirement 28(1) - After the words ‘CF Fertilisers’ add the following text “, Anglo American”	As requested by AA and proposed to be altered by the applicant. The ExA considered the inclusion of AA as a consultee in this instance to be appropriate.
Schedule 2 (Requirements) – requirement 33 (Requirements deemed to be discharged under the Net Zero Teesside Order 2024).	Removal of requirement 33 (Requirements deemed to be discharged under the Net Zero Teesside Order 2024) from Schedule 2, with the renumbering of all the subsequent requirements in Schedule 2 accordingly.	The Net Zero Teesside Order 2024 relates to a different development with different Order limits/ red line boundary. The imposition of requirement 33 would not meet the tests of reasonableness, precision or enforceability.

Provision	Recommendations	Reason
Schedule 3 Modifications to and Amendments of the York Potash Harbour Facilities Order 2016	Updated.	Amended to reflect the Applicant's preferred form of Schedule 3 of the dDCO [REP8-006], submitted at DL8 after the APV of the final of the dDCO was submitted at DL7a [REP7a-003].
Schedule 9 (Land in which New Rights Etc. may be acquired), table 9, Column 1	Removal of references to Plot No. 4/24.	As Plot No. 4/24 does not satisfy the tests within 132(3) of the PA2008 reference to it must be removed from Schedule 9, table 9, Column 1 and CA of Rights should not be given.
Schedule 9 - land in which New Rights Etc. may be acquired, table 9, Column 1	Removal of all references to Plot Nos. 4/22 and 4/23.	With the removal of Plot No. 4/24 (Cowpen Bewley Access Track Open Space land) the associated plots 4/22 and 4/23 should not be given CA of rights as the test in s122 of PA2008 have not been met.
Schedule 14 (Documents and Plans to be Certified)	Updated.	Amended to reflect the Applicant's updated version of Schedule 14 of the dDCO [REP9-003], submitted at DL8 after the APV of the final of the dDCO was submitted at DL7a [REP7a-003].
Schedule 19 for the Protection of NGET.	Delete Schedule 19 and replace with NGET's requested PPs submitted at DL8 ([REP8-058] appendix 2).	Replaced with NGET's requested PPs for the reasons set out in chapter 6 above and as set out NGETs in its DL8 submission [REP8-058].

Provision	Recommendations	Reason
Schedule 20 for the Protection of NGT.	Delete Schedule 20 and replace with NGT's requested PPs submitted at DL7 [REP7a-059] appendix 2).	Replaced with NGT's requested PPs for the reasons set out in chapter 6 above and as set out NGTs DL7a submission [REP7a-059].
Schedule 29 for the Protection of AA.	Delete Schedule 29 and replace with AA's requested PPs submitted at DL8 [REP8-046] but remove programme constraint at paragraph 9(c).	Replaced with AA's requested PPs, but with the programme constraint at paragraph 9(c) removed for the reasons set out in chapter 6 above.
Schedule 30 for the Protection of the STG.	Delete Schedule 30 and replace with applicant's updated PPs submitted at DL9 [REP9-010].	Replaced with applicant's updated PPs, being the most up to date version of the PPs that the ExA considered adequately protected the STG, for the reasons set out in chapter 6 above.
Schedule 33 for the Protection of CATS North Sea Ltd.	Delete Schedule 33 and replace with applicant's updated PPs [AS-049].	Replaced with applicant's updated PPs, being the most up to date version of the PPs that the ExA considered adequately protected CATS North Sea Ltd, for the reasons set out in chapter 6 above.
Schedule 34 for the Protection of SABIC Petrochemicals UK Ltd.	Delete Schedule 34 and replace with applicant's updated PPs submitted at DL9 [REP8-009].	Replaced with applicant's updated PPs, being the most up to date version of the PPs that the ExA considered adequately protected SABIC Petrochemicals UK Ltd, for the reasons set out in chapter 6 above.

Provision	Recommendations	Reason
Schedule 35 for the Protection of PDT.	Delete Schedule 35 and replace with PDT's requested PPs submitted at DL5 [REP5-082].	Replaced with PDT's requested PPs for the reasons set out in chapter 6 above and as set out in PDT in its DL5 submission [REP5-082].
Schedule 39 for the Protection of Lighthouse Green Fuels Ltd.	Delete Schedule 39 and replace with applicant's updated PPs submitted at DL9 [REP9-012].	Replaced with applicant's updated PPs, being the most up to date version of the PPs that the ExA considered adequately protected Lighthouse Green Fuels Ltd, for the reasons set out in chapter 6 above.
Schedule 41 for the Protection of NTG being North Tees Ltd; North Tees Land Ltd; North Tees Landfill Sites Ltd; and North Tees Rail Ltd.	Delete Schedule 41 and replace with applicant's updated PPs submitted at DL9 [REP9-014].	Replaced with applicant's updated PPs, being the most up to date version of the PPs that the ExA considered adequately protected NTG, for the reasons set out in chapter 6 above.
Schedule 43 for the Protection of Net Zero Power Ltd.	Delete Schedule 43 and replace with Net Zero Power Ltd's requested PPs submitted at DL8 [REP8-065].	Replaced with Net Zero Power Ltd's requested PPs, excluding paragraphs 9(7) and 9(8), for the reasons set out in chapter 6 above.
Schedule 44 for the Protection of Net Zero North Sea Storage Ltd.	Delete Schedule 44 and replace with Net Zero North Sea Storage Ltd's requested PPs submitted at DL8 [REP8-062].	Replaced with Net Zero Power Ltd's requested PPs, excluding paragraphs 9(7) and 9(8), for the reasons set out in chapter 6 above.
Schedule 45 for the Protection of Natara Global Ltd.	Add Schedule 45 with applicant's PPs submitted at DL9 [REP9-016].	Replaced with applicant's updated PPs, being the most up to date version of the PPs that the ExA considered adequately protected Natara Global Ltd, for the reasons set out in chapter 6 above.

Provision	Recommendations	Reason
Schedule 46 (For the Protection of BOC Ltd).	Re-insert PPs in favour of BOC Ltd at Schedule 46 which had been removed by the applicant from the draft DCO (Formerly found at Schedule 38 of the draft DCO submitted at DL7 [REP7-018].	Re-insert PPs in favour of BOC Ltd at Schedule 46 as the ExA considered in the absence of a completed side agreement/ legal agreement, PPs in favour of BOC Ltd are required, for the reasons set out in chapter 6 above.

7.4. CONCLUSIONS

7.4.1. The ExA has considered all iterations of the dDCO, as provided by the applicant, from the application version [APP-027] to the APV [REP7a-003] and the 'without prejudice' WCBAV [REP7a-006], with the last two submitted at DL7a and has considered the degree to which these final versions (the APV [REP7a-003] and the WCBAV [REP7a-006]) addressed outstanding matters. A number of matters are the subject of recommendations in this chapter and are included in the rDCO in appendix D of this report. However, the SoS may wish to include any PPs that may have been updated and agreed since the close of the examination.

7.4.2. Where the ExA have amended submitted versions of PPs, it suggests that in the interest of being open and fair, the SoS may wish to consult the applicant and relevant IPs, being AA, NZT Power Ltd and Net Zero North Sea Storage Ltd, as to their respective views on those PPs.

7.4.3. In addition to the above, the SoS may wish to seek clarification from the applicant and NGET as to whether the parties have reached agreement in terms of NGET's objection and the matter of serious detriment.

7.4.4. Taking all matters raised in this chapter and all matters relevant to the DCO raised in the remainder of this report fully into account, if the SoS for the DESNZ is minded to make the DCO, it is recommended that the DCO should be made in the form set out in the rDCO, which can be located at appendix D of this report.

8. SUMMARY OF FINDINGS AND CONCLUSIONS

8.1. CONSIDERATION OF FINDINGS AND CONCLUSIONS

8.1.1. The Examining Authority (ExA) acknowledges the objections raised by National Grid Electricity Transmission PLC (NGET), especially the objection related to serious detriment to it undertaking; as set out in the preceding chapters of this report, the ExA considers the Applicant's Preferred Version (APV) of the draft Development Consent Order (dDCO) to be unacceptable. This is due to NGET's objection in regard to the requirement and need to upgrade the Saltholme Substation which will require all land in NGETs ownership within the Order limits; NGET have shown that the proposed development cannot be compatible with its future undertaking.

8.1.2. As a result of the above, the ExA finds the APV of the dDCO to be unacceptable, as it would not accord with Section (s) 127 of the Planning Act 2008 (PA2008) due to it resulting in serious detriment to NGET's undertaking at Saltholme substation. The ExA considers this to be an important and relevant consideration, which has to be taken into account in this report.

8.1.3. Regardless of the above, the ExA is not persuaded by NGET's argument that serious detriment to its undertaking would occur with the applicant's alternative version of the dDCO, the Without Cowpen Bewley Arm Version (WCBAV) [REP7a-006], submitted at DL7a. There is clear evidence from the applicant's submitted documents, in particular the WCBAV of the Land Plans [REP8-030] and BoR [REP8-035], that this version of the Order would not impact on NGET land required for the expansion of Saltholme Substation. On the basis of the evidence entered into the examination, concerning this matter, is clear and the ExA does not consider the WCBAV of the dDCO would result in serious detriment to NGET's undertaking.

8.1.4. Notwithstanding the above, whilst the ExA recommends the rDCO attached at appendix D is made, the SoS may wish to seek clarification from the Applicant and NGET as to whether the parties have reached agreement in terms of NGET's objection, especially in regard to the matter of serious detriment. Seeking such clarification may assist the SoS in terms of the alternative version of the DCO attached at appendix E of this report.

8.1.5. Bearing the above in mind, the ExA's findings and conclusions, as set out below, are based solely on the applicant's 'without prejudice' alternative version of the dDCO (the WCBAV [REP7a-006]), that was entered into the examination at DL7a following the ExA's request.

8.1.6. In relation to s104 of the PA2008, the ExA concludes that making the recommended Development Consent Order (rDCO) would be in accordance with National Policy Statement (NPS) EN-1, NPS EN-4 and NPS EN-5. It would also accord with the National Planning Policy Framework (December 2024) and relevant policies from the Local Development Plans, which are also important and relevant in the consideration of the proposed development and which have been taken into account in this report. The ExA also had regard to the Local Impact Reports produced by both Redcar and Cleveland Borough Council and Stockton on Tees Borough Council in reaching its conclusion.

8.1.7. Whilst the Secretary of State (SoS) for the Department of Energy Security and Net Zero (DESNZ) is the competent authority under the Conservation of Habitats and Species Regulations 2017, and will make the definitive assessment, the ExA concludes that subject to:

- securing the description of the Authorised Development in Schedule 1 (Authorised Development) of the Development Consent Order;
- imposing the other requirements listed within Schedule 2, especially:
    - Requirement 3 (Detailed Design);
    - Requirement 4 (Landscape and Biodiversity Management Plan);
    - Requirement 10 (Drainage);
    - Requirement 11 (Flood Risk Mitigation);
    - Requirement 14 (Protected Species);
    - Requirement 15 (Construction Environmental Management Plan); and
    - Requirement 28 (Decommissioning),

any adverse effect on the integrity of the European sites and their features from the proposed development when considered alone or in combination with other plans or projects can be excluded. The ExA has taken this finding into account in reaching its recommendation.

8.1.8. The ExA finds the information and analysis provided in the Environmental Statement documentation satisfies The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017. It also finds reasonable alternatives have been considered and reported, and the applicant's final selection for the siting of the Hydrogen Production Facility and associated infrastructure, the routing of the pipelines and locations of the above ground installations are justified.

8.1.9. The ExA has had regard to the Public Sector Equality Duty throughout the examination and in producing this report. The proposed development would not harm the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and persons who do not share a protected characteristic. On that basis, there would be no breach of the Public Sector Equality Duty.

8.1.10. The ExA further considered whether the determination of this application in accordance with the NPSs, as well as other material considerations, which are important and relevant, would lead the United Kingdom (UK) to be in breach of any of its international obligations where relevant, including the Climate Change Act 2008 and the Paris Agreement 2015. It concludes that, in all respects, this would not be the case.

8.1.11. The proposed development is consistent with, and supportive of, the government achieving its decarbonisation objectives, whilst delivering national, regional and local economic benefits, at scale. The ExA affords very great weight to these benefits.

8.1.12. With regard to designated and non-designated heritage assets and in consideration of Regulation 3 of The Infrastructure Planning (Decisions) Regulations 2010, the ExA has found the proposed development would result in a residual effect of negligible to minor adverse to both designated and non-designated heritage assets, once essential mitigation secured by requirement 13 (Archaeology) and requirement 15 (CEMP) of the rDCO is applied, resulting in less than substantial harm to the significance of designated heritage assets and harm to non-designated heritage assets.

8.1.13. Despite this harm to both designated and non-designated heritage assets, the ExA has found that harm would be outweighed by the very great positive benefits from the proposed development assisting the UK in achieving Net-Zero and meeting its decarbonisation objectives, as well as providing significant national, regional and local economic benefits, at scale, for future generations. As such, the proposed development would be in alignment with NPS EN-1, NPS EN-4 and NPS EN-5 and be in compliance with Local Development Plan policies within the jurisdiction of both Redcar and Cleveland Borough Council, Stockton on Tees Borough Council and Hartlepool Borough Council. As such the public benefits outweigh the less than substantial harm on designated heritage assets and the harm on non-designated heritage assets and are afforded neutral weight in the planning balance in regard to this matter.

8.1.14. In terms of biodiversity and bearing in mind Regulation 7 of The Infrastructure Planning (Decisions) Regulations 2010, The ExA is satisfied that biodiversity, ecological and nature conservation issues have been adequately assessed and aligns with the requirements of NPS EN-1 and all other important and relevant policy considerations, including the Local Development Plans of the areas within which the proposed development lies, have been met. The ExA is also satisfied the applicant considered whether there were opportunities for environmental and biodiversity net gain enhancements in accordance with paragraph 4.6.1 of NPS EN-1 and is satisfied the applicant's commitment to no net loss, as a minimum, is adequate.

8.1.15. When considering all representations received, there are no other important and relevant matters that would individually or collectively outweigh the identified benefits and lead to a different recommendation from that below. Overall, the significant benefits to be gained from the proposed development strongly outweigh the identified disbenefits.

8.1.16. In terms of Compulsory Acquisition (CA) and Temporary Possession (TP) powers requested by the applicant, the ExA concludes that the proposed development for which the land and rights are sought align with national policy, as set out in the NPSs, which are important and relevant, and that the NPSs identify a national need for development of the nature sought by the proposed development, being a Hydrogen Production Facility and the Hydrogen Pipelines.

8.1.17. The need to secure the land and rights required, and to construct the proposed development within a reasonable commercial timeframe, represent just one of the significant public benefits identified above. The private loss to those affected is mitigated to a degree through the fact that the construction period would be limited, and the applicant is seeking to acquire the minimum possible rights and interests that they would need to construct and maintain the proposed development, whilst providing appropriate levels of mitigation.

8.1.18. The ExA is satisfied the applicant has explored all reasonable alternatives to the CA of land, rights and interests sought and there are no alternatives that ought to be preferred. Furthermore, it is satisfied that adequate and secure funding would be available to enable CA within the statutory period following the Order being made.

8.1.19. With regard to the CA of land at Coatham Marsh forming part of open space special category land, the ExA is satisfied the water connection corridor (Work No. 4) amounts to works comprising one or two water pipelines of up to 1100mm diameter each, installed using open cut techniques, resulting in no permanent surface installation works and that no exchange of other land is necessary, whether in the

interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public. Additionally, the ExA is satisfied the applicant has recorded this fact, and the subsection concerned, within the rDCO (see page 5 of the rDCO attached at appendix D of this report).

8.1.20. In the event the SoS does not agree with the ExA concerning the removal of the Cowpen Bewley Arm of the hydrogen pipeline corridor, the CA of land and rights in regard to the open space land at Cowpen Bewley needs to be considered. Should this occur, the ExA has considered the open space Land at Cowpen Bewley in the following terms: the Cowpen Bewley Access Track open space land (Plot No. 4/24) and related plots (Plot Nos. 4/22 and 4/23); and the remainder of the Cowpen Bewley Open Space Land, being the open space land excluding Plot No. 4/24 and the related Plot Nos. 4/22 and 4/23.

8.1.21. With regard to the Cowpen Bewley Access Track open space land (Plot No. 4/24), the ExA concluded in chapter 6 of this report that the applicant has not sufficiently proven that the Cowpen Bewley Access Track open space land (Plot No. 4/24) would, when burdened with the Order right, be no less advantageous than it was before to persons in whom it is vested, other persons entitled to rights of common or other rights, and the public. As the ExA considered this parcel of land (Plot No. 4/24) does not satisfy the tests within 132(3) of the PA2008. Additionally, plots 4/22 and 4/23 would not meet the test in s122 of the PA2008 as they would not be required for the development nor be incidental to it with the omission of the Cowpen Bewley Access Track open space land (Plot No. 4/24).

8.1.22. With regard to the remainder of the Cowpen Bewley Open Space Land, being the open space land excluding Plot Nos. 4/22, 4/23 and 4/24, the ExA is satisfied that an order granting development consent for the proposed development would not be subject to special parliamentary procedure, as set out in s131(3) of the PA2008, due to the fact the proposed development would comply with both limbs of the test, as set out in s.131(5) of the PA2008. Additionally, for the reasons set out in paragraph 8.1.19 above, the ExA also remains satisfied with regard to the CA of land at Coatham Marsh forming part of open space special category land. Therefore, the ExA is satisfied the applicant has recorded these facts, and the subsection concerned, within the APV of the dDCO (see page 5 of the APV of the dDCO attached at appendix E of this report).

8.1.23. Furthermore, the ExA is satisfied that Coatham Marsh open space within the Order land, when burdened with any new rights authorised for CA under the terms of this Order, will be no less advantageous than it was before such acquisition, to the persons 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) of the 2008 Act applies.

8.1.24. For the reason set out above, the ExA is satisfied that an order granting development consent for the proposed development would not be subject to special parliamentary procedure, as set out in s132(2) of the PA2008. Furthermore, the ExA is satisfied the applicant has recorded this fact, and the subsection concerned, within the rDCO. (See page 5 of the final versions of the rDCO).

8.1.25. In terms of crown land, the Crown Estate was the only body identified in the Book of Reference at the close of the examination but no letters of agreement/ consent had been entered into the examination. The ExA is not aware of any objection from the Crown Estate and the applicant states the consent process would be commencing following the close of the examination. However, the CA/ TP powers sought in this

regard should not be granted until it has been confirmed that the necessary crown authority, consistent with the BoR ([REP8-038] being the WCBAV or [REP7-014] being the applicant's preferred version) and in accordance with s135(1) and s135(2) of the PA2008, has been obtained.

8.1.26. In addition to all of the above, the ExA considers the interference with human rights would be lawful, necessary, proportionate and justified in the public interest and has been considered as part of a fair process for which compensation is available for loss of property rights.

8.1.27. With regard to all other matters and representations received, the ExA has found no important and relevant matters that would individually or collectively lead to a different recommendation to that below.

8.1.28. In relation to s104 of the PA2008, and with the mitigation proposed through the rDCO in appendix D to this report, having regard to the local impact reports and all important and relevant matters there is nothing to indicate that the application should be decided other than in accordance with the:

- the relevant NPSs;
- the UK Marine Policy Statement (March 2011) and the North East Inshore and North East Offshore Marine Plan (June 2021);
- the local development plans for the areas within which the proposed development lies;
- any matters prescribed in relation to development of the description to which the application relates; and
- any other matters which are both important and relevant.

8.1.29. Having considered the proposed development against all of the above, the ExA finds that there are no adverse impacts arising from the proposed development that would outweigh its benefits.

8.2. RECOMMENDATION

8.2.1. The ExA's findings and conclusions on important and relevant matters are set out in this report and its recommendation is:

(i) The applicant's preferred version of the draft DCO covering all of the Order Land **not be made** for the reasons set out above.

(ii) The applicant's alternative version of the draft DCO (the WCBAV) [REP7a-006]), which the ExA has taken forward as the recommended DCO, be made, subject to the SoS satisfying themselves on the following matters:

- The applicant provides a suitable plan that accurately shows the Order limits excluding the Cowpen Bewley Arm of the proposed development.
- It has been confirmed that the necessary crown authority, in regard to the powers sought related to crown land and/ or crown rights, consistent with the BoR (WCBAV) [REP8-038] and in accordance with s135(1) and s135(2) of the PA2008, has been obtained.

(iii) The SoS may wish to seek clarification from the applicant and NGET as to whether the parties have reached agreement in terms of NGET's objection and the matter of serious detriment. Seeking such clarification may assist the SoS in terms of the alternative version of the DCO attached at appendix E of this report.

(iv) Where the ExA have amended submitted versions of PPs, it suggests that in the interest of openness and fairness, the SoS may wish to consult the applicant and relevant IPs, being Anglo American, Net Zero Teesside Power Ltd and Net Zero North Sea Storage Ltd, as to their respective views on those PPs.

8.2.2. Subject to the above, the ExA considers that the proposed development, in the form of the rDCO [REP7a-006], the without Cowpen Bewley Arm Version, meets the tests in s104 of the PA2008. On that basis, it recommends that the SoS makes the H2Teesside Order in the form attached at appendix D to this report.

APPENDICES

APPENDIX A: EXAMINATION LIBRARY

Planning Inspectorate
Arolygiaeth Gynllunio

EN070009 - H2Teesside Examination Library

Updated – 10 March 2025

This Examination Library relates to the H2Teesside application. The library lists each document that has been submitted to the examination by any party and documents that have been issued by the Planning Inspectorate. All documents listed have been published to the National Infrastructure's Planning website and a hyperlink is provided for each document.

A unique reference is given to each document; these references will be used within the Report on the Implications for European Sites (if issued) and will be used in the Examining Authority's Recommendation Report to the Secretary of State. The documents within the library are categorised either by document type or by the deadline to which they are submitted.

Please note the following:

- This is a working document and will be updated periodically as the examination progresses.
- Advice under Section 51 of the Planning Act 2008 that has been issued by the Inspectorate, is published to the National Infrastructure Website but is not included within the Examination Library as such advice is not an examination document.
- This document contains references to documents from the point the application was submitted to when the examination closes.
- The order of documents within each sub-section is either chronological, numerical, or alphabetical and confers no priority or higher status on those that have been listed first.

Category	Reference
Application Documents Any amended versions accepted before or at the Preliminary Meeting will be saved as Additional Submissions. Amended versions requested for and/or received at a deadline will be saved with the deadline documents.	APP-xxx
Adequacy of Consultation responses	AoC-xxx
Relevant Representations	RR-xxx
Procedural Decisions and Notifications from the Examining Authority Includes Examining Authority's written questions, event notifications and procedural decisions on the examination.	PD-xxx
Additional Submissions Includes anything accepted at the discretion of the Examining Authority outside of a formal deadline.	AS-xxx
Events and Hearings Includes agendas, recordings, notes, actions, and Applicant's hearing notices relating to the Preliminary Meeting, examination hearings and Site Inspections, as relevant.	EVX-xxx
Representations – by Deadline	
Procedural Deadline A: • Written submissions on the Examination procedure • Notification of wish to speak at the Preliminary Meeting • Notification of wish to speak at Issue Specific Hearing 1 • Applicant's submission of the Land Rights Tracker (CA/ TP Schedule) • Submission of suggested locations to be included in any Accompanied Site Inspection	PDA-xxx
Deadline 1:	REP1-xxx
Deadline 2:	REP2-xxx
Deadline 3:	REP3-xxx
Deadline 4:	REP4-xxx
Deadline 5:	REP5-xxx

Document Index

Deadline 5A:	REP5a-xxx
Deadline 6:	REP6-xxx
Deadline 6A:	REP6a-xxx
Deadline 7:	REP7-xxx
Deadline 7A:	REP7a-xxx
Deadline 8:	REP8-xxx
Deadline 9:	REP9-xxx

Other Documents Includes s127/131/138 information, s56, s58 and s59 certificates, and transboundary documents	OD-xxx

Document Index

Application Documents from H2 Teesside Limited

Application form	
APP-001	1.1 Application Cover Letter
APP-002	1.2 Application Guide
APP-003	1.3 Application Form
APP-004	1.4 Notices for Statutory Publicity
APP-005	1.5 Section 55 Checklist
APP-006	1.6 Applicants response to PINS document review

Plans / Drawings / Sections	
APP-007	2.1 Location Plan
APP-008	2.2 Land Plans
APP-009	2.3 Special Category Land and Crown Land Plans
APP-010	2.4 Works Plans
APP-011	2.5 Access and Rights of Way Plans
APP-012	2.6 Indicative Hydrogen Production Facility and Above Ground Installations Plans
APP-013	2.7 Indicative Natural Gas Connection and Above Ground Installations Plans
APP-014	2.8 Indicative Electrical Connection Plan
APP-015	2.9 Indicative Water Connections Plans
APP-016	2.10 Indicative Hydrogen Distribution Network Plans
APP-017	2.11 Indicative CO2 Export Pipeline Plan
APP-018	2.12 Indicative Surface Water Drainage Plan
APP-019	2.13 Temporary Traffic Regulation Measures Plan
APP-020	2.14 H2Teesside and NZT Main Site Shared Area Plan
APP-021	2.15 Important Hedgerows to be Removed Plan
APP-022	2.16 Indicative Industrial Gases Connection Plans

Compulsory Acquisition	
APP-023	3.1 Book of Reference
APP-024	3.2 Statement of Reasons
APP-025	3.3 Funding Statement
APP-026	3.4 Schedule of Negotiations and Powers Sought

Draft Development Consent Order	
APP-027	4.1 Draft Development Consent Order
APP-028	4.2 Explanatory Memorandum
APP-029	4.3 Statutory Instrument Validation Statement

Consultation and Engagement	
APP-030	5.1 Consultation Report

Document Index

APP-031	5.2 Planning Statement
APP-032	5.2.1 Planning Statement - Policy Assessment Tables
APP-033	5.3 Need Statement

APP-034	5.4 Design and Access Statement
APP-035	5.5 Pipelines Statement
APP-036	5.6 Statutory Nuisance Statement
APP-037	5.7 Other Consents and Licences Statement
APP-038	5.8 Indicative Lighting Strategy (Operation)
APP-039	5.9 Outline Landscape and Biodiversity Management Plan
APP-040	5.10 Report to inform Habitats Regulations Assessment (REDACTED)
APP-041	5.10A Report to inform Habitats Regulations Assessment (CONFIDENTIAL)
APP-042	5.11 Schedule of Operational Mitigation and Monitoring
APP-043	5.12 Framework Construction Environmental Management Plan
APP-044	5.12.1 Appendix A Outline Site Waste Management Plan
APP-045	5.12.2 Appendix B Outline Water Management Plan
APP-046	5.12.3 Appendix C Indicative Lighting Strategy (Construction)
APP-047	5.13 Nutrient Neutrality Assessment
APP-048	5.14 Water Framework Directive Assessment
APP-049	5.15 Framework Construction Workers Travel Plan
APP-050	5.16 Framework Construction Traffic Management Plan

Environmental Statement	
[Includes: Environmental Impact Assessment, Habitat Regulations Assessment, Figures and Appendices]	
APP-051	6.1 ES Non-Technical Summary
APP-052	6.2 ES Vol I - Cover and Contents
APP-053	6.2.1 ES Vol I Chapter 1 Introduction
APP-054	6.2.2 ES Vol I Chapter 2 Assessment Methodology
APP-055	6.2.3 ES Vol I Chapter 3 Description of the Existing Area
APP-056	6.2.4 ES Vol I Chapter 4 Proposed Development
APP-057	6.2.5 ES Vol I Chapter 5 Construction Programme and Management
APP-058	6.2.6 ES Vol I Chapter 6 Alternatives and Design Evolution
APP-059	6.2.7 ES Vol I Chapter 7 Planning Policy Context
APP-060	6.2.8 ES Vol I Chapter 8 Air Quality
APP-061	6.2.9 ES Vol I Chapter 9 Surface Water, Flood Risk and Water Resources
APP-062	6.2.10 ES Vol I Chapter 10 Geology, Hydrogeology and Contaminated Land
APP-063	6.2.11 ES Vol I Chapter 11 Noise and Vibration
APP-064	6.2.12 ES Vol I Chapter 12 Ecology and Nature Conservation (including aquatic ecology)
APP-065	6.2.13 ES Vol I Chapter 13 Ornithology
APP-066	6.2.13A ES Vol I Chapter 13 Ornithology
APP-067	6.2.14 ES Vol I Chapter 14 Marine Ecology

Document Index

APP-068	6.2.15 ES Vol I Chapter 15 Traffic and Transport
APP-069	6.2.16 ES Vol I Chapter 16 Landscape and Visual Amenity
APP-070	6.2.17 ES Vol I Chapter 17 Cultural Heritage
APP-071	6.2.18 ES Vol I Chapter 18 Socio-economics and Land Use
APP-072	6.2.19 ES Vol I Chapter 19 Climate Change

APP-073	6.2.20 ES Vol I Chapter 20 Major Accidents and Disasters
APP-074	6.2.21 ES Vol I Chapter 21 Materials and Waste Management
APP-075	6.2.22 ES Vol I Chapter 22 Human Health
APP-076	6.2.23 ES Vol I Chapter 23 Cumulative and Combined Effects
APP-077	6.2.24 ES Vol I Chapter 24 Summary of Significant Effects
APP-078	6.3 ES Vol II – Cover and Contents
APP-079	6.3.1 ES Vol II Figure 1-1 Proposed Development Location
APP-080	6.3.2 ES Vol II Figure 3-1 Environmental Constraints within 1 km of the Proposed Development Site
APP-081	6.3.3 ES Vol II Figure 3-2 Water Constraints within 5 km of the Site Boundary
APP-082	6.3.4 ES Vol II Figure 3-3 Non-Statutory Ecological Constraints within 1 km of the Site Boundary
APP-083	6.3.5 ES Vol II Figure 3-4 Statutory Designated Ecological Sites within 15 km of the Site Boundary
APP-084	6.3.6 ES Vol II Figure 4-1 Proposed Development Site
APP-085	6.3.7 ES Vol II Figure 4-2 Parts of the Proposed Development Site
APP-086	6.3.8 ES Vol II Figure 4-3 CO2 Export Corridor
APP-087	6.3.9 ES Vol II Figure 4-4 Hydrogen Pipeline Corridor
APP-088	6.3.10 ES Vol II Figure 4-5 Natural Gas Connection Corridor
APP-089	6.3.11 ES Vol II Figure 4-6 Electrical Connection Corridor
APP-090	6.3.12 ES Vol II Figure 4-7 Water Connections Corridor
APP-091	6.3.13 ES Vol II Figure 4-8 Other Gases Connection Corridor (O2 and N2)
APP-092	6.3.14 ES Vol II Figure 5-1 Construction Access, Compounds and Welfare Facilities
APP-093	6.3.15 ES Vol II Figure 5-2 Indicative Pipeline Routings
APP-094	6.3.16 ES Vol II Figure 6-1 Proposed Development Site Evolution
APP-095	6.3.16A ES Vol II Figure 6-2 Main Site Alternatives
APP-096	6.3.17 ES Vol II Figure 8-1 Air Quality Study Area - Human Health Receptors and Monitoring
APP-097	6.3.18 ES Vol II Figure 8-2 Air Quality Study Area - Ecological Receptors
APP-098	6.3.19 ES Vol II Figure 8-3 Air Quality Study Area - Construction Road Traffic Locations
APP-099	6.3.20 ES Vol II Figure 8-4 Air Quality Study Area – Operational Model Inputs Phase 1
APP-100	6.3.21 ES Vol II Figure 8-5 Air Quality Study Area – Operational Model Inputs Phase 2
APP-101	6.3.22 ES Vol II Figure 8-6 Annual Mean NO2 Process Contribution
APP-102	6.3.23 ES Vol II Figure 8-7 99.79th1h NO2 Process Contribution

Document Index

APP-103	6.3.24 ES Vol II Figure 8-8 99.79th Percentile1h NO2 Process Contribution 2022
APP-104	6.3.25 ES Vol II Figure 8-9 99.79th Percentile1h NO2 Process Contribution 2020
APP-105	6.3.26 ES Vol II Figure 8-10 Nitrogen Deposition from Process Contribution
APP-106	6.3.27 ES Vol II Figure 9-1 Surface Water Features and their Attributes

APP-107	6.3.28 ES Vol II Figure 9-2 Groundwater Features and their Attributes
APP-108	6.3.29 ES Vol II Figure 9-3 Fluvial Flood Risk
APP-109	6.3.30 ES Vol II Figure 9-4 Surface Water Flood Risk
APP-110	6.3.31 ES Vol II Figure 10-1 Artificial Geology
APP-111	6.3.32 ES Vol II Figure 10-2 Superficial Geology
APP-112	6.3.33 ES Vol II Figure 10-3 Bedrock Geology
APP-113	6.3.34 ES Vol II Figure 10-4 BGS Boreholes
APP-114	6.3.35 ES Vol II Figure 10-5 Faults and Linear Features
APP-115	6.3.36 ES Vol II Figure 10-6 Waste and Landfills
APP-116	6.3.37 ES Vol II Figure 10-7 Hazardous Sites
APP-117	6.3.38 ES Vol II Figure 10-8a Historical Industrial Land Uses (Polygons).
APP-118	6.3.39 ES Vol II Figure 10-8b Historical Industrial Land Uses (Polygons)
APP-119	6.3.40 ES Vol II Figure 10-8c Historical Industrial Land Uses (Polygons)
APP-120	6.3.41 ES Vol II Figure 10-8d Historical Industrial Land Uses - Railway Features
APP-121	6.3.42 ES Vol II Figure 10-8e Historical Industrial Land Uses - Other Features
APP-122	6.3.43 ES Vol II Figure 10-9 Historical Tanks
APP-123	6.3.44 ES Vol II Figure 10-10 Ecological Designations
APP-124	6.3.45 ES Vol II Figure 10-11 Discharge Consents
APP-125	6.3.46 ES Vol II Figure 10-12 Superficial Aquifers
APP-126	6.3.47 ES Vol II Figure 10-13 Bedrock Aquifers
APP-127	6.3.48 ES Vol II Figure 10-14a Groundwater Vulnerability - Main Site
APP-128	6.3.49 ES Vol II Figure 10-15 Groundwater Source Protection Zones
APP-129	6.3.50 ES Vol II Figure 10-16 Groundwater Abstractions
APP-130	6.3.51 ES Vol II Figure 10-17 Surface Water Abstractions
APP-131	6.3.52 ES Vol II Figure 10-18a - Collapsible Deposits
APP-132	6.3.53 ES Vol II Figure 10-18b - Compressible Deposits
APP-133	6.3.54 ES Vol II Figure 10-18c - Ground Dissolution of Soluble Rocks
APP-134	6.3.55 ES Vol II Figure 10-18d - Landslides
APP-135	6.3.56 ES Vol II Figure 10-18e - Natural Ground Subsidence - Running Sand
APP-136	6.3.57 ES Vol II Figure 10-18f - Shrink Swell Clays
APP-137	6.3.58 ES Vol II Figure 10-19 Agricultural Land Classification
APP-138	6.3.59 ES Vol II Figure 10-20 Brit Pits
APP-139	6.3.60 ES Vol II Figure 10-21 Non-Coal Mining
APP-140	6.3.61 ES Vol II Figure 10-22 Surface Ground Workings

Document Index

APP-141	6.3.62 ES Vol II Figure 10-23 Underground Workings
APP-142	6.3.63 ES Vol II Figure 11-1 Noise Sensitive Receptors
APP-143	6.3.64 ES Vol II Figure 11-2 Construction Noise Contours
APP-144	6.3.65 ES Vol II Figure 11-3 Operational Noise Contours
APP-145	6.3.66 ES Vol II Figure 12-1 Statutory Designated Sites within 15 km
APP-146	6.3.67 ES Vol II Figure 12-2 Non-statutory Designated Sites within 2 km

APP-147	6.3.68 ES Vol II Figure 12-3 Potential Habitats of Principal Importance within 2 km
APP-148	6.3.69 ES Vol II Figure 12-4 Phase 1 Habitat Survey Results
APP-149	6.3.70 ES Vol II Figure 13-1 Study Area
APP-150	6.3.71 ES Vol II Figure 13-2 Survey Area
APP-151	6.3.72 ES Vol II Figure 13-3 Net Zero Teesside Breeding Bird Survey Areas
APP-152	6.3.73 ES Vol II Figure 13-4 Statutory Designated Sites with Ornithological Features
APP-153	6.3.74 ES Vol II Figure 13-5 Non-Statutory Designated Sites with Ornithological Features
APP-154	6.3.75 ES Vol II Figure 14-1 Study Area
APP-155	6.3.76 ES Vol II Figure 14-2 Designated Sites with Marine Ecological Features
APP-156	6.3.77 ES Vol II Figure 14-3 Teesside Offshore Wind Farm and NZT EUNIS SBS and Sediment Class
APP-157	6.3.78 ES Vol II Figure 14-4 Important Intertidal and Subtidal Habitats Benthic Habitats
APP-158	6.3.79 ES Vol II Figure 14-5 Mean percentage of at-sea population of harbour seals from haulouts in the British Isles
APP-159	6.3.80 ES Vol II Figure 14-6 Mean percentage of at-sea population of grey seals from haulouts in the British Isles
APP-160	6.3.81 ES Vol II Figure 14-7 Airborne Noise Modelling Locations for Seals
APP-161	6.3.82 ES Vol II Figure 15-1 Traffic Study Area
APP-162	6.3.83 ES Vol II Figure 15-2 HGV Routes to and from the Proposed Development Site
APP-163	6.3.84 ES Vol II Figure 15-3 Traffic Count Locations
APP-164	6.3.85 ES Vol II Figure 15-4 Traffic Routes
APP-165	6.3.86 ES Vol II Figure 16-1 Landscape Context
APP-166	6.3.87 ES Vol II Figure 16-2 Landscape Character
APP-167	6.3.88 ES Vol II Figure 16-3 Zone of Theoretical Visibility and Potential Viewpoint Locations
APP-168	6.3.89 ES Vol II Figure 16-4 Topography
APP-169	6.3.90 ES Vol II Figure 16-5 Zone of Theoretical Visibility and Representative Viewpoint Locations
APP-170	6.3.91 ES Vol II Figure 16-6-1a to 16-6-15a Winter Viewpoint Photography

Document Index

APP-171	6.3.92 ES Vol II Figure 16-6-1b to 16-6-14b Summer Viewpoint Photography
APP-172	6.3.93 ES Vol II Figure 16-7-1a to 16-7-4c Photomontages
APP-173	6.3.94 ES Vol II Figure 17-1 Location of Designated Heritage Assets
APP-174	6.3.95 ES Vol II Figure 17-2 Location of Non-Designated Heritage Assets
APP-175	6.3.96 ES Vol II Figure 17-3 Location of Cultural Heritage Events
APP-176	6.3.97 ES Vol II Figure 17-4 Historic Landscape Character

APP-177	6.3.98 ES Vol II Figure 18-1 Direct Impact Area and Wider Impact Areas
APP-178	6.3.99 ES Vol II Figure 20-1 Major Accidents and Disasters Study Area
APP-179	6.3.100 ES Vol II Figure 21-1 Historic and Authorised Landfills and Waste and Mineral Sites
APP-180	6.3.101 ES Vol II Figure 23-1 Zones of Influence for Cumulative Effects Assessment
APP-181	6.3.102 ES Vol II Figure 23-2 Long List of Other Developments
APP-182	6.3.103 ES Vol II Figure 23-3 Short List of Other Developments
APP-183	6.4 ES Vol III - Cover and Contents
APP-184	6.4.1 ES Vol III Appendix 1A Scoping Report
APP-185	6.4.2 ES Vol III Appendix 1B Scoping Opinion
APP-186	6.4.3 ES Vol III Appendix 1C Statement of Competence
APP-187	6.4.4 ES Vol III Appendix 1D Glossary of Abbreviations and Definitions of Frequently Used Terms
APP-188	6.4.5 ES Vol III Appendix 1E Scoping Opinion Responses
APP-189	6.4.6 ES Vol III Appendix 7A Marine Plan Policy Assessment
APP-190	6.4.7 ES Vol III Appendix 8A Air Quality - Construction Assessment
APP-191	6.4.8 ES Vol III Appendix 8B Air Quality - Operational Phase
APP-192	6.4.9 ES Vol III Appendix 9A Flood Risk Assessment
APP-193	6.4.10 ES Vol III Appendix 9B Water Quality Modelling Report
APP-194	6.4.11 ES Vol III Appendix 10A Desk Based Summary Report
APP-195	6.4.12 ES Vol III Appendix 10B Contaminated Land Conceptual Site Model
APP-196	6.4.13 ES Vol III Appendix 10C Contaminated Land Environmental Risk Assessment
APP-197	6.4.14 ES Vol III Appendix 10D Geotechnical Risk Register
APP-198	6.4.15 ES Vol III Appendix 11A Construction Noise Levels and Assumptions
APP-199	6.4.16 ES Vol III Appendix 11B Operational Noise Information
APP-200	6.4.17 ES Vol III Appendix 11C Baseline Sound Survey Monitoring Information
APP-201	6.4.18 ES Vol III Appendix 12A Phase 1 Habitat and Botanical Survey Report
APP-202	6.4.19 ES Vol III Appendix 12B GCN Survey Report
APP-203	6.4.20 ES Vol III Appendix 12C Bat Survey Report

Document Index

APP-204	6.4.21 ES Vol III Appendix 12D Reptile Survey Report
APP-205	6.4.22 ES Vol III Appendix 12E Invertebrate Survey Report
APP-206	6.4.23 ES Vol III Appendix 12F Water Vole and Otter Survey Report
APP-207	6.4.24 ES Vol III Appendix 12G Aquatic Ecology Survey Report
APP-208	6.4.25 ES Vol III Appendix 13A Ornithology Baseline Report
APP-209	6.4.25A ES Vol III Appendix 13A Ornithology Baseline Report
APP-210	6.4.26 ES Vol III Appendix 15A Transport Assessment
APP-211	6.4.27 ES Vol III Appendix 16A Landscape and Visual Methodology
APP-212	6.4.28 ES Vol III Appendix 16B Landscape Character

APP-213	6.4.29 ES Vol III Appendix 16C Potential Viewpoints
APP-214	6.4.30 ES Vol III Appendix 17A Cultural Heritage Desk Based Assessment
APP-215	6.4.31 ES Vol III Appendix 19A Climate Change Resilience Assessment
APP-216	6.4.32 ES Vol III Appendix 19B In-Combination Climate Change Impact Assessment
APP-217	6.4.33 ES Vol III Appendix 20A Long List of Major Accidents and Disasters Risk Events
APP-218	6.4.34 ES Vol III Appendix 20B Hazardous Substances Consent Flowchart
APP-219	6.4.35 ES Vol III Appendix 20C COMAH Flowchart
APP-220	6.4.36 ES Vol III Appendix 21A Minimum Liquid Discharge Waste Sites
APP-221	6.4.37 ES Vol III Appendix 23A Other developments within the search area
APP-222	6.4.38 ES Vol III Appendix 23B Assessment of Cumulative Effects - Stages 1-2
APP-223	6.4.39 ES Vol III Appendix 23C Shortlist of other developments within the Search Area
APP-224	6.4.40 ES Vol III Appendix 23D Stage 4 - Assessment of Cumulative and Combined Effects
APP-225	6.4.41 ES Vol III Appendix 23E Socio-economic Cumulative Assessment

Adequacy of Consultation Responses		
AoC-001	Durham County Council	Adequacy of Consultation Representation
AoC-002	Redcar and Cleveland Council	Adequacy of Consultation Representation
AoC-003	Stockton-on-Tees Borough Council	Adequacy of Consultation Representation

Relevant Representations	
RR-001	Aggregate Industries UK Limited

Document Index

RR-002	BDB Pitmans LLP on behalf of Lighthouse Green Fuels Limited
RR-003	BDB Pitmans LLP on behalf of The South Tees Group
RR-004	BNP Paribas Real Estate on behalf of Royal Mail Group Limited
RR-005	Not in use
RR-006	Charles Russell Speechlys LLP on behalf of Air Products PLC
RR-007	Climate Emergency Planning and Policy

RR-008	Durham County Council
RR-009	Environment Agency
RR-010	Eversheds Sutherland International LLP on behalf of Anglo American
RR-011	Eversheds Sutherland (International) LLP on behalf of CF Fertilisers UK Limited
RR-012	Eversheds Sutherland on behalf of INEOS Nitriles (UK) Limited
RR-013	Eversheds Sutherland (International) LLP on behalf of Navigator Terminals Limited
RR-014	Eversheds Sutherland (International) LLP on behalf of PD Teesport Limited
RR-015	Eversheds Sutherland on behalf of Sembcorp Utilities (UK) Limited
RR-016	Fieldfisher LLP on behalf of BOC Limited
RR-017	Fisher German LLP on behalf of National Gas Transmission
RR-018	GFW LLP on behalf of Mrs Shirley Peel (Mrs Shirley Peel)
RR-019	GTC Pipelines Ltd
RR-020	Historic England
RR-021	Marine Management Organisation
RR-022	Mishcon de Reya LLP on behalf of Redcar Bulk Terminal Limited
RR-023	Natara Global Ltd
RR-024	National Grid Electricity Transmission Plc
RR-025	National Highways

RR-026	Natural England
RR-027	Northern Powergrid Plc
RR-028	Shepherd and Wedderburn on behalf of Northern Gas Processing Limited
RR-029	Shepherd and Wedderburn on behalf of North Sea Midstream Partners Limited **(Submission Withdrawn by Email) REP2-090**
RR-030	Shepherd and Wedderburn on behalf of Teesside Gas & Liquids Processing
RR-031	Shepherd and Wedderburn on behalf of Teesside Gas Processing Plant Limited
RR-032	Stockton Borough Council

RR-033	UK Health Security Agency
RR-034	Venator Materials UK Limited
RR-035	Womble Bond Dickinson (UK) LLP on behalf of SABIC UK Petrochemicals Limited
RR-036	Burges Salmon LLP on behalf of H2NorthEast Limited
RR-037	Burges Salmon LLP on behalf of Kellas Midstream Limited and CATS North Sea Limited
Relevant Representations following Change Request 1	
RR-038	Ministry of Defence - DIO Safeguarding
RR-039	Eversheds Sutherland (International) LLP (Eversheds Sutherland (International) LLP) on behalf of PD Teesport Limited
RR-040	Eversheds Sutherland (International) LLP (Eversheds Sutherland (International) LLP) on behalf of Navigator Terminals Limited
RR-041	Eversheds Sutherland (International) LLP (Eversheds Sutherland (International) LLP) on behalf of Sembcorp Utilities (UK) Limited
RR-042	Historic England
RR-043	Forestry Commission
RR-044	Shepherd Wedderburn (Shepherd Wedderburn) on behalf of Northern Gas Processing Limited
RR-045	Shepherd Wedderburn (Shepherd Wedderburn) on behalf of Teesside Gas and Liquids Processing
RR-046	Shepherd Wedderburn (Shepherd Wedderburn) on behalf of Teesside Gas Processing Plant Limited
RR-047	Womble Bond Dickinson (UK) LLP (Womble Bond Dickinson (UK) LLP) on behalf of SABIC UK Petrochemicals Limited

Document Index

RR-048	Womble Bond Dickinson (UK) LLP (Womble Bond Dickinson (UK) LLP) on behalf of SABIC Tees Holdings Limited
RR-049	Womble Bond Dickinson (UK) LLP (Womble Bond Dickinson (UK) LLP) on behalf of SABIC Petrochemicals BV
RR-050	The Mission to Seafarers

Procedural Decisions and Notifications from the Examining Authority	
PD-001	Notification of Decision to Accept Application
PD-002	Section 51 advice to the Applicant
PD-003	Section 55 Checklist
PD-004	Notification of the appointment of the Examining Authority
PD-005	Rule 6 letter - Notification of the preliminary meeting and matters to be discussed
PD-006	Procedural Decision in respect of the Applicants notification of proposed changes application
PD-007	Rule 8 letter - notification of timetable for the examination
PD-008	The Examining Authority's written questions and requests for information (ExQ1)
PD-009	Invitation to NatureScot to make representations in the Examination
PD-010	Request for Further Information - Rule 17 - 10 September 2024
PD-011	Rule 13 and Rule 16 Letter - Notification of Hearings and Accompanied Site Inspection
PD-012	Procedural Decision in respect of the Applicants Change Application
PD-013	Proposed Provision Checklist
PD-014	Notice of variation to the Examination Timetable in the light of the Applicant's revised draft itinerary for the Accompanied Site Inspection
PD-015	The Examining Authority's second written questions and requests for information (ExQ2)
PD-016	Rule 16 - Notification of Accompanied Site Inspection 3 (ASI3) and Itinerary
PD-017	Notice of variation to the Examination Timetable following acceptance of change request for examination, including notification of Hearings
PD-018	Report on the Implications for European Sites (RIES)
PD-019	Procedural Decision in respect of the Applicants notification of intention to submit a second request for changes to the application
PD-020	Procedural Decision following a request to make changes to the Application, variation of examination timetable and request for further information
PD-021	Request for Further Information - Rule 17 - 11 February 2025
PD-022	Request for Further Information - Rule 17 - 19 February 2025
PD-023	Request for Further Information - Rule 17 - 25 February 2025

Document Index

PD-024	Request for further Information - Rule 17 - 26 February 2025
PD-025	Section 99 - Notification of completion of the Examining Authority's Examination

Additional Submissions

Applicant's response to the Planning Inspectorate's Section 51 advice and Section 55 acceptance checklist – 30 May 2024		
AS-001	H2 Teesside Limited	Applicant's response to the Planning Inspectorate's Section 51 advice and Section 55 acceptance checklist - 1.2 Application Guide
AS-002	H2 Teesside Limited	Applicant's response to the Planning Inspectorate's Section 51 advice and Section 55 acceptance checklist - 1.7 Applicant's response to S51 advice and S55 checklist
AS-003	H2 Teesside Limited	Applicant's response to the Planning Inspectorate's Section 51 advice and Section 55 acceptance checklist - 2.2 Land Plans
AS-004	H2 Teesside Limited	Applicant's response to the Planning Inspectorate's Section 51 advice and Section 55 acceptance checklist - 2.3 Special Category Land and Crown Land Plans
AS-005	H2 Teesside Limited	Applicant's response to the Planning Inspectorate's Section 51 advice and Section 55 acceptance checklist - 2.4 Works Plans
AS-006	H2 Teesside Limited	Applicant's response to the Planning Inspectorate's Section 51 advice and Section 55 acceptance checklist - 2.5 Access and Rights of Way Plans
AS-007	H2 Teesside Limited	Applicant's response to the Planning Inspectorate's Section 51 advice and Section 55 acceptance checklist - 2.7 Indicative Natural Gas Connection and Above Ground Installations
AS-008	H2 Teesside Limited	Applicant's response to the Planning Inspectorate's Section 51 advice and Section 55 acceptance checklist - 2.10 Indicative Hydrogen Distribution Network
AS-009	H2 Teesside Limited	Applicant's response to the Planning Inspectorate's Section 51 advice and Section 55 acceptance checklist - 2.13 Temporary Traffic Regulation Measures Plan

AS-010	H2 Teesside Limited	Applicant's response to the Planning Inspectorate's Section 51 advice and Section 55 acceptance checklist - 2.15 Important Hedgerows to be Removed
AS-011	H2 Teesside Limited	Applicant's response to the Planning Inspectorate's Section 51 advice and Section 55 acceptance checklist - 2.16 Industrial Gases Connection Plans
AS-012	H2 Teesside Limited	Applicant's response to the Planning Inspectorate's Section 51 advice and Section 55 acceptance checklist - 3.1 Book of Reference
AS-013	H2 Teesside Limited	Applicant's response to the Planning Inspectorate's Section 51 advice and Section 55 acceptance checklist - 4.1 draft Development Consent Order (Clean)
AS-014	H2 Teesside Limited	Applicant's response to the Planning Inspectorate's Section 51 advice and Section 55 acceptance checklist - 4.1 draft Development Consent Order (Tracked)
AS-015	H2 Teesside Limited	Applicant's response to the Planning Inspectorate's Section 51 advice and Section 55 acceptance checklist - 5.1 Consultation Report

AS-016	H2 Teesside Limited	Applicant's response to the Planning Inspectorate's Section 51 advice and Section 55 acceptance checklist - 5.10 Report to inform Habitats Regulations Assessment
AS-017	H2 Teesside Limited	Applicant's response to the Planning Inspectorate's Section 51 advice and Section 55 acceptance checklist - 6.3.27 ES Vol 2 Figure 9-1 Surface Water Features and their Attributes
AS-018	H2 Teesside Limited	Applicant's response to the Planning Inspectorate's Section 51 advice and Section 55 acceptance checklist - 6.3.66 ES Vol 2 Figure 12-1 Statutory Designated Sites within 15 km
AS-019	H2 Teesside Limited	Applicant's response to the Planning Inspectorate's Section 51 advice and Section 55 acceptance checklist - 6.3.93 ES Vol 2 Figure 16-7-1a to 16-7-4f Photomontages
AS-020	H2 Teesside Limited	Applicant's response to the Planning Inspectorate's Section 51 advice and Section 55 acceptance checklist - 6.3.94 ES Vol 2 Figure 17-1 Location of Designated Heritage Assets
AS-021	H2 Teesside Limited	Applicant's response to the Planning Inspectorate's Section 51 advice and Section 55 acceptance checklist - 6.3.95 ES Vol 2 Figure 17-2 Location of Non-Designated Heritage Assets

Document Index

AS-022	H2 Teesside Limited	Applicant's response to the Planning Inspectorate's Section 51 advice and Section 55 acceptance checklist - 6.4.18 ES Vol 3 Appendix 12A Phase 1 Habitat and Botanical Survey Report
AS-023	Net Zero North Sea Storage Limited	Additional Submission - Accepted at the discretion of the Examining Authority
AS-024	Net Zero Teesside Power Limited	Additional Submission - Accepted at the discretion of the Examining Authority
AS-025	Natural England	Additional Submission - Accepted at the discretion of the Examining Authority
AS-026	BDB Pitmans LLP on behalf of The South Tees Group	Additional submission accepted at the discretion of the Examining Authority - Notification of wish to speak at the Preliminary Meeting and Issue Specific Hearing
AS-027	DWD Ltd on behalf of H2 Teesside Limited	Additional Submission accepted at the discretion of the Examining Authority - 1.2 Application Guide - Rev. 3
AS-028	DWD Ltd on behalf of H2 Teesside Limited	Additional Submission accepted at the discretion of the Examining Authority - 2.6 Indicative Hydrogen Production Facility and Above Ground Installations Plan Rev. 1
AS-029	Reference not in use.	

AS-030	DWD Ltd on behalf of H2 Teesside Limited	Additional Submission accepted at the discretion of the Examining Authority - 6.3.93 Fig 16-7-1a to 4f Photomontages - Rev 2
Late Deadline 2 Submissions accepted as Additional Submissions		
AS-031	National Highways	Additional Submission accepted at the discretion of the Examining Authority - Cover Letter
AS-032	National Highways	Additional Submission accepted at the discretion of the Examining Authority - Written Representation
AS-033	Stockton-on-Tees Borough Council	Additional Submission accepted at the discretion of the Examining Authority - Responses to the Examining Authority's First Written Questions (ExQ1)
AS-034	Stockton-on-Tees Borough Council	Additional Submission accepted at the discretion of the Examining Authority - Cowpen Bewley Conservation Area
AS-035	Stockton-on-Tees Borough Council	Additional Submission accepted at the discretion of the Examining Authority - Environmental Weight Limit - Northern Area
Additional Submissions		

Document Index

AS-036	H2 Teesside Limited	6.2.13AA ES Vol I Ornithology Supplementary Baseline Report Confidential Rev 0 - Accepted at the Discretion of the Examining Authority (CONFIDENTIAL)
AS-037	H2 Teesside Limited	6.2.13b ES Vol I Ornithology Supplementary Baseline Report Redacted Rev 0 - Accepted at the Discretion of the Examining Authority
AS-038	H2 Teesside Limited	6.3.93 Fig 16-7-1a to 4f Photomontages Rev 4 - Accepted at the Discretion of the Examining Authority - Revision 3
AS-039	H2 Teesside Limited	8.15 Natural England Habitats Regulations Assessment Written Responses Response Table - Accepted at the discretion of the Examining Authority
AS-040	H2 Teesside Limited	8.17a Response to Climate Emergency, Planning and Policy Written Representation – Additional Submission accepted at the discretion of the Examining Authority
AS-041	Northumbrian Water Limited	Additional Submission accepted at the discretion of the Examining Authority – Attendance at Hearing
AS-042	CF Fertilisers (UK) LTD (CFF)	Additional submission accepted at the discretion of the Examining Authority - Response to CAH1 Action Points
AS-043	Greenergy Limited	Additional Submission accepted at the discretion of the Examining Authority – Holding Objection
AS-044	Environment Agency	Additional Submission accepted at the discretion of the Examining Authority
AS-045	H2 Teesside Limited	Additional Submission accepted at the discretion of the Examining Authority - 7.10 Change Notification 2 (Notification of Further Proposed Changes to the H2Teesside DCO Application and Response to CAH2-AP4)
AS-046	National Highways	Additional Submission accepted at the discretion of the Examining Authority - Update on Statement of Common Ground
AS-047	National Grid Electricity Transmission Plc	Additional Submission accepted at the discretion of the Examining Authority - Response to Procedural Decision [PD-020].

Document Index

AS-048	Natural England	Additional Submission accepted at the discretion of the Examining Authority – Response to the Exa's R8(3), 9 and R17 letter dated 10 February 2025
AS-049	H2 Teesside Limited	Additional Submission accepted at the discretion of the Examining Authority – 8.44.28 PP Position Statement with CATS North Sea Ltd - Rev 0
AS-050	H2 Teesside Limited	Additional Submission accepted at the discretion of the Examining Authority – 8.44.28.1 Applicant's preferred form of Protective Provisions for CATS North Sea Ltd - Clean - Rev 0
AS-051	H2 Teesside Limited	Additional Submission accepted at the discretion of the Examining Authority – 8.44.28.1 Applicant's preferred form of Protective Provisions for CATS North Sea Ltd - Tracked - Rev 0
AS-052	H2 Teesside Limited	Additional Submission accepted at the discretion of the Examining Authority – 8.54 Sembcorp Protection Corridor Plans - Rev 0
AS-053	H2 Teesside Limited	Additional Submission accepted at the discretion of the Examining Authority – 8.58 Cover Letter dated 26 February 2025
AS-054	H2 Teesside Limited	Additional Submission accepted at the discretion of the Examining Authority – 8.59 Response to Questions raised under Rule 17 letter 25-02-25 - Rev 0
AS-055	H2 Teesside Limited	DCO Validation confirmation email
AS-056	H2 Teesside Limited	Additional Submission accepted at the discretion of the Examining Authority - 8.3 Land Rights Tracker (Excel) - Rev 3 - This document is an Excel version of REP7a-013 - Land Rights Tracker - Rev 3
Change Request Application		
Change Request 1		
CR1-001	H2 Teesside Limited	Change Request - 1.2 - Application Guide Rev 6 - Accepted at the Discretion of the Examining Authority
CR1-002	H2 Teesside Limited	Change Request - 2.13 Temporary Traffic Regulation Measures Plan Rev 2 - Accepted at the Discretion of the Examining Authority

Document Index

CR1-003	H2 Teesside Limited	Change Request - 2.15 Important Hedgerows to be Removed Plan Rev 3 - Accepted at the Discretion of the Examining Authority
CR1-004	H2 Teesside Limited	Change Request - 2.2 Land Plans Rev 2 - Accepted at the Discretion of the Examining Authority

CR1-005	H2 Teesside Limited	Change Request - 2.2a Supplementary Land Plans Rev 0 - Accepted at the Discretion of the Examining Authority
CR1-006	H2 Teesside Limited	Change Request - 2.3 Special Category Land and Crown Land Plans Rev 2 - Accepted at the Discretion of the Examining Authority
CR1-007	H2 Teesside Limited	Change Request - 2.4 Works Plans Rev 2 - Accepted at the Discretion of the Examining Authority
CR1-008	H2 Teesside Limited	Change Request - 2.5 Access and Rights of Way Plans Rev 2 - Accepted at the Discretion of the Examining Authority
CR1-009	H2 Teesside Limited	Change Request - 3.1 - Book of Reference - Clean Rev 3 - Accepted at the Discretion of the Examining Authority
CR1-010	H2 Teesside Limited	Change Request - 3.1 - Book of Reference - Tracked Rev 3 - Accepted at the Discretion of the Examining Authority
CR1-011	H2 Teesside Limited	Change Request - 3.1a - Schedule of Change to the Book of Reference Clean Rev 1 - Accepted at the Discretion of the Examining Authority
CR1-012	H2 Teesside Limited	Change Request - 3.1a - Schedule of Change to the Book of Reference Tracked Rev 1 - Accepted at the Discretion of the Examining Authority
CR1-013	H2 Teesside Limited	Change Request - 3.2a Supplementary Statement of Reasons Rev 0 - Accepted at the Discretion of the Examining Authority
CR1-014	H2 Teesside Limited	Change Request - 3.3a Supplementary Funding Statement Rev 0 - Accepted at the Discretion of the Examining Authority
CR1-015	H2 Teesside Limited	Change Request - 4.1 Draft Development Consent Order Clean Rev 3 - Accepted at the Discretion of the Examining Authority
CR1-016	H2 Teesside Limited	Change Request - 4.1 Draft Development Consent Order Tracked Rev 3 - Accepted at the Discretion of the Examining Authority
CR1-017	H2 Teesside Limited	Change Request - 4.1a Schedule of Change to the dDCO Rev 1 - Accepted at the Discretion of the Examining Authority
CR1-018	H2 Teesside Limited	Change Request - 4.2 Explanatory Memorandum Clean Rev 1 - Accepted at the Discretion of the Examining Authority

Document Index

CR1-019	H2 Teesside Limited	Change Request - 4.2 Explanatory Memorandum Tracked Rev 1 - Accepted at the Discretion of the Examining Authority
CR1-020	H2 Teesside Limited	Change Request - 5.5 Pipelines Statement Clean Rev 1 - Accepted at the Discretion of the Examining Authority

CR1-021	H2 Teesside Limited	Change Request - 5.5 Pipelines Statement Tracked Rev 1 - Accepted at the Discretion of the Examining Authority
CR1-022	H2 Teesside Limited	Change Request - 5.9 Outline Landscape and Biodiversity Management Plan Rev 2 - Accepted at the Discretion of the Examining Authority
CR1-023	H2 Teesside Limited	Change Request - 5.10 Report to Inform Habitats Regulations Assessment Redacted - Clean - Accepted at the Discretion of the Examining Authority
CR1-024	H2 Teesside Limited	Change Request - 5.10 Report to Inform Habitats Regulations Assessment Redacted - Tracked - Accepted at the Discretion of the Examining Authority
CR1-025	H2 Teesside Limited	Change Request - 5.10A Report to Inform Habitats Regulations Assessment Confidential - Tracked - Accepted at the Discretion of the Examining Authority
CR1-026	H2 Teesside Limited	5.10A Report to Inform Habitats Regulations Assessment Confidential - Tracked - Accepted at the Discretion of the Examining Authority
CR1-027	H2 Teesside Limited	Not in use – This submission has been moved to AS-036
CR1-028	H2 Teesside Limited	Not in use – This submission has been moved to AS-037
CR1-029	H2 Teesside Limited	Change Request - 6.3.20 Figure 8-4 - Air Quality Study Area - Operational Model Inputs Phase 1 - Accepted at the Discretion of the Examining Authority
CR1-030	H2 Teesside Limited	Change Request - 6.3.21 Figure 8-5 - Air Quality Study Area - Operational Model Inputs Phase 2 - Accepted at the Discretion of the Examining Authority
CR1-031	H2 Teesside Limited	Change Request - 6.3.22 Figure 8-6 Annual Mean NO2 Proposed Dev during Normal Operations Ph 1-2 - Accepted at the Discretion of the Examining Authority
CR1-032	H2 Teesside Limited	Change Request - 6.3.23 Figure 8-7 99.79th Percentile 1h NO2 Proposed Dev during Normal Operations Ph 1-2 - Accepted at the Discretion of the Examining Authority

Document Index

CR1-033	H2 Teesside Limited	Change Request - 6.3.24 Figure 8-8 CO Process Contribution Phase 1 and 2 - Accepted at the Discretion of the Examining Authority
CR1-034	H2 Teesside Limited	Change Request - 6.3.25 Figure 8-9 - 1h CO Process Contribution for Phase 1 and 2 - Accepted at the Discretion of the Examining Authority

CR1-035	H2 Teesside Limited	Change Request - 6.3.26 Figure 8 -10 Annual Mean NOx Process Contribution - Accepted at the Discretion of the Examining Authority
CR1-036	H2 Teesside Limited	Change Request - 6.3.26a Figure 8-11 NH3 Process Contribution Ph 1 and 2 - Accepted at the Discretion of the Examining Authority
CR1-037	H2 Teesside Limited	Change Request - 6.3.26b Figure 8-12 Nitrogen Deposition from Process Contribution Ph1 and 2 - Accepted at the Discretion of the Examining Authority
CR1-038	H2 Teesside Limited	Change Request - 6.3.26c Figure 8-13 Acid Deposition from Process Contribution Ph1 and 2 - Accepted at the Discretion of the Examining Authority
CR1-039	H2 Teesside Limited	Change Request - 6.3.64 ES Vol II Figure 11-2 Construction Noise Contours - Accepted at the Discretion of the Examining Authority
CR1-040	H2 Teesside Limited	Change Request - 6.3.81 ES Vol II Figure 14-7 Airborne Noise Modelling Locations for Seals Rev 1 -Accepted at the Discretion of the Examining Authority
CR1-041	H2 Teesside Limited	Not in use – This submission has been moved to AS-038
CR1-042	H2 Teesside Limited	Change Request - 6.3.93 Fig 16-7-1a to 4f Photomontages Rev 4 - Accepted at the Discretion of the Examining Authority
CR1-043	H2 Teesside Limited	Change Request - 7.2 - Change Application Cover Letter - Accepted at the Discretion of the Examining Authority
CR1-044	H2 Teesside Limited	Change Request - 7.3 - Change Application Report - Accepted at the Discretion of the Examining Authority
CR1-045	H2 Teesside Limited	Change Request - 7.4 Change Application Report - Appendices - Accepted at the Discretion of the Examining Authority
CR1-046	H2 Teesside Limited	Change Request - 7.5 Consultation Statement Rev 0 - Accepted at the Discretion of the Examining Authority
CR1-047	H2 Teesside Limited	Change Request - 7.6 Consultation Statement Appendices Rev 0 Redacted - Accepted at the Discretion of the Examining Authority

Document Index

CR1-048	H2 Teesside Limited	Change Request - 7.7 Schedule of Application Documents - Accepted at the Discretion of the Examining Authority
CR1-049	H2 Teesside Limited	Change Request - 7.8 Works Comparison Plans Rev 0 - Accepted at the Discretion of the Examining Authority
CR1-050	H2 Teesside Limited	Change Request - 7.9 Habitats Regulations Assessment Changes Reference Table Rev 0 - Accepted at the Discretion of the Examining Authority
CR1-051	H2 Teesside Limited	Not in use – This submission has been moved to AS-039

Events

Unaccompanied Site Inspection	
EV1-001	Note of Unaccompanied Site Inspection 1 (USI1) – 24 June 2024
EV1-002	Note of Unaccompanied Site Inspection 2 (USI2) – 25 June 2024
EV1-003	Note of Unaccompanied Site Inspection 2 (USI3) – 26 June 2024

Preliminary Meeting (PM) – 28 August 2024	
EV2-001	Recording of Preliminary Meeting (PM) 28 August 2024
EV2-002	Transcript of Preliminary Meeting (PM) 28 August 2024 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event
EV2-003	Preliminary Meeting Note

Issue Specific Hearing 1 (ISH1) – 28 August 2024	
EV3-001	Agenda for Issue Specific Hearing 1 (ISH1)
EV3-002	Recording of Issue Specific Hearing 1 (ISH1) - Session 1 - 28 August 2024
EV3-003	Transcript of Issue Specific Hearing 1 (ISH1) - Session 1 - 28 August 2024 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event
EV3-004	Recording of Issue Specific Hearing 1 (ISH1) - Session 2 - 28 August 2024

EV3-005	Transcript of Issue Specific Hearing 1 (ISH1) - Session 2 - 28 August 2024 This document is intended to assist Interested Parties, it is not verbatim. The content is produced using artificial intelligence voice to text and is unedited. The video recording remains as the primary record of the event
EV3-006	Action Points arising from Issue Specific Hearing 1 (ISH1)
November hearings	
EV4-001	Applicants Hearing Notice for November 2024
Compulsory Acquisition Hearing 1 (CAH1) – 13 November 2024	
EV5-001	Agenda for Compulsory Acquisition Hearing 1
EV5-002	Recording of Compulsory Acquisition Hearing 1 (CAH1) - Part 1 - 13 November 2024
EV5-003	Transcript of Recording of Compulsory Acquisition Hearing 1 (CAH1) - Part 1 - 13 November 2024
EV5-004	Recording of Compulsory Acquisition Hearing 1 (CAH1) - Part 2 - 13 November 2024
EV5-005	Transcript of Recording of Compulsory Acquisition Hearing 1 (CAH1) - Part 2 - 13 November 2024
EV5-006	Recording of Compulsory Acquisition Hearing 1 (CAH1) - Part 3 - 13 November 2024
EV5-007	Transcript of Recording of Compulsory Acquisition Hearing 1 (CAH1) - Part 3 - 13 November 2024
EV5-008	Recording of Compulsory Acquisition Hearing 1 (CAH1) - Part 4 - 13 November 2024
EV5-009	Transcript of Recording of Compulsory Acquisition Hearing 1 (CAH1) - Part 4 - 13 November 2024
EV5-010	Action Points from Compulsory Acquisition Hearing 1 (CAH1) held on 13 November 2024
Issue Specific Hearing 2 (ISH2) – 14 November 2024	
EV6-001	Recording of Issue Specific Hearing 2 (ISH2) - Part 1 - 14 November 2024
EV6-002	Transcript of Recording of Issue Specific Hearing 2 (ISH2) - Part 1 - 14 November 2024
EV6-003	Recording of Issue Specific Hearing 2 (ISH2) - Part 2 - 14 November 2024
EV6-004	Transcript of Recording of Issue Specific Hearing 2 (ISH2) - Part 2 - 14 November 2024
EV6-005	Recording of Issue Specific Hearing 2 (ISH2) - Part 3 - 14 November 2024
EV6-006	Transcript of Recording of Issue Specific Hearing 2 (ISH2) - Part 3 - 14 November 2024
EV6-007	Action Points from Issue Specific Hearing 2 (ISH2) held on 14 November 2024
January hearings	
EV7-001	Applicants Hearing Notice for January 2025

EV7-002	Action Points arising from Compulsory Acquisition Hearing 2 (CAH2), Issue Specific Hearing 3 (ISH3) and Issue Specific Hearing 4 (ISH4)
Compulsory Acquisition Hearing 2 (CAH2) – 13 January 2025	
EV8-001	Updated Agenda for Compulsory Acquisition Hearing 2 (CAH2)
EV8-002	Recording of Compulsory Acquisition Hearing 2 (CAH2) - 13 January 2025 - Part 1
EV8-003	Transcript of Recording of Compulsory Acquisition Hearing 2 (CAH2) - 13 January 2025 - Part 1
EV8-004	Recording of Compulsory Acquisition Hearing 2 (CAH2) - 13 January 2025 - Part 2
EV8-005	Transcript of Recording of Compulsory Acquisition Hearing 2 (CAH2) - 13 January 2025 - Part 2
EV8-006	Recording of Compulsory Acquisition Hearing 2 (CAH2) - 13 January 2025 - Part 3
EV8-007	Transcript of Recording of Compulsory Acquisition Hearing 2 (CAH2) - 13 January 2025 - Part 3
EV8-008	Recording of Compulsory Acquisition Hearing 2 (CAH2) - 13 January 2025 - Part 4
EV8-009	Transcript of Recording of Compulsory Acquisition Hearing 2 (CAH2) - 13 January 2025 - Part 4
Issue Specific Hearing 3 (ISH3) – 14 January 2025	
EV9-001	Updated Agenda for Issue Specific Hearing 3 (ISH3)
EV9-002	Recording of Issue Specific Hearing 3 (ISH3) - 14 January 2025 - Part 1
EV9-003	Transcript of Recording of Issue Specific Hearing 3 (ISH3) - 14 January 2025 - Part 1
EV9-004	Recording of Issue Specific Hearing 3 (ISH3) - 14 January 2025 - Part 2
EV9-005	Transcript of Recording of Issue Specific Hearing 3 (ISH3) - 14 January 2025 - Part 2
EV9-006	Recording of Issue Specific Hearing 3 (ISH3) - 14 January 2025 - Part 3
EV9-007	Transcript of Recording of Issue Specific Hearing 3 (ISH3) - 14 January 2025 - Part 3
EV9-008	Recording of Issue Specific Hearing 3 (ISH3) - 14 January 2025 - Part 4
EV9-009	Transcript of Recording of Issue Specific Hearing 3 (ISH3) - 14 January 2025 - Part 4
Issue Specific Hearing 4 (ISH4) – 15 January 2025	
EV10-001	Recording of Issue Specific Hearing 4 (ISH4) - 15 January 2025
EV10-002	Transcript of Recording of Issue Specific Hearing 4 (ISH4) - 15 January 2025
Open Floor Hearing 1 (OFH1) – 15 January 2025	
EV11-001	Recording of Open Floor Hearing 1 (OFH1) - 15 January 2025
EV11-002	Transcript of Recording of Open Floor Hearing 1 (OFH1) - 15 January 2025

Representations

Document Index

Procedural Deadline A – 15 August 2024 For receipt by the Examining Authority of:		
• Written submissions on the Examination procedure • Notification of wish to speak at the Preliminary Meeting • Notification of wish to speak at Issue Specific Hearing 1 • Applicant's submission of the Land Rights Tracker (CA/ TP Schedule) • Submission of suggested locations to be included in any Accompanied Site Inspection		
PDA-001	H2 Teesside Limited	Procedural Deadline A Submission - 1.2 Application Guide Rev. 2
PDA-002	H2 Teesside Limited	Procedural Deadline A Submission - 2.15 Important Hedgerows to be Removed Plan Rev. 2
PDA-003	H2 Teesside Limited	Procedural Deadline A Submission - 6.1 ES Non-Technical Summary Rev. 1
PDA-004	H2 Teesside Limited	Procedural Deadline A Submission - 6.1 ES Non-Technical Summary (Tracked) Rev. 1
PDA-005	H2 Teesside Limited	Procedural Deadline A Submission - 6.2.4 ES Vol I Chapter 4 Proposed Development Rev. 1
PDA-006	H2 Teesside Limited	Procedural Deadline A Submission - 6.2.4 ES Vol I Chapter 4 Proposed Development (Tracked) Rev. 1
PDA-007	H2 Teesside Limited	Procedural Deadline A Submission - 6.2.11 ES Vol I Chapter 11 Noise and Vibration Rev. 1
PDA-008	H2 Teesside Limited	Procedural Deadline A Submission - 6.2.11 ES Vol I Chapter 11 Noise and Vibration (Tracked) Rev. 1
PDA-009	H2 Teesside Limited	Procedural Deadline A Submission - 6.3.14 ES Vol II Figure 5-1 Construction Access and Temporary Construction Compounds Rev. 1
PDA-010	H2 Teesside Limited	Procedural Deadline A Submission - 6.3.29 ES Vol II Figure 9-3 Tidal and Fluvial Flood Risk Rev. 1
PDA-011	H2 Teesside Limited	Procedural Deadline A Submission - 6.3.69 ES Vol II Figure 12-4 Phase 1 Habitat Survey Results Rev. 1
PDA-012	H2 Teesside Limited	Procedural Deadline A Submission - 6.3.86 ES Vol II Figure 16-1 Landscape Context Rev. 1
PDA-013	H2 Teesside Limited	Procedural Deadline A Submission - 6.3.91 ES Vol II Figure 16-6-1a to 16-6-15a Winter Viewpoint Photography Rev. 1
PDA-014	H2 Teesside Limited	Procedural Deadline A Submission - 6.3.92 ES Vol II Figure 16-6-1b to 16-6-14b Summer Viewpoint Photography Rev. 1

Document Index

PDA-015	H2 Teesside Limited	Procedural Deadline A Submission - 6.4.15 ES Vol III Appendix 11A Construction Noise Levels and Assumptions Rev. 1
PDA-016	H2 Teesside Limited	Procedural Deadline A Submission - 6.4.15 ES Vol III Appendix 11A Construction Noise Levels and Assumptions (Tracked) Rev. 1
PDA-017	H2 Teesside Limited	Procedural Deadline A Submission - 6.4.17 ES Vol III Appendix 11C Baseline Sound Monitoring Survey Information Rev. 1
PDA-018	H2 Teesside Limited	Procedural Deadline A Submission - 6.4.17 ES Vol III Appendix 11C Baseline Sound Monitoring Survey Information (Tracked) Rev. 1
PDA-019	H2 Teesside Limited	Procedural Deadline A Submission - 7.1 Change Notification Report
PDA-020	H2 Teesside Limited	Procedural Deadline A Submission - 8.1 Written Submissions on the Examination Procedure
PDA-021	H2 Teesside Limited	Procedural Deadline A Submission - 8.2 Errata Report
PDA-022	H2 Teesside Limited	Procedural Deadline A Submission - 8.3 Land Rights Tracker
PDA-023	Anglo American	Procedural Deadline A Submission - Submission of suggested locations to be included in any Accompanied Site Inspection
PDA-024	BOC Limited	Procedural Deadline A Submission - Notification of wish to speak at Issue Specific Hearing 1
PDA-025	Greenergy Biofuels Teesside Limited	Procedural Deadline A Submission - Written submissions on the Examination procedure
PDA-026	Marine Management Organisation	Procedural Deadline A Submission - Written Submissions on the Examination Procedure
PDA-027	MGT Teesside Limited	Procedural Deadline A Submission
PDA-028	Natara Global Limited	Procedural Deadline A Submission - Notification of wish to speak at Issue Specific Hearing 1
PDA-029	SABIC UK Petrochemicals Limited	Procedural Deadline A Submission - Submission of suggested locations to be included in any Accompanied Site Inspection
PDA-030	Dr Andrew Boswell	Procedural Deadline A Submission - Written Submissions on the Examination Procedure

Deadline 1 – 17 September 2024

For receipt by the Examining Authority of:

- Written summaries of oral submissions to the PM.
- An updated draft Development Consent Order (dDCO) in clean, tracked and Word versions (if required)
- Comments on Relevant Representations (RRs)
- Comments on Additional Submissions
- Comments on any submissions made at PDA

Document Index

- Local Impact Report (LIR) from Local Authorities
- Statements of Common Ground (SoCG) requested by ExA
- Statement of Commonality for SoCG
- Updated Book of Reference (BoR) and Schedule of Changes to the BoR (in clean and tracked versions) (if required)
- A Schedule of Changes to the dDCO (if required)
- Comments on the Applicant's Land Rights Tracker (CA/ TP Schedule) submitted at DL1
- An Application Guide (Application Document Tracker) (if required)
- An Examination Progress Tracker
- Submission of Tracking documents, if required
- Notification of wish to speak at an Open Floor Hearing
- Notification of wish to speak at a Compulsory Acquisition Hearing
- Comments on the suggested locations to be included in any ASI submitted at PDA
- The Applicant's draft itinerary for an ASI
- Notification by any Statutory Parties and Local Authorities who have not submitted a RR of their wish to be considered as an IP
- Any further information requested by the ExA

REP1-001	H2 Teesside Limited	8.8 - Deadline 1 Cover Letter
REP1-002	H2 Teesside Limited	1.2 Application Guide
REP1-003	H2 Teesside Limited	2.17 Typical Elevations of Above Ground Pipelines in Context with Surrounding Features
REP1-004	H2 Teesside Limited	3.1 Book of Reference (Clean)
REP1-005	H2 Teesside Limited	3.1 Book of Reference (Tracked)
REP1-006	H2 Teesside Limited	3.1a Schedule of Changes to the Book of Reference
REP1-007	H2 Teesside Limited	8.4 Applicant's Comments on Relevant Representations and Additional Submissions
REP1-008	H2 Teesside Limited	8.5: Summary of Applicant's Oral Submissions at the Issue Specific Hearing (ISH1)
REP1-009	H2 Teesside Limited	8.6 Net Zero Teesside Order as Made
REP1-010	H2 Teesside Limited	8.7 Examination Progress Tracker
REP1-011	H2 Teesside Limited	8.9 Draft itinerary for the Accompanied Site Inspection
REP1-012	H2 Teesside Limited	9.1: Statement of Common Ground between H2 Teesside Limited and Durham County Council
REP1-013	H2 Teesside Limited	9.2: Statement of Common Ground between H2 Teesside Limited and the Environment Agency
REP1-014	H2 Teesside Limited	9.3: Statement of Common Ground between H2 Teesside Limited and Hartlepool Borough Council
REP1-015	H2 Teesside Limited	9.4: Statement of Common Ground between H2 Teesside Limited and Health and Safety Executive

Document Index

REP1-016	H2 Teesside Limited	9.5: Statement of Common Ground between H2 Teesside Limited and the Marine Management Organisation
REP1-017	H2 Teesside Limited	9.6: Statement of Common Ground between H2 Teesside Limited and National Highways
REP1-018	H2 Teesside Limited	9.7: Statement of Common Ground between H2 Teesside Limited and Natural England
REP1-019	H2 Teesside Limited	9.8: Statement of Common Ground between H2 Teesside Limited and Redcar and Cleveland Borough Council
REP1-020	H2 Teesside Limited	9.9: Statement of Common Ground between H2 Teesside Limited and Teesworks Limited, South Tees Developments Limited and South Tees Development Corporation (together 'South Tees Group')
REP1-021	H2 Teesside Limited	9.10: Statement of Common Ground between H2 Teesside Limited and Stockton-on-Tees Borough Council
REP1-022	H2 Teesside Limited	9.11: Statement of Common Ground between H2 Teesside Limited and Tees Valley Combined Authority
REP1-023	H2 Teesside Limited	9.13: Statement of Common Ground between H2 Teesside Limited and Anglo American Woodsmith Limited, Anglo American Woodsmith (Teesside) Limited and Anglo American Crop Nutrients Limited (together 'Anglo American')
REP1-024	H2 Teesside Limited	9.12: Statement of Common Ground between H2 Teesside Limited and the UK Health Security Agency
REP1-025	H2 Teesside Limited	9.14 Statement of Commonality
REP1-026	Anglo American	Written summaries of oral submissions to the Preliminary Meeting (PM)
REP1-027	BOC Limited	Notification of wish to speak at a Compulsory Acquisition Hearing
REP1-028	BOC Limited	Notification of wish to speak at an Open Floor Hearing
REP1-029	BOC Limited	Written summaries of oral submissions to the Preliminary Meeting (PM)
REP1-030	CF Fertilisers UK Limited	Notification of wish to speak at a Compulsory Acquisition Hearing, Suggested ASI locations, comments on the LRT
REP1-031	INEOS Nitriles (UK) Limited	Notification of wish to speak at a Compulsory Acquisition Hearing
REP1-032	Lighthouse Green Fuels Limited	Notification of wish to speak at a Compulsory Acquisition Hearing
REP1-033	Marine Management Organisation	Summary of Written Representation
REP1-034	Marine Management Organisation	Written Representation (WR)

Document Index

REP1-035	Natara Global Limited	Notification of wish to speak at a Compulsory Acquisition Hearing
REP1-036	Natara Global Limited	Notification of wish to speak at an Open Floor Hearing
REP1-037	Nature Scot	Any further information requested by the ExA
REP1-038	Navigator Terminals Limited	Notification of wish to speak at a Compulsory Acquisition Hearing
REP1-039	North Sea Midstream Partners Limited	Written summaries of oral submissions to the Preliminary Meeting (PM) **(Submission Withdrawn by Email) REP2-090**
REP1-040	Northern Gas Processing Limited	Written summaries of oral submissions to the Preliminary Meeting (PM)
REP1-041	Office for Nuclear Regulation	Any further information requested by the ExA
REP1-042	PD Teesport Limited	Notification of wish to speak at a Compulsory Acquisition Hearing
REP1-043	Redcar and Cleveland Borough Council	Local Impact Report (LIR) from Local Authorities
REP1-044	Sembcorp Utilities (UK) Limited	Notification of wish to speak at a Compulsory Acquisition Hearing
REP1-045	Stockton on Tees Borough Council	Local Impact Report - Late Submission accepted at the discretion of the Examining Authority
REP1-046	Teesside Gas & Liquids Processing	Written summaries of oral submissions to the Preliminary Meeting (PM)
REP1-047	Teesside Gas Processing Plant Limited	Written summaries of oral submissions to the Preliminary Meeting (PM)
REP1-048	The South Tees Group	Comments on any submissions made at PDA
REP1-049	The South Tees Group	Written Summary of Submissions at Issue Specific Hearing 1 (ISH1)
REP1-050	Venator Materials UK Ltd	Notification of wish to speak at a Compulsory Acquisition Hearing
REP1-051	Venator Materials UK Ltd	Written Representation (WR)

Deadline 2 – 3 October 2024

For receipt by the Examining Authority of:

- Comments on any submissions received at DL1, including LIRs any updated dDCO and the Applicant's draft itinerary for the ASI
- Any post-PM submissions requested by the ExA
- Written Representations (WRs) (including summaries of all WRs exceeding 1500 words)
- Responses to comments on RRs
- Responses to ExA's ExQ1

Document Index

• Updated BoR and Schedule of Changes to the BoR, in clean and tracked versions (if required) • An updated dDCO in clean, tracked and Word versions (if required) • Applicant's first update to the Land Rights Tracker (CA/ TP Schedule) • An updated Schedule of Changes to the dDCO (if required) • An updated Application Guide (Application Document Tracker) (if required), in clean, tracked and Word versions • A statement of progress on SoCG that remain outstanding and submission of SoCG not completed at DL1 • Statement of Commonality of SoCG • Updated tracking documents, if required • Notification of wish to attend ASI • Comments/ Responses to the Applicant Examination Progress Tracker submitted at DL1 • Any further information requested by the ExA •		
REP2-001	H2 Teesside Limited	8.10 - Deadline 2 Cover Letter
REP2-002	H2 Teesside Limited	1.2 Application Guide Rev. 5
REP2-003	H2 Teesside Limited	2.4a - Integrated Works Plans
REP2-004	H2 Teesside Limited	4.1: Draft Development Consent Order (Clean) Rev 2
REP2-005	H2 Teesside Limited	4.1 Draft Development Consent Order (Tracked) Rev 2
REP2-006	H2 Teesside Limited	4.1a: Schedule of Changes to the Draft Development Consent Order
REP2-007	H2 Teesside Limited	5.7 - Other Consents and Licences Statement (Clean) Rev. 1
REP2-008	H2 Teesside Limited	5.7 - Other Consents and Licences Statement (Tracked) Rev. 1
REP2-009	H2 Teesside Limited	5.9 Outline Landscape and Biodiversity Management Plan (Clean) Rev. 1
REP2-010	H2 Teesside Limited	5.9 Outline Landscape and Biodiversity Management Plan (Tracked) Rev. 1
REP2-011	H2 Teesside Limited	5.12 Framework Construction Environmental Management Plan (Clean) Rev.1
REP2-012	H2 Teesside Limited	5.12: Framework Construction Environmental Management Plan (CEMP) (Tracked) Rev. 1
REP2-013	H2 Teesside Limited	5.15: Framework Construction Workers Travel Plan (Clean) Rev. 1
REP2-014	H2 Teesside Limited	5.15 Framework Construction Workers Travel Plan (Tracked) Rev. 1
REP2-015	H2 Teesside Limited	5.16 Framework Construction Traffic Management Plan (Clean) Rev. 1
REP2-016	H2 Teesside Limited	5.16 Framework Construction Traffic Management Plan (Tracked) Rev. 1
REP2-017	H2 Teesside Limited	6.3.58 ES Vol II Figure 10-19 Agricultural Land Classification Rev. 1
REP2-018	H2 Teesside Limited	8.3 Land Rights Tracker - Rev. 1

Document Index

REP2-019	H2 Teesside Limited	8.11.1 Response to ExQ1 General and Cross Topic
REP2-020	H2 Teesside Limited	8.11.2 Response to ExQ1 Assessment of Alternatives
REP2-021	H2 Teesside Limited	8.11.3 Response to ExQ1 Air Quality and Emissions
REP2-022	H2 Teesside Limited	8.11.4 Response to ExQ1 HRA and Ecology
REP2-023	H2 Teesside Limited	8.11.5 Response to ExQ1 Climate Change
REP2-024	H2 Teesside Limited	8.11.6 Response to ExQ1 Compulsory Acquisition and Temporary Possession
REP2-025	H2 Teesside Limited	8.11.7 Response to ExQ1 Cultural Heritage
REP2-026	H2 Teesside Limited	8.11.8 Response to ExQ1 Cumulative and Combined Effects
REP2-027	H2 Teesside Limited	8.11.9 Response to ExQ1 Draft Development Consent Order
REP2-028	H2 Teesside Limited	8.11.10 Response to ExQ1 Geology Hydrogeology and Land Contamination
REP2-029	H2 Teesside Limited	8.11.11 Response to ExQ1 Landscape, Visual Amenity & Design
REP2-030	H2 Teesside Limited	8.11.12 Response to ExQ1 Material and Waste Management
REP2-031	H2 Teesside Limited	8.11.13 Response to ExQ1 Noise and Vibration
REP2-032	H2 Teesside Limited	8.11.14 Response to ExQ1 Socio-economics and Land use
REP2-033	H2 Teesside Limited	8.11.15 Response to ExQ1 Surface Water Flood Risk and Water Resources
REP2-034	H2 Teesside Limited	8.11.16 Response to ExQ1 Needs Case and other Developments
REP2-035	H2 Teesside Limited	8.11.17 Response to ExQ1 Traffic and Transportation
REP2-036	H2 Teesside Limited	8.12 - Applicant's Comments on Local Impact Reports
REP2-037	H2 Teesside Limited	8.13 - Order Width Limit explanatory Note
REP2-038	H2 Teesside Limited	8.14 Interrelation Report
REP2-039	H2 Teesside Limited	9.8 Statement of Common Ground between H2 Teesside Limited and Redcar and Cleveland Borough Council - Rev. 1
REP2-040	H2 Teesside Limited	9.10 Statement of Common Ground between H2 Teesside Limited and Stockton-on-Tees Borough Council - Rev. 1
REP2-041	H2 Teesside Limited	9.11 Statement of Common Ground between H2 Teesside Limited and Tees Valley Combined Authority - Rev. 1
REP2-042	H2 Teesside Limited	9.13 Statement of Common Ground between H2 Teesside Limited and Anglo American Woodsmith Limited, Anglo American Woodsmith (Teesside) Limited and Anglo American Crop Nutrients Limited (together 'Anglo American') - Rev. 1

Document Index

REP2-043	H2 Teesside Limited	9.14 Statement of Commonality - Rev. 1
REP2-044	Redcar and Cleveland Borough Council	Responses to the Examining Authority's First Written Questions (ExQ1)
REP2-045	Stockton-on-Tees Borough Council	Any further information requested by the ExA
REP2-046	Climate Emergency Policy and Planning (CEPP)	Written Representation
REP2-047	Climate Emergency Policy and Planning (CEPP)	Written Representation - Appendix B
REP2-048	Climate Emergency Policy and Planning (CEPP)	Written Representation - Appendix C
REP2-049	Climate Emergency Policy and Planning (CEPP)	Written Representation - Appendix D
REP2-050	Climate Emergency Policy and Planning (CEPP)	Written Representation - Appendix E
REP2-051	Climate Emergency Policy and Planning (CEPP)	Written Representation - Appendix F
REP2-052	Climate Emergency Policy and Planning (CEPP)	Written Representation - Appendix G
REP2-053	Climate Emergency Policy and Planning (CEPP)	Written Representation - Appendix H
REP2-054	Climate Emergency Policy and Planning (CEPP)	Written Representation - Appendix I
REP2-055	Climate Emergency Policy and Planning (CEPP)	Written Representation - Appendix J
REP2-056	Climate Emergency Policy and Planning (CEPP)	Written Representation - Appendix K
REP2-057	Climate Emergency Policy and Planning (CEPP)	Written Representation - Appendix L
REP2-058	Climate Emergency Policy and Planning (CEPP)	Written Representation - Appendix M
REP2-059	Climate Emergency Policy and Planning (CEPP)	Written Representation - Appendix N

Document Index

REP2-060	Climate Emergency Policy and Planning (CEPP)	Written Representation - Appendix O
REP2-061	Climate Emergency Policy and Planning (CEPP)	Written Representation - Appendix P
REP2-062	Climate Emergency Policy and Planning (CEPP)	Written Representation - Appendix Q
REP2-063	Climate Emergency Policy and Planning (CEPP)	Written Representation - Appendix R
REP2-064	Environment Agency	Comments on the Deadline 1 Submissions
REP2-065	Environment Agency	Responses to the Examining Authority's First Written Questions (ExQ1)
REP2-066	Marine Management Organisation	Any further information requested by the ExA
REP2-067	National Gas Transmission Plc	Written Representation
REP2-068	National Grid Electricity Transmission Plc	Written Representation
REP2-069	National Highways	Any further information requested by the ExA
REP2-070	Natural England	Responses to ExQ1 - Additional information regarding breeding little terns to inform the applicant's updated air quality modelling and Report to inform HRA.
REP2-071	Natural England	Responses to ExQ1 - Annex In combination assessment – project shortlist details (Supplementing information presented in Gantt Chart form at Annex A of our reps)
REP2-072	Natural England	Written Representation and response to the Examining Authority's first written questions (EXQ1)
REP2-073	Air Products PLC and Others	Written Representation
REP2-074	Anglo American	Written Representation
REP2-075	BOC Limited	Written Representation
REP2-076	CF Fertilisers UK Limited	Responses to comments on Relevant Representations
REP2-077	CF Fertilisers UK Limited	Responses to the Examining Authority's First Written Questions (ExQ1)
REP2-078	Industrial Chemicals Ltd	Any further information requested by the ExA
REP2-079	Industrial Chemicals Ltd	Written Representation
REP2-080	INEOS Nitriles (UK) Limited	Responses to comments on Relevant Representations

Document Index

REP2-081	INEOS Nitriles (UK) Limited	Responses to the Examining Authority's First Written Questions (ExQ1)
REP2-082	Kellas Midstream Limited and CATS North Sea Limited	Responses to the Examining Authority's First Written Questions (ExQ1)
REP2-083	Lawson Planning Partnership Limited on behalf of Industrial Chemicals Limited	Responses to the Examining Authority's First Written Questions (ExQ1)
REP2-084	Lighthouse Green Fuels Limited	Responses to the Examining Authority's First Written Questions (ExQ1)
REP2-085	Natara Global Limited	Written Representation
REP2-086	Navigator Terminals Limited	Responses to comments on Relevant Representations
REP2-087	Navigator Terminals Limited	Responses to the Examining Authority's First Written Questions (ExQ1)
REP2-088	Northern Gas Processing Limited	Responses to the Examining Authority's First Written Questions (ExQ1)
REP2-089	Northern Gas Processing Limited	Written Representation
REP2-090	North Sea Midstream Partners Limited	Request for withdrawal of Relevant Representation **(RR-029)** and written summary of oral submissions **(REP1-039)** and withdrawal from the Examination
REP2-091	Northumbrian Water Limited	Notification of wish to attend Accompanied Site Inspection
REP2-092	Northumbrian Water Limited	Responses to the Examining Authority's First Written Questions (ExQ1) and Letter of Objection
REP2-093	PD Teesport Limited	Responses to comments on Relevant Representations
REP2-094	PD Teesport Limited	Responses to the Examining Authority's First Written Questions (ExQ1)
REP2-095	Redcar Bulk Terminal Limited	Summary of Written Representation
REP2-096	Redcar Bulk Terminal Limited	Written Representation
REP2-097	SABIC Tees Holdings Limited and SABIC Petrochemicals BV	Any further information requested by the ExA
REP2-098	SABIC UK Petrochemicals Limited	Any further information requested by the ExA
REP2-099	SABIC UK Petrochemicals Limited	Responses to comments on Relevant Representations

Document Index

REP2-100	SABIC UK Petrochemicals Limited	Written Representation
REP2-101	Sembcorp Utilities (UK) Limited	Comments on any submissions received at DL1, including LIRs any updated dDCO and the Applicant's draft itinerary for the ASI
REP2-102	Sembcorp Utilities (UK) Limited	Responses to comments on Relevant Representations
REP2-103	Sembcorp Utilities (UK) Limited	Responses to the Examining Authority's First Written Questions (ExQ1)
REP2-104	Sembcorp Utilities (UK) Limited	Written Representation
REP2-105	Teesside Gas and Liquids Processing	Responses to the Examining Authority's First Written Questions (ExQ1)
REP2-106	Teesside Gas and Liquids Processing	Written Representation
REP2-107	Teesside Gas Processing Plant Limited	Responses to the Examining Authority's First Written Questions (ExQ1)
REP2-108	Teesside Gas Processing Plant Limited	Written Representation
REP2-109	The South Tees Group	Notification of wish to attend Accompanied Site Inspection
REP2-110	The South Tees Group	Responses to the Examining Authority's First Written Questions (ExQ1)
REP2-111	The South Tees Group	Written Representation and Response to Deadline 1

Deadline 3 – 21 October 2024

For receipt by the Examining Authority of:

- Comments on any submissions received at DL2, including in regard to any post-submissions and WRs
- Responses to comments on LIRs
- Comments on responses to ExA's ExQ1
- An updated dDCO in clean, tracked and Word versions (if required)
- An updated Schedule of Changes to the dDCO (if required)
- Updated BoR and Schedule of Change to the BoR in clean and tracked versions (if required)
- Comments on the Applicant's first update to the Land Rights Tracker (CA/TP Schedule)
- A statement of progress on SoCG that remain outstanding and submission of SoCG completed since DL2 (if required)
- An updated Statement of Commonality of SoCG (if required)
- An updated Application Guide (Application Document Tracker) (if required) in clean and tracked versions
- Update to the Applicant's Examination Progress Tracker submitted at DL1

Document Index

• Updated tracking documents, if required • Notification of wish to speak at the ISH schedule for week commencing 11 November 2024 • Any further information requested by the ExA		
REP3-001	H2 Teesside Limited	8.16 Deadline 3 Cover Letter
REP3-002	H2 Teesside Limited	1.2 Application Guide Rev 7
REP3-003	H2 Teesside Limited	5.12 Framework Construction Environmental Management Plan Rev 2 (Clean)
REP3-004	H2 Teesside Limited	5.12 Framework Construction Environmental Management Plan Rev 2 (Tracked)
REP3-005	H2 Teesside Limited	8.9 Draft Itinerary for the Accompanied Site Inspection 1 Rev 1
REP3-006	H2 Teesside Limited	8.17 Applicant's Responses to Deadline 2 submissions
REP3-007	H2 Teesside Limited	8.18 Applicants follow up response to ExQ1.6.44
REP3-008	H2 Teesside Limited	9.9: Statement of Common Ground between H2 Teesside Limited and Teesworks Limited, South Tees Developments Limited and South Tees Development Corporation (together 'South Tees Group')
REP3-009	H2 Teesside Limited	9.14 Statement of Commonality Rev 2
REP3-010	Environment Agency	Comments on any submissions received at DL2, including in regard to any post-PM submissions and WRs
REP3-011	The Marine Management Organisation	Comments on any submissions received at DL2, including in regard to any post-PM submissions and WRs, comments on responses to ExA's ExQ1, notification of wish to speak at the ISH schedule for week commencing 11 November 2024 and Any further information requested by the ExA
REP3-012	Anglo American	Comments on any submissions received at DL2, including in regard to any post-PM submissions and WRs
REP3-013	BOC LIMITED	Detailed review of the Land Plans and Book of Reference
REP3-014	Climate Emergency Policy and Planning (CEPP)	Comments on responses to ExA's ExQ1- APPENDIX S: DeSmog article, October 12th 2024, on blue hydrogen emissions (including Upstream solvent emissions)
REP3-015	Climate Emergency Policy and Planning (CEPP)	Comments on responses to ExA's ExQ1- APPENDIX T: Warwick, N. et al. (2022). Atmospheric implications of increased Hydrogen Use.
REP3-016	Climate Emergency Policy and Planning (CEPP)	Comments on responses to ExA's ExQ1- APPENDIX U: Nature, Scientific Reports, October 15th 2024, Westra, I.M., Scheeren, H.A., Stroo, F.T. et al. First detection of

		industrial hydrogen emissions using high precision mobile measurements in ambient air.
REP3-017	Climate Emergency Policy and Planning (CEPP)	Comments on responses to ExA's ExQ1
REP3-018	Lighthouse Green Fuels Limited	Comments on any submissions received at DL2, including in regard to any post-PM submissions and WRs and Notification of wish to speak at the ISH and CAH scheduled for week commencing 11 November 2024
REP3-019	Northumbrian Water Limited	Notification of wish to speak at the Issue Specific Hearing 2 (ISH2)
REP3-020	SABIC UK Petrochemicals Limited, SABIC Tees Holdings Limited and SABIC Petrochemicals BV	Comments on responses to ExA's ExQ1 - (8.11.6 Response to ExQ1 Compulsory Acquisition and Temporary Possession - REP2-027)
REP3-021	SABIC UK Petrochemicals Limited, SABIC Tees Holdings Limited and SABIC Petrochemicals BV	Comments on responses to ExA's ExQ1- (8.11.9 Response to ExQ1 Draft Development Consent Order)
REP3-022	SABIC UK Petrochemicals Limited, SABIC Tees Holdings Limited and SABIC Petrochemicals BV	Cover Letter
REP3-023	Shepherd and Wedderburn LLP on behalf of NSMP Entities	Notification of wish to speak at the Issue Specific Hearing 2 (ISH2) and Compulsory Acquisition Hearing 1 (CAH1)
REP3-024	The South Tees Group	Comments on any submissions received at DL2, including in regard to any post-PM submissions and WRs
REP3-025	The South Tees Group	Comments on responses to ExA's ExQ1, notification of wish to speak at both Compulsory Acquisition Hearing 1 (CAH1) and Issue Specific Hearing 2 (ISH2)
REP3-026	Climate Emergency Policy and Planning (CEPP)	Notification of wish to speak at the Issue Specific Hearing 2 (ISH2)

Deadline 4 – 20 November 2024

For receipt by the Examining Authority of:

Document Index

- Written summaries of oral submissions made at any Hearings held during the week commencing 11 November 2024
- Any post-hearing submissions requested by the ExA
- Comments on any other submissions received at DL3, including responses to the comments made on any post-PM submissions and any comments made on WRs
- Updated BoR and Schedule of Changes to the BoR, in clean and tracked versions (if required)
- An updated dDCO in clean, tracked and Word versions (if required)
- An updated Schedule of Changes to the dDCO (if required)
- An updated Application Guide (Application Document Tracker) (if required) in clean and tracked versions
- A statement of progress on SoCG that remain outstanding and submission of SoCG completed since DL3 (if required)
- Statement of Commonality for SoCG (if required)
- Updated tracking documents, if required
- Comments/ Responses to the Applicant's Examination Progress Tracker submitted at DL3
- Any further information requested by the ExA

REP4-001	H2 Teesside Limited	1.2 Application Guide (Rev. 8)
REP4-002	H2 Teesside Limited	3.1 Book of Reference (Clean) (Rev. 4)
REP4-003	H2 Teesside Limited	3.1 Book of Reference (Tracked) (Rev. 4)
REP4-004	H2 Teesside Limited	4.1: Draft Development Consent Order (Clean) (Rev. 4)
REP4-005	H2 Teesside Limited	4.1: Draft Development Consent Order (Tracked) (Rev. 4)
REP4-006	H2 Teesside Limited	4.1a: Schedule of Changes to the Draft Development Consent Order (Rev. 2)
REP4-007	H2 Teesside Limited	5.16: Framework Construction Traffic Management Plan (Clean) (Rev. 2)
REP4-008	H2 Teesside Limited	5.16: Framework Construction Traffic Management Plan (Tracked) (Rev. 2)
REP4-009	H2 Teesside Limited	6.3.83 – Figure 15-2: HGV Routes to and from the Proposed Development Site (Rev. 1)
REP4-010	H2 Teesside Limited	6.3.85 – Figure 15-4: Traffic Routes (Rev. 1)
REP4-011	H2 Teesside Limited	8.3a – Supplementary Land Rights Tracker
REP4-012	H2 Teesside Limited	8.19 Cover Letter
REP4-013	H2 Teesside Limited	8.20 Applicant's Response to Deadline 3 Submissions
REP4-014	H2 Teesside Limited	8.20a Applicant's Response to Deadline 3 Submissions (Climate Emergency and Planning Policy)
REP4-015	H2 Teesside Limited	8.21 Summary of Applicant's Oral Submissions at the Compulsory Acquisition Hearing 1 (CAH1)
REP4-016	H2 Teesside Limited	8.22: Summary of Applicant's Oral Submissions at the Issue Specific Hearing 2 (ISH2)
REP4-017	H2 Teesside Limited	8.23 Draft Itinerary for ASI3
REP4-018	H2 Teesside Limited	9.1: Statement of Common Ground between H2 Teesside Limited and Durham County Council

Document Index

		(Rev. 1)
REP4-019	H2 Teesside Limited	9.2: Statement of Common Ground between H2 Teesside Limited and the Environment Agency (Rev. 1)
REP4-020	H2 Teesside Limited	9.5: Statement of Common Ground between H2 Teesside Limited and the Marine Management Organisation (Rev. 1)
REP4-021	H2 Teesside Limited	9.6 Statement of Common Ground between H2 Teesside Limited and National Highways (Rev. 1)
REP4-022	H2 Teesside Limited	9.7: Statement of Common Ground between H2 Teesside Limited and Natural England (Rev. 1)
REP4-023	H2 Teesside Limited	9.14 Statement of Commonality (Rev. 3)
REP4-024	Stockton-on-Tees Borough Council	Any post-hearing submissions requested by the ExA
REP4-025	Environment Agency	Comments on any other submissions received at DL3, including responses to the comments made on any post-PM submissions and any comments made on WRs
REP4-026	Marine Management Organisation	Comments on any other submissions received at DL3, including responses to the comments made on any post-PM submissions and any comments made on WRs
REP4-027	National Highways	Comments on any other submissions received at DL3, including responses to the comments made on any post-PM submissions and any comments made on WRs
REP4-028	Natural England	Any further information requested by the ExA
REP4-029	National Gas Transmission Plc	Any further information requested by the ExA
REP4-030	Addleshaw Goddard LLP on behalf of Network Rail Infrastructure Limited	Any further information requested by the ExA - Submission of Section 56 Representations
REP4-031	Anglo American	Written summaries of oral submissions made at any Hearings held during the week commencing 11 November 2024
REP4-032	BOC Limited	Written summaries of oral submissions made at any Hearings held during the week commencing 11 November 2024
REP4-033	Burges Salmon LLP on behalf of CATS North Sea Limited (CNSL) and Kellas Midstream Limited (Kellas)	Written summaries of oral submissions made at any Hearings held during the week commencing 11 November 2024
REP4-034	Eversheds Sutherland LLP on behalf of CF Fertilisers UK Limited	Comments on any other submissions received at DL3, including responses to the comments made on any post-PM submissions and any comments made on WRs
REP4-035	CF Fertilisers UK	Written summaries of oral submissions made at

	Limited	any Hearings held during the week commencing 11 November 2024
REP4-036	Climate Emergency Policy and Planning (CEPP)	Any post-hearing submissions requested by the ExA - APPENDIX W: EP EPR/PP3501LR : Decision document
REP4-037	Climate Emergency Policy and Planning (CEPP)	Any post-hearing submissions requested by the ExA - APPENDIX X: Post-combustion carbon dioxide capture: emerging techniques Environment Agency guidance, downloaded from GOV.UK on November 20th 2024
REP4-038	Climate Emergency Policy and Planning (CEPP)	Any post-hearing submissions requested by the ExA
REP4-039	H2NorthEast Limited	Written summaries of oral submissions made at any Hearings held during the week commencing 11 November 2024
REP4-040	Industrial Chemicals Ltd	Written summaries of oral submissions made at any Hearings held during the week commencing 11 November 2024
REP4-041	Eversheds Sutherland LLP on behalf of INEOS Nitriles (UK) Limited	Comments on any other submissions received at DL3, including responses to the comments made on any post-PM submissions and any comments made on WRs
REP4-042	Eversheds Sutherland LLP on behalf of INEOS Nitriles (UK) Limited	Written summaries of oral submissions made at any Hearings held during the week commencing 11 November 2024
REP4-043	Lighthouse Green Fuels Limited	Written summaries of oral submissions made at any Hearings
REP4-044	Natara Global Limited	Written summaries of oral submissions made at any Hearings held during the week commencing 11 November 2024
REP4-045	Eversheds Sutherland LLP on behalf of Navigator Terminals Limited	Comments on any other submissions received at DL3, including responses to the comments made on any post-PM submissions and any comments made on WRs
REP4-046	Eversheds Sutherland LLP on behalf of Navigator Terminals Limited	Written summaries of oral submissions made at Compulsory Acquisition Hearing 1 held during the week commencing 11 November 2024
REP4-047	Eversheds Sutherland LLP on behalf of PD Teesport Limited	Comments on any other submissions received at DL3, including responses to the comments made on any post-PM submissions and any comments made on WRs
REP4-048	Eversheds Sutherland LLP on behalf of PD Teesport Limited	Written summaries of oral submissions made at Issue Specific Hearing 2 held during the week commencing 11 November 2024
REP4-049	Eversheds	Written summaries of oral submissions made at

	Sutherland LLP on behalf of PD Teesport Limited	Compulsory Acquisition Hearing 1 held during the week commencing 11 November 2024
REP4-050	Womble Bond Dickinson (UK) LLP on behalf of SABIC UK Petrochemicals Limited	Any post-hearing submissions requested by the ExA
REP4-051	Womble Bond Dickinson (UK) LLP on behalf of SABIC UK Petrochemicals Limited	Written summaries of oral submissions made at Compulsory Acquisition Hearing 1 held during the week commencing 11 November 2024
REP4-052	Womble Bond Dickinson (UK) LLP on behalf of SABIC UK Petrochemicals Limited	Written summaries of oral submissions made at any Issue Specific Hearing 2 held during the week commencing 11 November 2024
REP4-053	Eversheds Sutherland LLP on behalf of Sembcorp Utilities (UK) Limited	Comments on any other submissions received at DL3, including responses to the comments made on any post-PM submissions and any comments made on WRs
REP4-054	Eversheds Sutherland LLP on behalf of Sembcorp Utilities (UK) Limited	Written summaries of oral submissions made at Issue Specific Hearing 2 held during the week commencing 11 November 2024
REP4-055	Eversheds Sutherland LLP on behalf of Sembcorp Utilities (UK) Limited	Written summaries of oral submissions made at Compulsory Acquisition Hearing 1 held during the week commencing 11 November 2024
REP4-056	The South Tees Group	Written summaries of oral submissions made at Compulsory Acquisition Hearing 1 held during the week commencing 11 November 2024
REP4-057	The South Tees Group	Written summaries of oral submissions made at Issue Specific Hearing 2 held during the week commencing 11 November 2024
REP4-058	WS Atkins on behalf of Vodafone Limited	Any further information requested by the ExA - Cover letter
REP4-059	WS Atkins on behalf of Vodafone Limited	Any further information requested by the ExA - Plan Part 1
REP4-060	WS Atkins on behalf of Vodafone Limited	Any further information requested by the ExA - Plan Part 2
REP4-061	WS Atkins on behalf of Vodafone Limited	Any further information requested by the ExA - Plan Part 3
REP4-062	WS Atkins on behalf of Vodafone Limited	Any further information requested by the ExA - Special Requirements relating to the External Plant Network of Vodafone

Deadline 5 – 18 December 2024

Document Index

For receipt by the Examining Authority of:		
• Responses to Second Written Questions (ExQ2) (if required) • Comments on any other submissions received at DL4, including any updated dDCO • Updated BoR and Schedule of Changes to the BoR in clean and tracked versions (if required) • Applicant's second update to the Land Rights Tracker (CA/ TP Schedule) • An updated dDCO in clean, tracked and Word versions (if required) • An updated Schedule of Changes to the dDCO (if required) • An updated Application Guide (Application Document Tracker) (if required) in clean and tracked versions • Update to the Applicant's Examination Progress Tracker submitted at DL3 • A statement of progress on SoCG that remain outstanding and submission of SoCG completed since DL4 (if required) • Statement of Commonality for SoCG (if required) • Updated tracking documents, if required • Notification of wish to speak at the ISH or CAH scheduled for week commencing 13 January 2025, if any ISH(s) or CAH(s) are required. • Any further information requested by the ExA		
REP5-001	H2 Teesside Limited	1.2 Application Guide Rev 9
REP5-002	H2 Teesside Limited	3.1 - Book of Reference - Clean Rev 5
REP5-003	H2 Teesside Limited	3.1 - Book of Reference - Tracked Rev 5
REP5-004	H2 Teesside Limited	3.1a - Schedule of Changes to the Book of Reference - Clean Rev 2
REP5-005	H2 Teesside Limited	3.1a - Schedule of Changes to the Book of Reference - Tracked Rev 2
REP5-006	H2 Teesside Limited	4.1 Draft Development Consent Order Rev 5 - Clean
REP5-007	H2 Teesside Limited	4.1 Draft Development Consent Order Rev 5 - Tracked
REP5-008	H2 Teesside Limited	4.1a Schedule of Changes to Draft Development Consent Order Rev 3
REP5-009	H2 Teesside Limited	5.7 Other Consents and Licences Statement Rev 2 - Clean
REP5-010	H2 Teesside Limited	5.7 Other Consents and Licences Statement Rev 2 - Tracked
REP5-011	H2 Teesside Limited	5.10 Report to Inform Habitats Regulations Assessment (Redacted) Rev 3 - Clean
REP5-012	H2 Teesside Limited	5.10 Report to Inform Habitats Regulations Assessment (Redacted) Rev 3 - Tracked
REP5-013	H2 Teesside Limited	5.12 Framework Construction Environmental Management Plan Rev 3 - Clean
REP5-014	H2 Teesside Limited	5.12 Framework Construction Environmental Management Plan Rev 3 - Tracked
REP5-015	H2 Teesside Limited	6.2.23 ES Vol I Chapter 23 Cumulative and Combined Effects Rev 1 - Clean
REP5-016	H2 Teesside Limited	6.2.23 ES Vol I Chapter 23 Cumulative and

Document Index

		Combined Effects Rev 1 - Tracked
REP5-017	H2 Teesside Limited	6.3.83 ES Vol II Figure 15-2 HGV Routes to and from the Proposed Development Site Rev 2
REP5-018	H2 Teesside Limited	6.3.85 ES Vol II Figure 15-4 Traffic Routes Rev 2
REP5-019	H2 Teesside Limited	6.3.101 ES Vol II Figure 23-1 Zones of Influence for Cumulative Effects Assessment Rev 1
REP5-020	H2 Teesside Limited	6.3.102 ES Vol II Figure 23-2 Long List of Other Developments Rev 1
REP5-021	H2 Teesside Limited	6.3.103 ES Vol II Figure 23-3 Short List of Other Developments Rev 1
REP5-022	H2 Teesside Limited	6.4.9 ES Vol III Appendix 9A Flood Risk Assessment Rev 1 - Clean
REP5-023	H2 Teesside Limited	6.4.9 ES Vol III Appendix 9A Flood Risk Assessment Rev 1 - Tracked
REP5-024	H2 Teesside Limited	6.4.37 ES Vol III Appendix 23A Other developments within the search area Rev 1 - Clean
REP5-025	H2 Teesside Limited	6.4.37 ES Vol III Appendix 23A Other developments within the search area Rev 1 - Tracked
REP5-026	H2 Teesside Limited	6.4.38 ES Vol III Appendix 23B Assessment of Cumulative Effects -Stages 1-2 Rev 1 - Clean
REP5-027	H2 Teesside Limited	6.4.38 ES Vol III Appendix 23B Assessment of Cumulative Effects -Stages 1-2 Rev 1 - Tracked
REP5-028	H2 Teesside Limited	6.4.39 ES Vol III I Appendix 23C Shortlist of other developments within the Search Area Rev 1 - Clean
REP5-029	H2 Teesside Limited	6.4.39 ES Vol III I Appendix 23C Shortlist of other developments within the Search Area Rev 1 - Tracked
REP5-030	H2 Teesside Limited	6.4.40 ES Vol III Appendix 23D Stage 4 - Assessment of Cumulative and Combined Effects Rev 1 - Clean
REP5-031	H2 Teesside Limited	6.4.40 ES Vol III Appendix 23D Stage 4 - Assessment of Cumulative and Combined Effects Rev 1 - Tracked
REP5-032	H2 Teesside Limited	6.4.41 ES Vol III Appendix 23E Socio-economic Cumulative Assessment Rev 1 - Clean
REP5-033	H2 Teesside Limited	6.4.41 ES Vol III Appendix 23E Socio-economic Cumulative Assessment Rev 1 - Tracked
REP5-034	H2 Teesside Limited	6.4.42 ES Vol III Technical Note Updates to AQ and Traffic Cumulative Assessments Rev 0
REP5-035	H2 Teesside Limited	8.3 Land Rights Tracker - Rev 2
REP5-036	H2 Teesside Limited	8.3a Supplementary Land Rights Tracker - Rev 1
REP5-037	H2 Teesside Limited	8.7 Examination Progress Tracker - Rev 1
REP5-038	H2 Teesside Limited	8.24 Deadline 5 Cover Letter
REP5-039	H2 Teesside Limited	8.25.1 Response to ExQ2.1 General & Cross Topic Rev 0
REP5-040	H2 Teesside Limited	8.25.2 Response to ExQ2.2 Assessment of

Document Index

		Alternatives Rev 0
REP5-041	H2 Teesside Limited	8.25.3 Response to ExQ2.3 Air Quality & Emissions Rev 0
REP5-042	H2 Teesside Limited	8.25.4 Response to ExQ2.4 Habitat Regulations Assessment Rev 0
REP5-043	H2 Teesside Limited	8.25.5 Response to ExQ2.5 Climate Change Rev 0
REP5-044	H2 Teesside Limited	8.25.6 Response to ExQ2.6 Compulsory Acquisition and Temporary Possession - Clean
REP5-045	H2 Teesside Limited	8.25.7 Response to ExQ2.9 Draft Development Consent Orders
REP5-046	H2 Teesside Limited	8.25.8 Response to ExQ2.10 Geology Hydrogeology and Land Contamination Rev 0
REP5-047	H2 Teesside Limited	8.25.9 Response to ExQ2.11 Landscape, Visual Amenity and Design Rev 0
REP5-048	H2 Teesside Limited	8.25.10 Response to ExQ2.14 Socio-economics & Land use
REP5-049	H2 Teesside Limited	8.25.11 Response to ExQ2.15 Surface Water, Flood Risk and Water Resources
REP5-050	H2 Teesside Limited	8.25.12 Response to ExQ2.17 Traffic and Transportation
REP5-051	H2 Teesside Limited	8.26 Applicant's Responses to D4 submissions and CA Reg RR
REP5-052	H2 Teesside Limited	8.27 Update on Negotiations
REP5-053	H2 Teesside Limited	9.2 Environment Agency SoCG - Rev 1
REP5-054	H2 Teesside Limited	9.3: Statement of Common Ground between H2 Teesside Limited and Hartlepool Borough Council
REP5-055	H2 Teesside Limited	9.5: Statement of Common Ground between H2 Teesside Limited and the Marine Management Organisation
REP5-056	H2 Teesside Limited	9.7 Statement of Common Ground between H2 Teesside Limited and Natural England
REP5-057	H2 Teesside Limited	9.8 Statement of Common Ground between H2 Teesside Limited and Redcar and Cleveland Borough Council
REP5-058	H2 Teesside Limited	9.10 Statement of Common Ground between H2 Teesside Limited and Stockton-on-Tees Borough Council - Clean
REP5-059	H2 Teesside Limited	9.14 Statement of Commonality Rev 4
REP5-060	Redcar and Cleveland Borough Council	Responses to Second Written Questions (ExQ2) (if required)
REP5-061	Stockton on Tees Borough Council	Responses to Second Written Questions (ExQ2) (if required)
REP5-062	Environment Agency	Responses to Second Written Questions (ExQ2) (if required)
REP5-063	National Gas Transmission Plc	Notification of wish to speak at the ISH or CAH scheduled for week commencing 13 January 2025, if any ISH(s) or CAH(s) are required.

Document Index

REP5-064	National Grid Electricity Transmission Plc	A request to attend CAH2; A detailed Written Submission relating to NGET's existing objection; and Responses to ExQ2.
REP5-065	Natural England	Responses to Second Written Questions (ExQ2) (if required)
REP5-066	Natural England	A statement of progress on SoCG that remain outstanding and submission of SoCG completed since DL4 (if required)
REP5-067	The Marine Management Organisation	Comments on any other submissions received at DL4, including any updated dDCO
REP5-068	Air Products PLC, Air Products (BR) Limited, and Air Products Renewable Energy Limited (collectively referred to as Air Products)	Responses to Second Written Questions (ExQ2) (if required)
REP5-069	Anglo American	Responses to Second Written Questions (ExQ2) (if required)
REP5-070	BOC Limited	Notification of wish to speak at the ISH or CAH scheduled for week commencing 13 January 2025, if any ISH(s) or CAH(s) are required.
REP5-071	BP Alternative Energy Investment Limited (“BPAEIL”)	Responses to Second Written Questions (ExQ2) (if required)
REP5-072	CATS North Sea Limited and Kellas Midstream Limited	Comments on any other submissions received at DL4, including any updated dDCO
REP5-073	CF Fertilisers UK Limited	Responses to Second Written Questions (ExQ2) (if required)
REP5-074	Industrial Chemicals Ltd	Any further information requested by the ExA - Update on Engagement Between Industrial Chemicals Ltd (Interested Party Ref: H2TS-AFP166) and Applicant Team Following Compulsory Acquisition Hearing 1 (CAH1)
REP5-075*	Industrial Chemicals Ltd (ICL)	*Removed due to being a duplicate of REP5-074
REP5-076	INEOS Nitriles (UK) Limited	Responses to Second Written Questions (ExQ2) (if required)
REP5-077	Lighthouse Green Fuels Limited	Responses to Second Written Questions (ExQ2) (if required)
REP5-078	Natara Global Limited	Notification of wish to speak at the ISH or CAH scheduled for week commencing 13 January 2025, if any ISH(s) or CAH(s) are required.
REP5-079	Navigator Terminals Limited	Responses to Second Written Questions (ExQ2) (if required)
REP5-080	Northern Gas Processing Limited, Teesside Gas and	Responses to Second Written Questions (ExQ2) (if required)

Document Index

	Liquids Processing, Teesside Gas Processing Plant Limited	
REP5-081	NSMP Entities (Northern Gas Processing Ltd, Teesside Gas and Liquids Processing, Teesside Gas Processing Plant Ltd)	Notification of wish to speak at the ISH or CAH scheduled for week commencing 13 January 2025, if any ISH(s) or CAH(s) are required.
REP5-082	PD Teesport Limited	Responses to Second Written Questions (ExQ2) (if required)
REP5-083	Redcar Bulk Terminal Limited	Any further information requested by the ExA - draft agreed protective provisions
REP5-084	Redcar Bulk Terminal Limited	Any further information requested by the ExA
REP5-085	Royal Mail	Any further information requested by the ExA - Written Representation
REP5-086	SABIC UK Petrochemicals Limited, SABIC Tees Holdings Limited and SABIC Petrochemicals BV	Responses to Second Written Questions (ExQ2) (if required)
REP5-087	Sembcorp Utilities (UK) Limited	Responses to Second Written Questions (ExQ2) (if required)
REP5-088	South Tees Group	Any further information requested by the ExA - Draft Protective Provisions
REP5-089	South Tees Group	Responses to Second Written Questions (ExQ2) (if required)
REP5-090	South Tees Group	Notification of wish to speak at the ISH or CAH scheduled for week commencing 13 January 2025, if any ISH(s) or CAH(s) are required.
REP5-091	Northern Gas Processing Limited, Teesside Gas and Liquids Processing, Teesside Gas Processing Plant Limited	Responses to Second Written Questions (ExQ2) (if required)
REP5-092	Teesside Gas Processing Plant Limited, Teesside Gas and Liquids Processing, Teesside Gas Processing Plant Limited	Responses to Second Written Questions (ExQ2) (if required)
REP5-093	The Mission to Seafarers	Any further information requested by the ExA

Document Index

REP5-094	EDF	Non-IP late Deadline 5 Submission accepted at the discretion of the Examining Authority
REP5-095	H2 Teesside Limited	5.10A Report to Inform Habitats Regulations Assessment Confidential - Clean - Late Deadline 5 Submission Accepted at the Discretion of the Examining Authority
REP5-096	H2 Teesside Limited	5.10A Report to Inform Habitats Regulations Assessment Confidential - Tracked - Late Deadline 5 Submission Accepted at the Discretion of the Examining Authority

Deadline 5A – 8 January 2025

For receipt by the Examining Authority of:

- Comments on Relevant Representations (RRs) received that concern the Applicant's proposed provision for the CA of additional land
- Written Representations (WRs) (including summaries of all WRs exceeding 1500 words) about the proposed provisions from the applicant, additional Affected Person(s) (AP); additional Interested Party (IP); or IPs
- Notification of a wish to speak at an Open Floor Hearing (OFH)
- Notification from any Additional AP(s) of a wish to speak at CAH 2 (CAH2)
- Notification by any Statutory Parties, who is/ are affected as a result of the Applicant's proposed provision for the CA of additional land, who have not submitted a RR of their wish to be considered as an IP

REP5a-001	Air Products (BR) Limited	Cover Letter regarding protective provisions
REP5a-002	Air Products (BR) Limited	Appendix 1 Protective Provisions - Part X (Clean)
REP5a-003	Air Products (BR) Limited	Appendix 2 Protective Provisions - Part X (Tracked)
REP5a-004	Air Products PLC	Cover Letter regarding protective provisions
REP5a-005	Air Products PLC	Appendix 1 Protective Provisions - Part X (Clean)
REP5a-006	Air Products PLC	Appendix 2 Protective Provisions - Part X

Document Index

		(Tracked)
REP5a-007	Air Products Renewable Energy Limited	Cover Letter regarding protective provisions
REP5a-008	Air Products Renewable Energy Limited	Appendix 1 Protective Provisions - Part X (Clean)
REP5a-009	Air Products Renewable Energy Limited	Appendix 2 Protective Provisions - Part X (Tracked)
REP5a-010	BOC Limited	Written Representations (WRs) (including summaries of all WRs exceeding 1500 words) about the proposed provisions from the applicant, additional Affected Person(s) (AP); additional Interested Party (IP); or IPs
REP5a-011	Lighthouse Green Fuels Limited	Cover Letter regarding protective provisions
REP5a-012	Lighthouse Green Fuels Limited	Protective Provisions - Part X
REP5a-013	Marine Management Organisation	Written Representations (WRs) (including summaries of all WRs exceeding 1500 words) about the proposed provisions from the applicant, additional Affected Person(s) (AP); additional Interested Party (IP); or IPs
REP5a-014	Natara Global Limited	Written Representations (WRs) (including summaries of all WRs exceeding 1500 words) about the proposed provisions from the applicant, additional Affected Person(s) (AP); additional Interested Party (IP); or IPs
REP5a-015	Natural England	Written Representations (WRs) (including summaries of all WRs exceeding 1500 words) about the proposed provisions from the applicant, additional Affected Person(s) (AP); additional Interested Party (IP); or IPs

Deadline 6 – 13 January 2025

For receipt by the Examining Authority of:

- Comments on responses to ExQ2 (if required)
- Comments on the Applicant's second update to the Land Rights Tracker (CA/ TP Schedule)
- Updated tracking documents, if required
- Comments/ Responses to the Applicant Examination Progress Tracker submitted at DL5

REP6-001	H2 Teesside Limited	1.2 Application Guide Rev 10
REP6-002	H2 Teesside Limited	5.16 Framework Construction Traffic Management Plan Rev 3 Clean

Document Index

REP6-003	H2 Teesside Limited	5.16 Framework Construction Traffic Management Plan Rev 3 Tracked
REP6-004	H2 Teesside Limited	6.3.83 Environmental Statement Figure 15-2 HGV Routes to and from the Proposed Development Site Rev 3
REP6-005	H2 Teesside Limited	8.28 Deadline 6 Cover Letter
REP6-006	H2 Teesside Limited	8.29 Applicant's Responses to D5 submissions
REP6-007	H2 Teesside Limited	8.30 Impact Assessment and Conservation Payment Certificate (IAPC) from Natural England
REP6-008	Environment Agency	Comments on responses to ExQ2
REP6-009	Anglo American	Comments on responses to ExQ2
REP6-010	SABIC UK Petrochemicals Limited, SABIC Tees Holdings Limited and SABIC Petrochemicals BV	Protective Provisions
REP6-011	SABIC UK Petrochemicals Limited, SABIC Tees Holdings Limited and SABIC Petrochemicals BV	Comments on responses to ExQ2
REP6-012	The South Tees Group	Comments on responses to ExQ2

Deadline 6A – 22 January 2025

For receipt by the Examining Authority of:

- Written summaries of oral submissions made at any Hearings held during the week commencing 13 January 2025
- Responses to Action Points arising from Hearings held during the week commencing 13 January 2025
- Any other post-hearing submissions requested by the ExA

REP6a-001	H2 Teesside Limited	1.2 Application Guide - Rev 11
REP6a-002	H2 Teesside Limited	2.4 Works Plans - Rev 3
REP6a-003	H2 Teesside Limited	3.1 Book of Reference - Clean - Rev 6
REP6a-004	H2 Teesside Limited	3.1 Book of Reference - Tracked - Rev 6
REP6a-005	H2 Teesside Limited	3.1a Book of Reference Schedule of Changes - Clean - Rev 6
REP6a-006	H2 Teesside Limited	3.1a Book of Reference Schedule of Changes - Tracked - Rev 6
REP6a-007	H2 Teesside Limited	4.1 Draft Development Consent Order - Clean - Rev 6
REP6a-008	H2 Teesside Limited	4.1 Draft Development Consent Order - Tracked

Document Index

		- Rev 6
REP6a-009	H2 Teesside Limited	4.1a Schedule of Changes to Draft Development Consent Order - Rev 4
REP6a-010	H2 Teesside Limited	5.10 Report to Inform Habitats Regulations Assessment - Redacted - Clean - Rev 4
REP6a-011	H2 Teesside Limited	5.10 Report to Inform Habitats Regulations Assessment - Redacted - Tracked - Rev 4
REP6a-012	H2 Teesside Limited	5.10A Report to Inform Habitats Regulations Assessment - CONFIDENTIAL - Clean - Rev 4
REP6a-013	H2 Teesside Limited	5.10A Report to Inform Habitats Regulations Assessment - CONFIDENTIAL - Tracked - Rev 4
REP6a-014	H2 Teesside Limited	5.12 Framework Construction Environmental Management Plan - Rev 4 - Clean
REP6a-015	H2 Teesside Limited	5.12 Framework Construction Environmental Management Plan - Rev 4 - Tracked
REP6a-016	H2 Teesside Limited	8.31 Deadline 6A Cover Letter
REP6a-017	H2 Teesside Limited	8.32 Applicant's Responses to D6 submissions - Rev 0
REP6a-018	H2 Teesside Limited	8.33 Summary of Applicant's Oral Submissions at CAH2
REP6a-019	H2 Teesside Limited	8.34 Summary of Applicant's Oral Submissions at ISH3
REP6a-020	H2 Teesside Limited	8.35 Summary of Applicant's Oral Submissions at ISH4
REP6a-021	H2 Teesside Limited	Appendix C1 Assessment of Best Available Techniques for Emerging Techniques for Hydrogen Production with Carbon Capture
REP6a-022	Anglo American	Written summaries of oral submissions made at any Hearings held during the week commencing 13 January 2025
REP6a-023	BOC Limited	Responses to Action Points arising from Compulsory Acquisition Hearing 2
REP6a-024	BOC Limited	Written summaries of oral submissions made at Compulsory Acquisition Hearing 2
REP6a-025	BOC Limited	Update regarding progress of Protective Provisions negotiations as between BOC Limited ("BOC") and H2 Teesside (the "Applicant") as at the date of the CAH2
REP6a-026	Climate Emergency Policy and Planning (CEPP)	Appendix AA - BP, May 2022 - Multi-Store Development Philosophy
REP6a-027	Climate Emergency Policy and Planning (CEPP)	Appendix AB - BP, May 2022 - Endurance Storage Development Plan
REP6a-028	Climate Emergency Policy and Planning (CEPP)	Post Issue Specific Hearing 3 Submission
REP6a-029	EDF Energy Nuclear Generation Limited	Response to REP1-041 from Office for Nuclear Regulation

Document Index

REP6a-030	Lighthouse Green Fuels Limited	Written summaries of oral submissions made at Compulsory Acquisition Hearing 2 and Update on progression of protective provisions
REP6a-031	Natara Global Limited	Written summaries of oral submissions made at Compulsory Acquisition Hearing 2
REP6a-032	National Gas Transmission Plc	Written summaries of oral submissions made at Compulsory Acquisition Hearing 2 and Protective Provisions
REP6a-033	National Grid Electricity Transmission Plc	Written summaries of oral submissions made at Compulsory Acquisition Hearing 2, Responses to Action Points arising from Compulsory Acquisition Hearing 2 and Request for a further Compulsory Acquisition Hearing
REP6a-034	Natural England	Response to REP5-051 - 8.26 Applicant's Responses to D4 submissions and CA Reg RR
REP6a-035	SABIC UK Petrochemicals Limited, SABIC Tees Holdings Limited and SABIC Petrochemicals BV	Written summaries of oral submissions made at Compulsory Acquisition Hearing 2
REP6a-036	SABIC UK Petrochemicals Limited, SABIC Tees Holdings Limited and SABIC Petrochemicals BV	Written summaries of oral submissions made at Issue Specific Hearing 4
REP6a-037	The South Tees Group	Written summaries of oral submissions made at any Hearings held during the week commencing 13 January 2025

Deadline 7 – 6 February 2025

For receipt by the Examining Authority of:

Document Index

• Written summaries of oral submissions at hearings (if required) • Comments on any submissions received at DL5,DL5A,DL6 and DL6A, including any additional AP(s); additional IP(s); or IP(s), as well as any RRs or WRs made pursuant to the Change Request proposed provision • Response to Applicant's comments on RRs received at DL5A • Comments on the RIES (if required) • Comments on the ExA's proposed schedule of changes to the dDCO (if required) • Finalised SoCGs • Final Statement of Commonality for SoCG • Final BoR in clean and tracked versions • Final Statement of Reasons in clean and tracked versions • Schedule of Changes to the BoR in clean and tracked versions • Applicant's final update to the Land Rights Tracker (CA/ TP Schedule) • Final Application Guide (Application Document Tracker), in clean and tracked versions • Final Examination Progress Tracker • Final update to tracking documents, if required • Applicant's Final Preferred Development Consent Order (DCO) in the SI template validation report and a validated copy of the DCO • Applicant's preferred DCO in word format • Final Schedule of Changes to the dDCO • Any further information requested by the ExA (if required)		
Applicant Cover Letter and Application Guide		
REP7-001	H2 Teesside Limited	8.36 Deadline 7 Cover Letter
REP7-002	H2 Teesside Limited	1.2 Application Guide - Rev 12
Change Request 2		
REP7-003	H2 Teesside Limited	Change Request 2 - 2.2 Land Plans - Rev 3
REP7-004	H2 Teesside Limited	Change Request 2 - 2.3 Special Category Land and Crown Land Plans - Rev 3
REP7-005	H2 Teesside Limited	Change Request 2 - 2.4 Works Plans - Rev 4
REP7-006	H2 Teesside Limited	Change Request 2 - 2.5 Access and Rights of Way Plans - Rev 3
REP7-007	H2 Teesside Limited	Change Request 2 - 2.13 Temporary Traffic Regulation Measures Plan - Rev 3
REP7-008	H2 Teesside Limited	Change Request 2 - 2.15 Important Hedgerows to be Removed Plan - Rev 4
REP7-009	H2 Teesside Limited	Change Request 2 - 5.12 Framework Construction Environmental Management Plan - Clean - Rev 5
REP7-010	H2 Teesside Limited	Change Request 2 - 5.12 Framework Construction Environmental Management Plan - Tracked - Rev 5
REP7-011	H2 Teesside Limited	Change Request 2 - 7.11 Second Application Change Report
REP7-012	H2 Teesside Limited	Change Request 2 - 7.11.1 Order Limits Comparison Plans

Document Index

REP7-013	H2 Teesside Limited	Change Request 2 - 8.40 Technical Note for the Implications of Change 3 on Cultural Heritage
Other Deadline 7 submissions		
REP7-014	H2 Teesside Limited	3.1 Book of Reference - Clean - Rev 7
REP7-015	H2 Teesside Limited	3.1 Book of Reference - Tracked - Rev 7
REP7-016	H2 Teesside Limited	3.1a Book of Reference Schedule of Changes - Clean - Rev 7
REP7-017	H2 Teesside Limited	3.1a Book of Reference Schedule of Changes - Tracked - Rev 7
REP7-018	H2 Teesside Limited	4.1 Draft Development Consent Order - Clean - Rev 7
REP7-019	H2 Teesside Limited	4.1 Draft Development Consent Order - Tracked - Rev 7
REP7-020	H2 Teesside Limited	4.1a Schedule of Changes to the Draft Development Consent Order - Rev 5
REP7-021	H2 Teesside Limited	5.9 Outline Landscape and Biodiversity Management Plan - Clean - Rev 3
REP7-022	H2 Teesside Limited	5.9 Outline Landscape and Biodiversity Management Plan - Tracked - Rev 3
REP7-023	H2 Teesside Limited	8.7 Examination Progress Tracker - Rev 2
REP7-024	H2 Teesside Limited	8.37 Comments on Submissions received at Deadline 6A
REP7-025	H2 Teesside Limited	8.38 Response to RIES
REP7-026	H2 Teesside Limited	8.39 Protective Provisions Statement
REP7-027	H2 Teesside Limited	8.41 Report to Inform Assessment of Air Quality Impacts on Teesmouth and Cleveland Coast SSSI
REP7-028	H2 Teesside Limited	9.2 Statement of Common Ground between H2 Teesside Limited and the Environment Agency - Rev 3
REP7-029	H2 Teesside Limited	9.3 Statement of Common Ground between H2 Teesside Limited and Hartlepool Borough Council - Rev 2
REP7-030	H2 Teesside Limited	9.4 Statement of Common Ground between H2 Teesside Limited and Health and Safety Executive - Rev 1
REP7-031	H2 Teesside Limited	9.5 Statement of Common Ground between H2 Teesside Limited and the Marine Management Organisation - Rev 3
REP7-032	H2 Teesside Limited	9.7 Statement of Common Ground between H2 Teesside Limited and Natural England - Rev 3
REP7-033	H2 Teesside Limited	9.10 Statement of Common Ground between H2 Teesside Limited and Stockton-on-Tees Borough Council - Rev 3
REP7-034	H2 Teesside Limited	9.11 Statement of Common Ground between H2 Teesside Limited and Tees Valley Combined Authority - Rev 2
REP7-035	H2 Teesside Limited	9.12 Statement of Common Ground between

Document Index

		H2 Teesside Limited and the UK Health Security Agency - Rev 1
REP7-036	H2 Teesside Limited	9.14 Statement of Commonality - Rev 5
REP7-037	Environment Agency	Comments on any submissions received at DL5,DL5A,DL6 and DL6A, including any additional AP(s); additional IP(s); or IP(s), as well as any RRs or WRs made pursuant to the Change Request proposed provision
REP7-038	Natural England	Statement of Common Ground
REP7-039	Natural England	Comments on the Report on the Implications for European Sites (RIES)
REP7-040	Natural England	Appendix 2 Teesmouth Cleveland Coast SPA - Ramsar Evidence Pack
REP7-041	Natural England	Appendix 3 TIN190 Edition 3 Lindisfarne SPA and Ramsar - Evidence Pack June 2024
REP7-042	Anglo American	Comments on any submissions received at DL5,DL5A,DL6 and DL6A, including any additional AP(s); additional IP(s); or IP(s), as well as any RRs or WRs made pursuant to the Change Request proposed provision
REP7-043	BOC Limited	Any further information requested by the ExA (if required)
REP7-044	CF Fertillisers UK Limited	Any further information requested by the ExA (if required)
REP7-045	Lighthouse Green Fuels Limited	Update on Protective Provisions
REP7-046	Natara Global Limited	Any further information requested by the ExA (if required)
REP7-047	National Gas Transmission Plc (NGT)	Comments on any submissions received at DL5,DL5A,DL6 and DL6A, including any additional AP(s); additional IP(s); or IP(s), as well as any RRs or WRs made pursuant to the Change Request proposed provision
REP7-048	National Gas Transmission Plc (NGT)	Update on negotiations with the applicant
REP7-049	National Grid Electricity Transmission Plc	Comments on any submissions received at DL5,DL5A,DL6 and DL6A
REP7-050	Network Rail Infrastructure Limited	Cover Letter
REP7-051	Network Rail Infrastructure Limited	Written Representation
REP7-052	Northern Gas Processing Limited	Comments on any submissions received at DL5,DL5A,DL6 and DL6A, including any additional AP(s); additional IP(s); or IP(s), as well as any RRs or WRs made pursuant to the Change Request proposed provision
REP7-053	North Tees Group Limited	Written Representation
REP7-054	North Tees Group	Appendix 1 Common Services Proposal Route

Document Index

	Limited	
REP7-055	North Tees Group Limited	Appendix 2 Boreholes
REP7-056	Northumbrian Water Limited	Comments on any submissions received at DL5,DL5A,DL6 and DL6A, including any additional AP(s); additional IP(s); or IP(s), as well as any RRs or WRs made pursuant to the Change Request proposed provision
REP7-057	NSMP Entities (Northern Gas Processing Limited, Teesside Gas and Liquids Processing, Teesside Gas Processing Plant Limited)	Comments on any submissions received at DL5,DL5A,DL6 and DL6A, including any additional AP(s); additional IP(s); or IP(s), as well as any RRs or WRs made pursuant to the Change Request proposed provision
REP7-058	PD Teesport Limited	Any further information requested by the ExA (if required)
REP7-059	Redcar Bulk Terminal Limited	Comments on any submissions received at DL5,DL5A,DL6 and DL6A, including any additional AP(s); additional IP(s); or IP(s), as well as any RRs or WRs made pursuant to the Change Request proposed provision
REP7-060	Sembcorp Utilities (UK) Limited	Any further information requested by the ExA (if required)
REP7-061	Suez Recycling and Recovery UK Ltd	Comments on any submissions received at DL5,DL5A,DL6 and DL6A, including any additional AP(s); additional IP(s); or IP(s), as well as any RRs or WRs made pursuant to the Change Request proposed provision
REP7-062	The South Tees Group	Comments on any submissions received at DL5,DL5A,DL6 and DL6A, including any additional AP(s); additional IP(s); or IP(s), as well as any RRs or WRs made pursuant to the Change Request proposed provision

Deadline 7a – 17 February 2025

For receipt by the Examining Authority of:

- Responses to the Applicant's Change Request accepted into the Examination on 10 February 2025.
- Responses to questions raised under Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010 (EPR).
- Comments on any submissions received at DL7, including any responses to comments on the Report on Implications for European Sites (RIES) received at DL7.
- Applicant's Final Preferred Development Consent Order (DCO) in the SI template

validation report and a validated copy of the DCO.

- Applicant's preferred DCO in word format.
- Final Schedule of Changes to the dDCO.
- Final Statements of Common Ground (SoCG).
- Final Statement of Commonality for SoCG.
- Final BoR in clean and tracked versions.
- Schedule of Changes to the BoR in clean and tracked versions.
- Applicant's final update to the Land Rights Tracker (CA/ TP Schedule), together with an agreed position statement on the Lands Rights Tracker, setting out where the Applicant and relevant Interested Parties agree or disagree with the various elements of its content, which is signed by both parties confirming their respective positions.
- Final Application Guide (Application Document Tracker), in clean and tracked versions.
- Final Examination Progress Tracker.
- Final update to tracking documents, if required, related to any relevant developing/emerging:
- National Policy Statements;
- New policy intentions related to critical infrastructure;
- National Planning Policy Framework; and
- National Development Management Policies.
- Updated Local Impact Reports (LIRs) (if required).
- Any further information requested by the ExA (if required).

REP7a-001	H2 Teesside Limited	8.42 Deadline 7A Cover Letter
REP7a-002	H2 Teesside Limited	1.2 Application Guide - Rev 13
REP7a-003	H2 Teesside Limited	4.1 Draft Development Consent Order - Clean - Rev 8
REP7a-004	H2 Teesside Limited	4.1 Draft Development Consent Order - Tracked - Rev 8
REP7a-005	H2 Teesside Limited	4.1a Schedule of Changes to Draft Development Consent Order - Rev 6
REP7a-006	H2 Teesside Limited	4.1b Draft DCO Without Prejudice Excluding Cowpen Bewley Spur - Clean - Rev 8a
REP7a-007	H2 Teesside Limited	4.1b Draft DCO Without Prejudice Excluding Cowpen Bewley Spur - Tracked - Rev 8a
REP7a-008	H2 Teesside Limited	4.2 Explanatory Memorandum - Clean - Rev 2
REP7a-009	H2 Teesside Limited	4.2 Explanatory Memorandum - Tracked - Rev 2
REP7a-010	H2 Teesside Limited	4.4 Draft Development Consent Order Statutory Instrument Template Validation Report
REP7a-011	H2 Teesside Limited	5.12 Framework Construction Environmental Management Plan - Clean - Rev 6
REP7a-012	H2 Teesside Limited	5.12 Framework Construction Environmental Management Plan - Tracked - Rev 6
REP7a-013	H2 Teesside Limited	8.3 Land Rights Tracker - Rev 3 – An Excel spreadsheet version of this document is available at AS-056

Document Index

REP7a-014	H2 Teesside Limited	8.7 Examination Progress Tracker - Rev 3
REP7a-015	H2 Teesside Limited	8.43 Saltholme Interaction Report - Rev 0
REP7a-016	H2 Teesside Limited	8.44.1 PP Position Statement with NGET - Rev 0
REP7a-017	H2 Teesside Limited	8.44.2 PP Position Statement with National Gas Transmission Plc - Rev 0
REP7a-018	H2 Teesside Limited	8.44.3 PP Position Statement with Railway Interests - Rev 0
REP7a-019	H2 Teesside Limited	8.44.4 PP Position Statement with Suez Recycling and Recovery UK Limited - Rev 0
REP7a-020	H2 Teesside Limited	8.44.5 PP Position Statement with Ineos Nitriles (UK) Limited - Rev 0
REP7a-021	H2 Teesside Limited	8.44.6 PP Position Statement with Navigator Terminals Seal Sands Limited - Rev 0
REP7a-022	H2 Teesside Limited	8.44.7 PP Position Statement with Air Products Plc - Rev 0
REP7a-023	H2 Teesside Limited	8.44.8 PP Position Statement with CF Fertilisers UK Limited - Rev 0
REP7a-024	H2 Teesside Limited	8.44.9 PP Position Statement with Northern Powergrid (Northeast) Plc - Rev 0
REP7a-025	H2 Teesside Limited	8.44.10 PP Position Statement with Anglo American - Rev 0
REP7a-026	H2 Teesside Limited	8.44.11 PP Position Statement with the York Potash Harbour Facilities Order 2016 - Rev 0
REP7a-027	H2 Teesside Limited	8.44.12 PP Position Statement with South Tees Group - Rev 0
REP7a-028	H2 Teesside Limited	8.44.13 PP Position Statement with Northumbrian Water Limited - Rev 0
REP7a-029	H2 Teesside Limited	8.44.14 PP Position Statement with The Breagh Pipeline Owners - Rev 0
REP7a-030	H2 Teesside Limited	8.44.15 PP Position Statement with Sabic Petrochemicals UK Limited - Rev 0
REP7a-031	H2 Teesside Limited	8.44.16 PP Position Statement with PD Teesport Limited - Rev 0
REP7a-032	H2 Teesside Limited	8.44.17 PP Position Statement with Redcar Bulk Terminal - Rev 0
REP7a-033	H2 Teesside Limited	8.44.18 PP Position Statement with Northern Gas Networks Limited - Rev 0
REP7a-034	H2 Teesside Limited	8.44.19 PP Position Statement with Lighthouse Green Fuels Limited - Rev 0
REP7a-035	H2 Teesside Limited	8.44.20 PP Position Statement with Venator Materials UK Limited - Rev 0
REP7a-036	H2 Teesside Limited	8.44.21 PP Position Statement with North Tees Group - Rev 0
REP7a-037	H2 Teesside Limited	8.44.22 PP Position Statement with Sembcorp - Rev 0
REP7a-038	H2 Teesside Limited	8.44.23 Protective Provisions Statement - Other Updates
REP7a-039	H2 Teesside Limited	8.45 The Applicant's Environmental Position Statement
REP7a-040	H2 Teesside Limited	8.46 Responses to Questions raised under

Document Index

		Rule 17 dated 10 Feb 2025 - Rev 0
REP7a-041	H2 Teesside Limited	8.47 NZT NEP H2T Shared Area Plan - Rev 0
REP7a-042	H2 Teesside Limited	Northumbrian Water Limited letter to the Applicant regarding raw water supply - 6 February 2025
REP7a-043	H2 Teesside Limited	9.3 Statement of Common Ground between H2 Teesside Limited and Hartlepool Borough Council
REP7a-044	H2 Teesside Limited	9.4 Statement of Common Ground between H2 Teesside Limited and Health and Safety Executive - Rev 2
REP7a-045	H2 Teesside Limited	9.6 Statement of Common Ground between H2 Teesside Limited and National Highways - Rev 3
REP7a-046	H2 Teesside Limited	9.7 Statement of Common Ground between H2 Teesside Limited and Natural England - Rev 4
REP7a-047	H2 Teesside Limited	9.9 Statement of Common Ground between H2 Teesside Limited and Teesworks Limited, South Tees Developments Limited, Steel River Power Limited and South Tees Development Corporation (together 'South Tees Group') - Rev 0
REP7a-048	H2 Teesside Limited	9.10 Statement of Common Ground between H2 Teesside Limited and Stockton-on-Tees Borough Council - Rev 4
REP7a-049	H2 Teesside Limited	9.11 Statement of Common Ground between H2 Teesside Limited and Tees Valley Combined Authority - Rev 3
REP7a-050	H2 Teesside Limited	9.14 Statement of Commonality - Rev 6
REP7a-051	Environment Agency	Standard Protective Provisions
REP7a-052	Environment Agency	Explanatory Note to standard protective provisions.
REP7a-053	Anglo American	Responses to questions raised under Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010 (EPR).
REP7a-054	BOC Limited	Any further information requested by the ExA (if required).
REP7a-055	CF Fertilisers UK Limited	Responses to questions raised under Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010 (EPR).
REP7a-056	Greenenergy Limited	Withdrawal of holding objection
REP7a-057	INEOS Nitriles (UK) Limited	Responses to questions raised under Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010 (EPR).
REP7a-058	Lighthouse Green Fuels Limited	Responses to questions raised under Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010 (EPR).
REP7a-059	National Gas Transmission Plc	Responses to questions raised under Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010 (EPR).
REP7a-060	Natural England	Response to questions as posed by the ExA in

Document Index

		the Rule 8(3), 9 and 17 letter dated 10 February 2025
REP7a-061	Natural England	Statement of Common Ground (SoCG) Update
REP7a-062	Navigator Terminals Limited	Responses to questions raised under Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010 (EPR).
REP7a-063	Net Zero North Sea Storage Limited	Update on commercial discussions with the applicant
REP7a-064	Net Zero Teesside Power Limited	Update on commercial discussions with the applicant
REP7a-065	Northern Gas Processing Limited	Responses to questions raised under Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010 (EPR).
REP7a-066	NPL Waste Management Limited	Update on negotiations with applicant
REP7a-067	PD Teesport Limited	Responses to questions raised under Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010 (EPR).
REP7a-068	SABIC UK Petrochemicals Limited, SABIC Tees Holdings Limited and SABIC Petrochemicals BV	Applicant's preferred DCO.
REP7a-069	SABIC UK Petrochemicals Limited	Responses to questions raised under Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010 (EPR).
REP7a-070	Sembcorp Utilities (UK) Limited	Responses to questions raised under Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010 (EPR).
REP7a-071	Teesside Gas and Liquids Processing	Responses to questions raised under Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010 (EPR).
REP7a-072	Teesside Gas Processing Plant Limited	Responses to questions raised under Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010 (EPR).
REP7a-073	The Mission to Seafarers	Response to ExA's Rule 17 letter dated 10 February 2025
REP7a-074	The South Tees Group	Cover letter
REP7a-075	The South Tees Group	Preferred form of Protective Provisions - Clean
REP7a-076	The South Tees Group	Preferred form of Protective Provisions - Tracked
REP7a-077	The South Tees Group	Response to the Applicant's Second Change Request and the matters raised in Annex B to the Examining Authority's procedural decision letter dated 10 February 2025
REP7a-078	Air Products	Late Deadline 7A submission accepted at the discretion of the Examining Authority – Update on Protective Provisions

Document Index

Deadline 8 – 24 February 2025

For receipt by the Examining Authority of:

- Applicant's Comments on the responses to the Applicant's Change Request accepted into the Examination on 10 February 2025.
- Comments on Applicant's Final Preferred DCO in the SI template validation report and a validated copy of the DCO and its preferred DCO in word format, including all Articles and Schedules.
- Closing submissions.
- Comments on any submissions received at DL7A, including on any updates on LIRs, responses to the questions raised under Rule 17 of the EPR (as referred to in Item 20 above) and responses on final SoCG.
- Any further information requested by the ExA (if required).

REP8-001	H2 Teesside Limited	8.49 Deadline 8 Cover Letter
REP8-002	H2 Teesside Limited	1.2 Application Guide - Rev 14
REP8-003	H2 Teesside Limited	5.12 Framework Construction Environmental Management Plan - Clean - Rev 7
REP8-004	H2 Teesside Limited	5.12 Framework Construction Environmental Management Plan - Tracked - Rev 7
REP8-005	H2 Teesside Limited	8.44.10 Applicant's Updated Preferred form of Protective Provisions with Anglo American
REP8-006	H2 Teesside Limited	8.44.11 Applicant's updated Preferred form of Schedule 3 of the draft DCO
REP8-007	H2 Teesside Limited	8.44.12 Applicant's updated Preferred form of Protective Provisions with South Tees Group
REP8-008	H2 Teesside Limited	8.44.15 Updated PP Position Statement with Sabic Petrochemicals UK Limited
REP8-009	H2 Teesside Limited	8.44.15.1 Applicant's preferred form of Protective Provisions with SABIC Petrochemicals UK - Clean
REP8-010	H2 Teesside Limited	8.44.15.1 Applicant's preferred form of Protective Provisions with SABIC Petrochemicals UK - Tracked
REP8-011	H2 Teesside Limited	8.44.15.2 SABIC Information plan
REP8-012	H2 Teesside Limited	8.44.22 Updated PP Position Statement with Sembcorp - Tracked
REP8-013	H2 Teesside Limited	8.44.22.1 Agreed form of Protected Provisions with Sembcorp
REP8-014	H2 Teesside Limited	8.44.24 Applicants Preferred form of Protective Provisions with Natara Global
REP8-015	H2 Teesside Limited	8.44.25 PP Position Statement with Environment Agency
REP8-016	H2 Teesside Limited	8.44.26 Applicant's Updated form of Protective Provisions with Net Zero Teesside Power Limited Protective Provisions
REP8-017	H2 Teesside Limited	8.44.27 Applicant's Updated form of Protective Provisions with Net Zero North Sea Storage

Document Index

		Limited Protective Provisions
REP8-018	H2 Teesside Limited	8.50 Response to landowner Deadline 7A Submissions
REP8-019	H2 Teesside Limited	8.51 Environmental Position Statement - Deadline 8 - Rev 0
REP8-020	H2 Teesside Limited	8.52 Response to South Tees Group Deadline 7A Submissions
REP8-021	H2 Teesside Limited	8.53 Response to Questions raised under Rule 17 letter dated 19 February 2025
REP8-022	H2 Teesside Limited	8.54 Sembcorp Protection Corridor Plans without Cowpen Bewley Arm - Rev 0a
REP8-023	H2 Teesside Limited	8.55 STDC Agreement Area Plan - Rev 0
REP8-024	H2 Teesside Limited	9.2 Statement of Common Ground between H2 Teesside Limited and the Environment Agency - Rev 4
REP8-025	H2 Teesside Limited	9.3 Statement of Common Ground between H2 Teesside Limited and Hartlepool Borough Council - Rev 3
REP8-026	H2 Teesside Limited	9.7 Statement of Common Ground between H2 Teesside Limited and Natural England - Rev 5
REP8-027	H2 Teesside Limited	9.10 Statement of Common Ground between H2 Teesside Limited and Stockton-On-Tees Borough Council - Rev 5
REP8-028	H2 Teesside Limited	9.11 Statement of Common Ground between H2 Teesside Limited and Tees Valley Combined Authority - Rev 4
REP8-029	H2 Teesside Limited	9.14 Statement of Commonality - Rev 7
Without prejudice without Cowpen Bewley Arm Documents		
REP8-030	H2 Teesside Limited	2.2 Land Plans - Rev 3a
REP8-031	H2 Teesside Limited	2.3 Special Category Land and Crown Land Plans - Rev 3a
REP8-032	H2 Teesside Limited	2.4 Works Plans Sheets - Rev 4a
REP8-033	H2 Teesside Limited	2.5 Access and Rights of Way Plans - Rev 3a
REP8-034	H2 Teesside Limited	2.13 Temporary Traffic Regulation Measures Plan - Rev 3a
REP8-035	H2 Teesside Limited	3.1 Book of Reference - Clean - Rev 7a
REP8-036	H2 Teesside Limited	3.1 Book of Reference - Tracked - Rev 7a
REP8-037	H2 Teesside Limited	3.1a Book of Reference Schedule of Changes - Clean - Rev 7a
REP8-038	H2 Teesside Limited	3.1a Book of Reference Schedule of Changes - Tracked - Rev 7a
REP8-039	H2 Teesside Limited	5.9 Outline Landscape and Biodiversity Management Plan - Clean - Rev 4a
REP8-040	H2 Teesside Limited	5.9 Outline Landscape and Biodiversity Management Plan - Tracked - Rev 4a
REP8-041	H2 Teesside Limited	5.12 Framework Construction Environmental Management Plan - Clean - Rev 7a
REP8-042	H2 Teesside Limited	5.12 Framework Construction Environmental Management Plan - Tracked - Rev 7a
Other Deadline 8 submissions		
REP8-043	Historic England	Request to be removed from future consultations

Document Index

REP8-044	Natural England	Responses to questions raised under Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010 (EPR)
REP8-045	Network Rail Infrastructure Limited	Closing submissions.
REP8-046	Anglo American	Closing submissions.
REP8-047	BOC Limited	Any further information requested by the ExA (if required).
REP8-048	BOC Limited	Closing submissions.
REP8-049	CF Fertilisers UK Limited	Closing submissions.
REP8-050	Industrial Chemicals Ltd	Closing submissions.
REP8-051	Reference not in use.	
REP8-052	INEOS Nitriles (UK) Limited	Closing submissions.
REP8-053	Lighthouse Green Fuels Limited	Cover Letter
REP8-054	Lighthouse Green Fuels Limited	Preferred Protective Provisions - Clean
REP8-055	Lighthouse Green Fuels Limited	Preferred Protective Provisions - Tracked
REP8-056	Natara Global Limited	Any further information requested by the ExA (if required) - 18 February 2025
REP8-057	Natara Global Limited	Any further information requested by the ExA (if required) - 24 February 2025
REP8-058	National Grid Electricity Transmission Plc	Any further information requested by the ExA (if required).
REP8-059	Navigator Terminals Limited	Closing submissions.
REP8-060	Net Zero North Sea Storage Limited (NZNSS)	Closing submission (Written Representation)
REP8-061	Net Zero North Sea Storage Limited (NZNSS)	Appendix 1
REP8-062	Net Zero North Sea Storage Limited (NZNSS)	Appendix 2
REP8-063	Net Zero Teesside Power Limited (NZT)	Closing submission (Written Representation)
REP8-064	Net Zero Teesside Power Limited (NZT)	Appendix 1
REP8-065	Net Zero Teesside Power Limited (NZT)	Appendix 2
REP8-066	Northern Gas	Closing submissions.

Document Index

	Processing Limited	
REP8-067	North Tees Group Limited	Closing submission
REP8-068	North Tees Group Limited	Appendix 1 NTL Revised Protective Provisions
REP8-069	North Tees Group Limited	Appendix 2 NTL Link Line Corridor
REP8-070	North Tees Group Limited	Appendix 3 North Tees Estate Plan
REP8-071	Northumbrian Water Limited	Comments on any submissions received at DL7A, including on any updates on LIRs, responses to the questions raised under Rule 17 of the EPR (as referred to in Item 20 above) and responses on final SoCG.
REP8-072	PD Teesport Limited	Any further information requested by the ExA (if required).
REP8-073	SABIC UK Petrochemicals Limited, SABIC Tees Holdings Limited and SABIC Petrochemicals BV	Closing submissions.
REP8-074	SABIC UK Petrochemicals Limited, SABIC Tees Holdings Limited and SABIC Petrochemicals BV	Protective Provisions
REP8-075	SABIC UK Petrochemicals Limited, SABIC Tees Holdings Limited and SABIC Petrochemicals BV	SABIC's Deadline 8 reply to the applicant's Deadline 7a "Protective Positions Position Statement with SABIC" [REP7a-030]
REP8-076	Teesside Gas and Liquids Processing	Closing submissions.
REP8-077	Teesside Gas Processing Plant Limited	Closing submissions.
REP8-078	The South Tees Group	Closing submissions.
REP8-079	The South Tees Group	Protective Provisions for the protection of the South Tees Group - Clean. The ExA used their discretion to accept this document as a late Deadline 8 submission
REP8-080	The South Tees Group	Protective Provisions for the protection of the South Tees Group - Tracked. The ExA used their discretion to accept this document as a late Deadline 8 submission

Document Index

Deadline 9 – 28 February 2025 For receipt by the Examining Authority of: • Applicant's final right of reply to anything received at DL8.		
REP9-001	H2 Teesside Limited	8.62 Deadline 9 Cover Letter
REP9-002	H2 Teesside Limited	1.2 Application Guide - Rev 15
REP9-003	H2 Teesside Limited	4.4 Without prejudice excluding Cowpen Bewley Spur draft Development Consent Order - Schedule 13 (Documents and Plans to be Certified) - Clean - Rev 0a
REP9-004	H2 Teesside Limited	4.4 Draft Development Consent Order - Schedule 14 (Documents and Plans to be Certified) - Clean - SI Version - Rev 0
REP9-005	H2 Teesside Limited	4.4 Without prejudice excluding Cowpen Bewley Spur draft Development Consent Order - Schedule 13 (Documents and Plans to be Certified) - Tracked - Rev 0a
REP9-006	H2 Teesside Limited	4.4 Draft Development Consent Order - Schedule 14 (Documents and Plans to be Certified) - Clean - Rev 0
REP9-007	H2 Teesside Limited	4.4 Without prejudice excluding Cowpen Bewley Spur draft Development Consent Order - Schedule 13 (Documents and Plans to be Certified) - Clean - SI Version - Rev 0a
REP9-008	H2 Teesside Limited	4.4 Draft Development Consent Order - Schedule 14 (Documents and Plans to be Certified) - Tracked - Rev 0
REP9-009	H2 Teesside Limited	8.44.1.1 Applicant's updated Preferred form of Protective Provisions with NGET - SI template - Clean
REP9-010	H2 Teesside Limited	8.44.12 Applicant's Updated Preferred Form of Protective Provisions for South Tees Group - Clean
REP9-011	H2 Teesside Limited	8.44.12 Applicant's Updated Preferred Form of Protective Provisions for South Tees Group - Tracked
REP9-012	H2 Teesside Limited	8.44.19 Protective Provisions for the Protection of Lighthouse Green Fuels Limited - Clean
REP9-013	H2 Teesside Limited	8.44.19 Protective Provisions for the Protection of Lighthouse Green Fuels Limited - Tracked
REP9-014	H2 Teesside Limited	8.44.21 Protective Provisions for North Tees Group - Position Statement - Clean
REP9-015	H2 Teesside Limited	8.44.21 Protective Provisions for North Tees Group - Position Statement - Tracked
REP9-016	H2 Teesside Limited	8.44.24 Protective Provisions for the Protection of Natara Global Limited (updated) - D9 - Clean - SI Template
REP9-017	H2 Teesside Limited	8.44.24 Protective Provisions for the Protection of Natara Global Limited (updated) - D9 -

Document Index

		Tracked - SI Template
REP9-018	H2 Teesside Limited	8.44.24.1 Natara Global Limited site plan
REP9-019	H2 Teesside Limited	8.44.24.2 Protective Provisions Position Statement with Natara Global Limited
REP9-020	H2 Teesside Limited	8.56 Anglo American Shared Area Plan
REP9-021	H2 Teesside Limited	8.57 Applicant's Response to NTG's Submissions
REP9-022	H2 Teesside Limited	8.60 Applicant's Response to NGET's Deadline 8 submissions - Rev 0
REP9-023	H2 Teesside Limited	8.61 Response to Deadline 8 Submissions - Rev 0
REP9-024	H2 Teesside Limited	8.63 Applicant's Response to South Tees Group's Deadline 8 submissions
REP9-025	H2 Teesside Limited	8.64 Presentation Slides (bp's 2025 Capital Markets Update)
REP9-026	Anglo American	Additional Submission accepted at the discretion of the Examining Authority - Final Submission
REP9-027	BOC Limited	Additional Submission accepted at the discretion of the Examining Authority - Final Submission
REP9-028	Natara Global Limited	Additional Submission accepted at the discretion of the Examining Authority - Final Submission
REP9-029	SABIC UK Petrochemicals Limited, SABIC Tees Holdings Limited and SABIC Petrochemicals BV	Additional Submission accepted at the discretion of the Examining Authority - Final Protective Provisions
REP9-030	SABIC UK Petrochemicals Limited, SABIC Tees Holdings Limited and SABIC Petrochemicals BV	Additional Submission accepted at the discretion of the Examining Authority - Update on Protective Provisions
REP9-031	Sembcorp	Additional Submission accepted at the discretion of the Examining Authority - Letter with withdrawal of Objection
REP9-032	The South Tees Group	Additional Submission accepted at the discretion of the Examining Authority - Response to the Applicants Deadline 8 Submissions

Other Documents		
OD-001	DWD LLP on behalf of H2 Teesside Limited	Section 56 Notice
OD-002	DWD LLP on behalf of H2 Teesside Limited	Certificates of Compliance - Cover Letter

Document Index

OD-003	DWD LLP on behalf of H2 Teesside Limited	Certificate of Compliance with Regulation 16 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017
OD-004	DWD LLP on behalf of H2 Teesside Limited	Section 56 Compliance Certificate
OD-005	DWD LLP on behalf of H2 Teesside Limited	Section 59 Compliance Certificate
OD-006	H2 Teesside Limited	Compulsory Acquisition Regulation 8 Newspaper Notice
OD-007	H2 Teesside Limited	Notice under regulation 9(a)
OD-008	H2 Teesside Limited	Certificate under regulation 9(b) certifying compliance with regulations 7 and 8
OD-009	The Planning Inspectorate	Regulation 32 Transboundary Screening

APPENDIX B: LIST OF ABBREVIATIONS

APPENDIX B: LIST OF ABBREVIATIONS

Abbreviation	Reference
AA	Anglo American
ADNOC	Abu Dhabi National Oil Company
AEoI	Adverse Effect on Integrity
AGI	Above Ground Installation
ALARP	As Low As Reasonably Practicable
ALC	Agricultural Land Classifications
APV	Applicant's Preferred Version
AS	Additional Submission
ASI	Accompanied Site Inspection
ASU	Air Separation Unit
BAT	Best Available Techniques
BAT-AEL	BAT Association Emission Levels
BEIS	Department of Business Enterprise and Industrial Strategy
BMV	Best and Most Versatile
BoR	Book of Reference
BPM	Best Practicable Means
CA	Compulsory Acquisition
CA Regulations	Infrastructure Planning (Compulsory Acquisition) Regulations 2010
CAH	Compulsory Acquisition Hearing
CCR	Climate Change Resilience
CCS	Carbon Capture and Storage
CCUS	Carbon Capture, Usage and Storage
CEMP	Construction Environmental Management Plan
CEPP	Climate Emergency Planning and Policy
CFFL	CF Fertilisers UK Ltd
CH_4	Methane

Abbreviation	Reference
CHP	Combined Heat and Power
CIEEM	Chartered Institute of Ecology and Environmental Management
CIfA	Chartered Institute for Archaeologists
CNP	Critical National Priority
CNSL	CATS North Sea Ltd
CO	Carbon Monoxide
CO_2	Carbon Dioxide
COMAH	Control of Major Accident Hazards
CR	Change Request
CR1	First Change Request
CR2	Second Change Request
CTMP	Construction Traffic Management Plan
DAS	Design and Access Statement
DCO	Development Consent Order
dDCO	draft Development Consent Order
DEFRA	Department for Environment, Food and Rural Affairs
DEMP	Decommissioning Environmental Management Plan
DESNZ	Department of Energy Security and Net Zero
DL	Deadline
DLUHC	Department of Levelling Up, Housing and Communities
DML	Deemed Marine Licence
EA	Environment Agency
ECC	East Coast Cluster
ECHR	European Convention on Human Rights
ECoW	Environmental or Ecological Clerk of Works
EEA	European Economic Area
EIA	Environmental Impact Assessment
EIA Regulations	Infrastructure Planning (Environmental Impact Assessment) Regulations 2017

Abbreviation	Reference
EL	Examination Library
EM	Explanatory Memorandum
EMF	Electromagnetic Fields
EP	Environmental Permit
EPR	Infrastructure Planning (Examination Procedure) Rules 2010
ES	Environmental Statement
EU	European Union
ExA	Examining Authority
ExQ	Examining Authority's Written Questions
ExQ1	Examining Authority's First Written Questions
ExQ2	Examining Authority's Second Written Questions
FLL	Functionally Linked Land
FRA	Flood Risk Assessment
Framework CEMP	Framework Construction Environmental Management Plan
FZ	Flood Zone
FZ1	Flood Zone 1
FZ2	Flood Zone 2
FZ3	Flood Zone 3
$gCO2e/MJ_{LHV}$	grams of CO_2 equivalent per megajoule of Lower Heating Value
GHCL	Geology, Hydrogeology and Contaminated Land
GHG	Greenhouse Gas
GPA	Good Practice Advice
GWP	Global Warming Potential
GWth	Gigawatt thermal
H_2	Hydrogen
H2NE	H2NorthEast Limited
ha	Hectares

Abbreviation	Reference
Habitat Regulations	Conservation of Habitats and Species Regulations 2017
HBC	Hartlepool Borough Council
HDD	Horizontal Directional Drilling
HGV	Heavy Goods Vehicle
HH	Human Health
HLP	Hartlepool Local Plan (2018)
HRA	Habitats Regulation Assessment
HSC	hazardous Substance Consent
HSE	Health and Safety Executive
IAPI	Initial Assessment of Principle Issues
ICL	Industrial Chemicals Ltd
IEMA	Institute of Environmental Management and Assessment
INL	INEOS Nitriles (UK) Ltd
INNS	Invasive Non-Native Species
IP	Interested Party
ISH	Issue Specific Hearing
kgN/ha/yr	kilograms of Nitrogen, per hectare, per year
LCA	Landscape Character Assessment
LCHS	UK Low Carbon Hydrogen Standard
LCT	Local Character Type
LCTr	Landscape Character Tract
LGF	Lighthouse Green Fuels Ltd
LHV	Lower Heating Value
LIR	Local Impact Report
LNR	Local Nature Reserve
LOAEL	Lowest Observed Adverse Effect Level
LPA	Local Planning Authority
LSE	Likely Significant Effect
LSOA	Lower Layer Super Output Area

Abbreviation	Reference
LWS	Local Wildlife Site
MA&D	Major Accident and Disaster
MCAA2009	Marine and Coastal Access Act 2009
MHWS	Mean High Water Springs
MMO	Marine Management Organisation
MPS	UK Marine Policy Statement
MtCO2e	million tonnes CO2 equivalent
MW	Megawatt
MWth	Megawatt thermal
N	Nitrogen
Navigator	Navigator Terminals Ltd
NCA	National Character Area
NE	Natural England
NEMP	North East Inshore and North East Offshore Marine Plan
NEP	Northern Endurance Partnership
NGET	National Grid Electricity Transmission PLC
NGL	Natara Global Ltd
NGN	Northern Gas Networks
NGT	National Gas Transmission PLC
NH_3	Ammonia
NNR	National Nature Reserve
NO_2	Nitrogen Dioxide
NOEL	No Observed Effect Level
Northern Powergrid	Northern Powergrid (Northeast) Plc
NOx	Nitrogen Oxides
NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance
NPS	National Policy Statement
NPS EN-1	Overarching National Policy Statement for Energy

Abbreviation	Reference
NPS EN-4	National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines
NPS EN-5	National Policy Statement for Electricity Networks Infrastructure
NPSE	Noise Policy Statement for England Explanatory Note
NR	Network Rail (England and Wales)
NRMM	Non-Road Mobile Machinery
NSIP	Nationally Significant Infrastructure Project
NSMP	North Sea Midstream Partners
NSR	Noise Sensitive Receptor(s)
NTG	North Tees Group
NWL	Northumbrian Water Limited
NZNSS	Net Zero North Sea Storage Ltd
NZT	Net Zero Teesside
NZT order	Net Zero Teesside Development Consent Order
NZTP	Net Zero Teesside Power Ltd
O_2	Oxygen
OFH	Open Floor Hearing
OLBMP	Outline Landscape and Biodiversity Management Plan
OSWMP	Outline Site Waste Management Plan
PA2008	Planning Act 2008
PC	Process Contribution
PD	Procedural Decision
PDT	PD Teesport Limited
PM	Preliminary Meeting
PM_{10}	Particulate matter of 10 micrometres (µm) diameter or less
$PM_{2.5}$	Particulate matter of 2.5 micrometres (µm) diameter or less
PP	Protective Provision
PPW	Permitted Preliminary Works

Abbreviation	Reference
PRoW	Public Right(s) of Way
PSED	Public Sector Equality Duty
RBT	Redcar Bulk Terminals Ltd
RCBC	Redcar and Cleveland Borough Council
RCLB	Redcar and Cleveland Local Plan (2018)
rDCO	recommended Development Consent Order
RR	Relevant Representations
RSPB	Royal Society for the Protection of Birds
s	Section
SABIC	SABIC UK Petrochemicals Limited
SABIC BV	SABIC Petrochemicals BV
SAC	Special Area of Conservation
SCL	Special Category Land
SEL	Sound Exposure Level
SNCB	Statutory Nature Conservation Bodies
SO_2	Sulphur dioxide
SOAEL	Significant Observed Adverse Effect Level
SoCG	Statement of Common Ground
SoR	Statement of Reasons
SoS	Secretary of State
SPA	Special Protection Area
SPD	Supplementary Planning Document
sqm	Square Metres
SSCC	Seal Sands Chemical Company
SSSI	Site of Special Scientific Interest
STBC	Stockton-on-Tees Borough Council
STDC	South Tees Development Corporation
STG	South Tees Group
STLP	Stockton-on-Tees Local Plan (2019)
SU	Statutory Undertaker

Abbreviation	Reference
Suez	Suez Recycling and Recovery UK Ltd
SWMP	Site Waste Management Plan
tCO_2e	tonnes of Carbon Dioxide equivalent
TP	Temporary Possession
TTWA	Travel to Work Area
UKHSA	United Kingdom Health Security Agency
USI	Unaccompanied Site Inspection
Venator	Venator Materials UK Limited
WCBAV	without Cowpen Bewley arm version
WFD	Water Framework Directive
Work No.	Work Number
WR	Written Representation
WSI	Written Scheme of Investigation
YPHFO	York Potash Harbour Facilities Order
ZoI	Zone of Influence

APPENDIX C: HABITATS REGULATIONS ASSESSMENT

C. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT

C.1. INTRODUCTION

C.1.1. This appendix sets out the Examining Authority's (ExA's) analysis and conclusions relevant to the Habitats Regulations Assessment (HRA). This will assist the Secretary of State (SoS) for the Department of Energy Security and Net Zero (DESNZ), as the Competent Authority, in performing their duties under the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations').

C.1.2. This appendix is structured as follows:

- Section C.2: findings in relation to likely significant effects (LSE) on the UK National Site Network (NSN) and other European sites.
- Section C.3: conservation objectives for sites and features.
- Section C.4: findings in relation to adverse effects on integrity (AEoI).
- Section C.5: HRA conclusions.

C.1.3. In accordance with the precautionary principle embedded in the Habitats Regulations, consent for the proposed development may be granted only after having ascertained that it will not adversely affect the integrity of European site(s) and no reasonable scientific doubt remains (Case Law CJEU Case C-127/02 Waddenzee 7 September 2004, Reference for a preliminary ruling from the Raad van State (Netherlands) in the proceedings: Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij).

C.1.4. For the purpose of this report, in line with the Habitats Regulations and relevant Government policy, the term 'European sites' includes Special Areas of Conservation (SAC), proposed SACs, Special Protection Areas (SPA), potential SPAs, Ramsar, proposed Ramsar and sites identified or required as compensatory measures for adverse effects on any of these sites. The 'UK National Site Network' refers to the network of European sites within the UK.

C.1.5. Policy considerations and the legal obligations under the Habitats Regulations are described in chapter 2 (section 2.7) of this report.

C.1.6. The ExA has been mindful throughout the examination of the need to ensure that the SoS for the DESNZ has such information as may reasonably be required to carry out their duties as the Competent Authority. We have sought evidence from the applicant and the relevant Interested Parties (IPs), including Natural England (NE) as the Appropriate Nature Conservation Body (ANCB), through written questions and issue specific hearings (ISH).

Report on Implications for European Sites (RIES) and consultation

C.1.7. The ExA produced a Report on the Implications for European Sites (RIES) [PD-018] which compiled, documented, and signposted HRA-relevant information provided in the development consent order (DCO) application and examination representations up to Deadline (D) 6 (13 January 2025). The RIES was issued to set out ExA

understanding on HRA-relevant information and the position of the IPs in relation to the effects of the proposed development on European sites at that point in time. Consultation on the RIES took place between 13 January 2025 and 6 February 2025. Comments were received from the applicant [REP7-025] and NE [REP7-039]. Responses to comments on the RIES were scheduled for D7a (17 February 2025) but no submissions were received. Comments received have been taken into account in the drafting of this appendix.

C.1.8. The ExA's recommendation is that the RIES, and consultation on it, may be relied upon as an appropriate body of information to enable the SoS to fulfil their duties of consultation under Regulation 63(3) of the Habitats Regulations, should the SoS wish to do so.

Proposed development description and HRA implications

C.1.9. The proposed development is described in chapter 1 (paragraphs 1.3.7 to 1.3.9) of this report and in the applicant's Environmental Statement (ES) Chapter 4 (Proposed Development) [PDA-005].

C.1.10. The spatial relationship between the order limits of the proposed development and European sites is depicted on figures 2 and 3 (annex A) of the Report to Inform HRA (the 'HRA Report') [REP6a-010] (redacted version)/ [REP6a-012] (confidential version).

C.1.11. The proposed development is not directly connected with, or necessary to, the management of a European site. Therefore, where LSE on European sites cannot be excluded, the SoS for the DESNZ must make an 'appropriate assessment' (AA) of the implications of the proposed development.

C.1.12. The applicant's assessment of effects was presented in the HRA Report. The applicant provided 2 versions of the HRA Report: a redacted version and an unredacted confidential version. The original HRA Report was [APP-040] (redacted version) and [APP-041] (confidential version), updated to [AS-016] (redacted version only) in response to section 51 advice at acceptance relating to typographical and cross-referencing errors. The HRA Report was further updated to [CR1-023] (redacted version)/ [CR1-025] (confidential version) to support the applicant's first change request and to [REP5-011] (redacted version only) and [REP6a-010] (redacted version)/ [REP6a-012] (confidential version) following updates to assessment work. Both Examination Library (EL) references will be provided throughout this appendix.

C.1.13. The applicant did not identify any LSE on non-UK European sites in European Economic Area (EEA) States in its HRA Report [REP6a-010]/ [REP6a-012] or in its ES. No transboundary matters relevant to HRA were raised for discussion by any IPs during the examination. Only UK European sites are addressed in this report.

C.1.14. During the examination, the applicant made a series of changes to the application, as described in chapter 2 (section 2.7) of this Report. The ExA issued procedural decisions accepting the applicant's proposed changes for examination on 21 October 2024 [PD-012] and 10 February 2025 [PD-020].

C.1.15. As described in the RIES [PD-018], the first change application potentially affected the assessment of change in operational emissions to air, loss of functionally linked land (FLL), noise and visual disturbance, relating to bird qualifying features of the Teesmouth and Cleveland Coast SPA and Ramsar site compared to the application

as originally submitted. Changes 1, 2B to 2F, 3, 4, 5, 6 and 8 had implications for the HRA, as summarised in the HRA Changes Reference Table [CR1-050]. The applicant submitted an updated HRA Report [CR1-023]/ [CR1-025] to account for these changes. The Change Application Report [CR1-044] and updated HRA Report recorded no change to the HRA conclusions because of the changes.

C.1.16. A second change application was submitted after publication of the RIES at D7. The Second Application Change Report [REP7-011] stated that the HRA Report was excluded from the assessment update considering the proposed changes as they did not introduce any new potential impact pathways or worsening of impacts to the European sites.

C.1.17. No HRA matters relevant to these change requests were raised by IPs during the examination.

C.1.18. As described in section 3.3 and Chapter 7 of this Report, the applicant submitted 2 final versions of the draft DCO. The applicant also submitted two versions of the Framework Construction Environmental Management Plan (CEMP). In regard to the two different documents, 1 version of each was a without prejudice version should the Cowpen Bewley Arm of the Hydrogen Pipeline corridor be removed from the Order limits. This potential change in the proposed development does not have implications for the HRA but both document references are used in this appendix as follows:

- Draft DCO [REP7a-003] and Schedule 14 [REP9-004] or (Without Prejudice Cowpen Bewley Arm version) [REP7a-006] and Schedule 13 [REP9-003].
- Framework CEMP [REP8-003] or (Without Prejudice Cowpen Bewley Arm version) [REP8-041].

Summary of HRA matters considered during the examination

C.1.19. The main HRA matters raised by the ExA and NE and discussed during the examination include:

- The applicant's assessment method for bird qualifying features of Teesmouth and Cleveland Coast Ramsar site and SPA. This had implications for the assessment of noise and visual disturbance, and loss of FLL.
- The applicant's conclusions on LSE for atmospheric pollution, and visual disturbance to Teesmouth and Cleveland Coast Ramsar site and SPA.
- The applicant's conclusions on LSE for atmospheric pollution to North Yorks Moors SAC and SPA and Northumbria Coast Ramsar site and SPA.
- The applicant's approach to assessment of in-combination effects, including other projects considered and the overlap between the proposed development and the Net Zero Teesside (NZT) DCO.

C.1.20. These matters are discussed in the sections below, as appropriate.

C.1.21. Matters which were undisputed at the start and throughout the examination by NE as the ANCB, as recorded in NE's relevant representation (RR) [RR-026] were the applicant's conclusions of no AEoI of the following European sites:

- Humber Estuary SAC
- Berwickshire and North Northumberland Coast SAC
- The Wash and Norfolk Coast SAC

C.2. FINDINGS IN RELATION TO LSE

C.2.1. Under Regulation 63 of the Habitats Regulations, the Competent Authority must consider whether a development will have LSE on a European site, either alone or in-combination with other plans or projects. The purpose of the LSE test is to identify the need for an AA and the activities, sites or plans and projects to be included for further consideration in the AA.

European sites within the UK National Site Network

C.2.2. The applicant's HRA Report [REP6a-010]/ [REP6a-012] identified 13 European sites within the UK NSN for inclusion within the assessment. These are listed in Tables 3-1 and 3-2 of the HRA Report and detailed in Table C.1. The Environment Agency (EA) guidance for large power generation developments greater than 50 megawatts (MW) was used to inform the zone of influence (ZoI) for identifying European sites. Paragraph 3.2.1 of [REP6a-010]/ [REP6a-012] stated that a minimum ZoI of 15km was used, widened for mobile qualifying features (marine mammals and migratory fish) of more distant European sites (paragraph 3.2.6). Potential for bird qualifying features of the Teesmouth and Cleveland Coast SPA and Ramsar site to be using FLL affected by the proposed development was also considered.

Table C.1: UK National Site Network European sites identified in the applicant's HRA Report [REP6a-010]/ [REP6a-012]

Name of European Site	Distance at closest point (km)	
	Main site	Connection corridors
Berwickshire and North Northumberland Coast SAC	87.72km north	
Durham Coast SAC	13.7km south-east	11.4km south-east
Humber Estuary SAC	106.38km south	
North York Moors SAC	12.1km south-east	8km south-east
North York Moors SPA	12.1km south-east	8km south-east
Northumbria Coast SPA	13.7km south-east	11.3km south-east
Northumbria Coast Ramsar site	13.7km south-east	11.3km south-east
River Tweed SAC	107.27km north	
Southern North Sea SAC	101.34km east	

Name of European Site	Distance at closest point (km)	
	Main site	**Connection corridors**
Teesmouth and Cleveland Coast SPA	Adjacent	Overlapping
Teesmouth and Cleveland Coast Ramsar site	Adjacent	Overlapping
The Wash and North Norfolk Coast SAC	187.05km south	
Tweed Estuary SAC	135.95km north	

C.2.3. Annex D of the HRA Report [REP6a-010]/ [REP6a-012] listed the qualifying features of the European sites and identified which are relevant to the screening for LSE.

C.2.4. Castle Eden Dene SAC was also considered [REP6a-010]/ [REP6a-012] in the context of operational stack emissions but screened out from further assessment as it is more than 15km from the main site, and operational air quality effects would not be generated from the connection corridors. NE ([REP7-039, Q2.1.1]) agreed with the applicant's rationale.

C.2.5. The HRA Report [REP6a-010]/ [REP6a-012] identified potential effects on several cross-border sites, including the Berwickshire and North Northumberland Coast SAC and the River Tweed SAC. On 4 September 2024, the ExA [PD-009] wrote to NatureScot inviting it to make representations in the examination owing to potential impacts to these sites. NatureScot [REP1-037] confirmed that whilst the larger part of the River Tweed SAC is in Scotland, as the proposed development is located within England, it was content for NE to comment on its behalf.

C.2.6. No additional European sites were suggested by IPs for inclusion in the screening assessment. NE ([REP2-072], Q1.4.8) confirmed that it was satisfied that the HRA Report [AS-016] identified all relevant European sites and qualifying features.

Impact pathways

C.2.7. Section 4 of the HRA Report [REP6a-010]/ [REP6a-012] described potential LSEs on the relevant European sites, based on the different phases of the proposed development (construction, operation and decommissioning).

C.2.8. The impact pathways assessed by the applicant were set out in annex C of the HRA Report [REP6a-010]/ [REP6a-012] and summarised by relevance to European sites and receptor type in Table 2.2 of the RIES [PD-018]. Tables D-1 to D-11 in annex D of the HRA Report [REP6a-010]/ [REP6a-012] set out the applicant's screening conclusions for each European site and qualifying feature assessed in respect of the impact pathways considered.

C.2.9. The applicant's original HRA Report [APP-040]/ [APP-041] referred to an impact pathway of effects on foraging resources that support qualifying bird species during

decommissioning that was not discussed elsewhere in the HRA Report. In response to the ExA's first written questions (ExQ1) [PD-008], the applicant ([REP2-022], Q1.4.2) confirmed this reference was made in error and removed it from later versions of the HRA Report [CR1-023]/ [CR1-025] and [REP6a-010]/ [REP6a-012].

C.2.10. In response to ExQ1 ([PD-008], Q1.9.28), the applicant [REP2-027] provided further explanation of proposed ground strengthening works, which it considered would likely constitute an improvement to the land. NE [REP2-072] advised that areas affected by these works should be considered in the HRA. The applicant [REP3-006] confirmed that impacts of installing ground strengthening were accounted for and the activity would not prevent restoration of habitats as committed in the Outline Landscape and Biodiversity Management Plan (LBMP) [REP2-009]. NE [REP7-039] was satisfied with the information on the basis that strengthened areas are reinstated to provide their identified function for SPA birds.

C.2.11. NE [RR-026] [REP7a-061] did not identify any additional impact pathways.

LSE from the proposed development alone

C.2.12. The applicant's original conclusions in respect of screening were presented in section 4, and summarised in annex D, of the HRA Report [APP-040]/ [APP-041]. It concluded that the proposed development would not be likely to give rise to significant effects, either alone or in-combination with other projects or plans, on all qualifying features of the following European sites:

- Durham Coast SAC
- North York Moors SAC
- North York Moors SPA
- Northumbria Coast Ramsar site
- Northumbria Coast SPA
- Southern North Sea SAC

C.2.13. NE [REP7a-061] agreed with the applicant's conclusion of no LSE in respect of the Southern North Sea SAC. NE [RR-026] did not dispute the applicant's LSE conclusions of no LSE from the proposed development alone for the other European sites listed, aside from Durham Coast SAC.

C.2.14. The applicant's HRA Report [APP-040]/ [APP-041] concluded no LSE to Durham Coast SAC from changes to air quality (nitrogen deposition) during operation as the Air Pollution Information System (APIS) did not identify the SAC as being sensitive to nitrogen deposition. NE stated [RR-026] that it was unclear why 10 kilograms per hectare per year (kgN/ha/yr) was used as the critical load when APIS indicates that coastal dune grasslands have a lower critical load of 5kgN/ha/yr. The applicant [REP1-007] clarified that the SAC does not have dune grasslands and the lower critical load would not be appropriate. In response to ExQ1 ([PD-008], Q1.4.10), the applicant [REP2-022] and NE [REP2-072] confirmed that grey dunes were not a qualifying feature of the SAC. NE was satisfied this matter was resolved.

C.2.15. Whilst the applicant [APP-040]/ [APP-041] screened in Teesmouth and Cleveland Coast SPA and Ramsar site for consideration of AEoI for some impact pathways, NE [RR-026] raised concerns about several pathways for which the applicant [APP-040]/ [APP-041] originally concluded no LSE from the proposed development alone. These matters are described in the sections below.

Screening of emissions to air

C.2.16. The applicant's original HRA Report [APP-040]/ [APP-041] identified that the main pollutants of concern from the proposed development are oxides of nitrogen (NO_x), ammonia (NH_3) and sulphur dioxide (SO_2). It stated that high levels of NO_x and NH_3 are likely to increase total nitrogen deposition to soils, which could lead to deleterious effects in resident ecosystems. Table 4-7 summarised the main sources and effects of air pollution on habitats and species.

C.2.17. The applicant used site relevant critical loads from APIS to establish the sensitivity of the qualifying features of the European sites. It applied specific criteria for statutory nature conservation sites as described in [APP-191] based on the EA Air Emissions Risk Assessment guidance (Defra and the EA, 2016, updated in 2023), which stated that impacts from stack emissions are insignificant if:

- the long-term process contribution (PC) is less than 1% of the critical level, or if greater than 1% then the predicted environmental contribution (PEC) is less than 70% of the critical level, or
- the short-term PC is less than 10% of the critical level

C.2.18. The original HRA Report [APP-040]/ [APP-041] concluded that atmospheric pollution during operation of the proposed development alone would not lead to LSE on bird qualifying features of the Teesmouth and Cleveland Coast SPA and Ramsar site. Based on modelling in [APP-190] and [APP-191], the applicant concluded the PEC would remain below the 24 hour and annual critical level for NO_x and nitrogen deposition on APIS, and in accordance with the EA guidance would be insignificant.

C.2.19. NE [RR-026] did not agree and advised that screening should follow its guidance in NEA001. It stated that if the PC from the proposed development alone exceeds 1% of the relevant critical load or level on APIS, an assessment of AEoI is required; the LSE conclusion does not depend on background or PEC. The applicant updated the HRA Report [CR1-023]/ [CR1-025] to include details of atmospheric pollution and cumulative road traffic emissions using NEA001. Annual NO_x and nitrogen deposition would exceed the 1% critical level at Teesmouth and Cleveland Coast SPA and Ramsar site but it concluded no LSE as it was only marginally above the threshold (1.1% for both pollutants).

C.2.20. NE [RR-026] sought additional information about relevant habitat types, qualifying features and critical loads as reported on APIS. The applicant [REP1-007] clarified that only the nesting tern and avocet qualifying features are sensitive to atmospheric pollutants; these features are sensitive to nitrogen deposition but not NO_x, acid deposition or NH_3.

C.2.21. NE [REP4-028] noted the assessment did not include nitrogen deposition, NO_x or NH_3 from operational road traffic [RR-026]. The applicant provided a further updated HRA Report [REP5-011] to address these comments (retaining the conclusion of no LSE from the proposed development alone) and NE subsequently [REP7a-060] [REP7a-061] recorded these matters as being resolved.

C.2.22. The original HRA Report [APP-040]/ [APP-041] concluded that atmospheric pollution from traffic during construction would not lead to LSE on bird qualifying features of the Teesmouth and Cleveland Coast SPA and Ramsar site. The conclusion was based on the air quality assessment [APP-191] finding emissions would not exceed the screening threshold of 1% of the environmental standard for annual mean NO_x concentrations and the critical level (30 microgram per cubic metre ($\mu g/m^3$)) not being exceeded. For nutrient nitrogen deposition, it would not exceed 1% of the environmental thresholds at any receptor. ES Chapter 8 Air

Quality [APP-060] stated that SO_2 did not require detailed consideration as released concentrations would not be significant based on anticipated vehicle numbers. NE [RR-026] advised that the assessment should include consideration of NH_3 and acid deposition (from SO_2) in addition to NO_x and particulate matter. It noted that mitigation may be needed. The applicant updated its HRA Report [CR1-023]/ [CR1-025] to include assessment of cumulative road traffic assessment using NEA001 and stated [REP1-007] that the only qualifying features of concern were nesting terns and avocets, and that there are no nesting sites within 200m of affected roads. NE [REP2-072] accepted these comments but advised that evidence regarding broad habitat structure should be presented and advised [REP4-028] that it would be precautionary to assume at screening that the qualifying feature is at the site boundary, and evidence why that it is not the case to inform AA. The applicant subsequently updated the HRA Report [REP5-011] to screen in LSE from construction phase traffic emissions.

Screening of operational visual disturbance

C.2.23. The original HRA Report [APP-040]/ [APP-041] concluded that visual disturbance during operation would not lead to LSE on bird qualifying features of the Teesmouth and Cleveland Coast SPA and Ramsar site, noting the site's long history of industrial use and overwintering birds being use to human activity.

C.2.24. NE [RR-026] did not agree and requested that sources of visual disturbance were better quantified, together with a robust analysis of impacts to inform if mitigation is required. The applicant [REP1-007] provided more information about likely operational activities along the pipeline corridor and reiterated that these would not lead to LSE. It also referred to a NatureScot Research Report and literature review of disturbance distances in its response to D4 submissions [REP5-051] to support its position that assessment needs to be site specific considering context.

C.2.25. The applicant [REP1-007] stated that there is little evidence that the Blast Furnace Pool is used more than occasionally, noting that 4 SPA bird features were recorded across 24 surveys and none more than twice. It considered the implications of the first change request, in particular change 7 resulting in an increase in the maximum height of the carbon dioxide (CO_2) absorber column and flash vessels. It concluded it would not affect the HRA [AS-039].

C.2.26. The applicant provided a technical note ([REP5-051], appendix 2), with detailed consideration for the potential reduction in sightlines to the Blast Furnace Pool. Using baseline bird survey data, photographic evidence, topographical survey and 3D modelling of the proposed development infrastructure (considering layout, position and vertical scale) it concluded that it was highly unlikely that wetland birds would be deterred from using the Blast Furnace Pool and its environs. It concluded that effects from a reduction in openness and sightlines would be negligible. It also stated that potential for increased predation of waterbirds through nesting and roosting opportunities for predatory birds was unlikely to result in significant effects when compared to the recent baseline of a steelworks with similar opportunities.

C.2.27. NE ([REP7-039], Q2.2.2a) accepted these conclusions and confirmed that it held no further evidence to demonstrate that the Blast Furnace Pool was used for refuge by bird qualifying features during less favourable tidal or weather conditions. However, NE [REP6a-034] retained concerns about operational visual disturbance and requested additional information on the scale and nature of disturbance compared to the baseline, and how the development was designed to avoid impacts.

C.2.28. The applicant [REP7-024] stated that sources of operational visual disturbance were considered in an updated HRA Report [REP6a-010]/ [REP6a-012] for the main site and pipeline corridor. Disturbance was anticipated to be lower than that historically or currently experienced within the site and as such no LSE could be concluded. It stated that some external lighting would be required to ensure the facility could be operated safely, which would be in accordance with the Indicative Lighting Strategy (Operation) [APP-038] to prevent or minimise disturbance to human and ecological receptors. Visual disturbance during operation remained screened out for LSE [REP6a-010]/ [REP6a-012].

C.2.29. In response to the ExA [PD-020], the applicant elaborated on proposed operational maintenance works at the River Tees crossing and how the proposed development was designed to avoid visual disturbance during operation [REP7a-040]. It stated that maintenance would involve occasional arrival by vehicle and walkover visual inspection. It considered that operational activities near the River Tees crossing would not result in prolonged and continuous disturbance. The applicant stated it had aligned the order limits to avoid direct loss of any part of the European sites.

C.2.30. NE [REP7a-061] accepted this and recorded matters relating to operational visual disturbance as resolved.

Other screening matters

C.2.31. NE [RR-026] [REP2-072] raised clarification points about the applicant's approach to screening of atmospheric pollution during construction (construction dust and other (non-traffic) emission sources) for Teesmouth and Cleveland Coast Ramsar site and SPA. These are described in Table 2.3 of the RIES [PD-018]. Following explanation from the applicant, NE considered these matters were resolved [REP2-072] [REP4-028].

LSE from the proposed development in combination

C.2.32. Information relating to the in-combination assessment was provided in section 5 of the original HRA Report [APP-040]/ [APP-041]. The projects assessed in the in-combination assessment were detailed in Table 5-1 of the HRA Report and their locations depicted on ES figure 23-3 [APP-182].

C.2.33. The applicant's screening matrices in annex D of the original HRA Report [APP-040]/ [APP-041] indicate that in-combination effects were screened in for each impact pathway which was screened in for potential LSE from the proposed development alone, for all relevant European sites and qualifying features.

C.2.34. Section 7 of the HRA Report [APP-040]/ [APP-041] provided an assessment of in-combination effects of the proposed development with other plans and projects in relation to effects on site integrity, rather than as part of the screening exercise for LSE. In response to the ExQ1 ([PD-008], Q1.4.5), the applicant [REP2-022] stated that the HRA considered plans and projects as set out in the report, and that the potential for all aspects to have in-combination LSE was considered. NE [RR-026] did not dispute this approach and advised that the "developments scoped in for potential impacts in-combination… is comprehensive, in terms of inclusion of the correct types of development."

C.2.35. NE [RR-026] queried the applicant's approach to assessment of in-combination effects, including the following matters:

- Confirmation as to how developments were identified, noting that no agricultural schemes were included and that some projects were excluded as individual assessments did not conclude significant effects, but several non-significant impacts could result in a significant effect in-combination.

C.2.36. The applicant [REP1-007] committed to reviewing the in-combination assessment to determine if any projects dismissed because their own HRA concluded no in-combination LSE should be assessed. The assessment was updated in [REP5-011]. ES Chapter 23 [REP5-015], Table 23-1 stated that the assessment included additional developments as set out in the Technical Note: Updates to Air Quality and Traffic Cumulative Assessments [REP5-034], reflecting those in the updated ES Appendix 23C [REP5-028]. It included developments to a new cut-off date of 18 September 2024. Agricultural developments with a planning application submitted in the ZoI and that met the criteria used in ES Chapter 23 [REP5-015] were included.

C.2.37. NE ([REP2-072], Q1.3.9), identified additional projects that should be screened in to the in-combination assessment of operational air quality changes:

- Graythorpe Energy Centre
- Teesside Brinefields Hydrogen (H_2) Storage
- Lighthouse Green Fuels
- H2NE Blue H_2 Facility
- Teesside Flexible Regas Port
- HyGreen H_2 Facility
- British Steel Electric Arc Furnace
- Biffa Redcar Plastics Recycling Facility
- Carbon Capture from Existing Waste Facility

C.2.38. NE ([REP2-072], Q1.3.9) also stated that there may be additional projects by virtue of the location of the proposed development in the Teesside Freeport Zone and Tees Valley Industrial Cluster.

C.2.39. The applicant [CR1-023]/ [CR1-025] amended the in-combination assessment to include updates for HyGreen, York Potash and Teesside Flexible Regas Port. It committed [AS-039] to reviewing additional projects and providing a further update to the HRA if needed. It added these projects, together with most other projects identified by NE to ES Appendix 23C Shortlist of other developments within the search area [REP5-028]. The applicant ([REP5-042], Q2.4.2) confirmed it had updated the HRA Report [REP5-011] to assess LSE alongside other plans and projects, with Table 7-1 providing a comprehensive summary.

C.2.40. No other additional plans or projects were highlighted by IPs in the examination.

C.2.41. The applicant initially screened out the impact pathway of operational emissions to air (NO_x and nitrogen deposition) to Teesmouth and Cleveland Coast SPA and Ramsar site [APP-040]/ [APP-041] from the proposed development in combination. It subsequently screened this pathway in for LSE [CR1-023]/ [CR1-025] following advice from NE [RR-026] as the screening criteria for significance were exceeded.

C.2.42. Whilst NE [RR-026] agreed with the applicant's conclusion [APP-040]/ [APP-041] of no LSE to North York Moors SAC and SPA, and Northumbria Coast SPA and Ramsar site from the proposed development alone, it disputed the conclusion of no LSE from the proposed development in-combination from atmospheric pollution during operation (NO_x, nitrogen deposition, and for the North York Moors SAC and

SPA also acid deposition). This was based on the applicant's air quality modelling demonstrating exceedance of the 1% critical level for these pollutants on APIS.

C.2.43. The applicant [REP1-007] clarified that contribution from the proposed development alone is effectively zero for acid deposition, as shown in ([APP-191], Table 8B-32). The applicant updated its HRA Report [CR1-023]/ [CR1-025] and concluded that 24 hour NO_x from the proposed development in combination would exceed the 1% critical level at North York Moors SAC and SPA, and Northumbria Coast Ramsar site and SPA (Table 4-9) but retained the conclusion of no LSE as the proposed development's contribution was below 10% of the critical level. Tables 4-11 and 4-12 of [CR1-023]/ [CR1-025] showed the 1% critical level would not be exceeded for nitrogen or acid deposition from the proposed development alone or in-combination.

C.2.44. NE [REP4-028] stated that North York Moors SAC and SPA, and Northumbria Coast SPA and Ramsar site should be included in the AA for completeness but acknowledged that in practice 24 hour NO_x impacts would not alter the annual levels relevant to ecosystem impacts and reported these matters as agreed.

C.2.45. Noting that a further updated HRA Report [REP5-011] from the applicant showed that the 1% critical level was exceeded for NO_x, and the 1% critical load for nitrogen deposition and acid deposition, the ExA [PD-018] requested NE to advise on implications for its advice. NE [REP7-039], Q2.5.1) was content that no further assessment was required based on consideration of the entire in-combination impact at the European sites.

LSE Assessment Outcomes

C.2.46. The applicant in its the HRA Report [REP6a-010]/ [REP6a-012] concluded that the proposed development would be likely to give rise to significant effects, either alone or in-combination with other projects or plans, on one or more of the qualifying features of:

- Berwickshire and North Northumberland Coast SAC
- Humber Estuary SAC
- River Tweed SAC
- Teesmouth and Cleveland Coast Ramsar site
- Teesmouth and Cleveland Coast SPA
- The Wash and North Norfolk Coast SAC
- Tweed Estuary SAC

C.2.47. As noted above, concerns raised by IPs about the applicant's screening for LSE were resolved during the examination. During examination, the applicant agreed that an LSE should be screened in for the impact pathways below and updated its HRA Report [REP6a-010]/ [REP6a-012] accordingly:

- Atmospheric pollution during construction (traffic emissions) from the proposed development alone and in-combination to Teesmouth and Cleveland Coast Ramsar site and SPA.
- Atmospheric pollution during operation (NO_x and nitrogen deposition) from the proposed development in combination to Teesmouth and Cleveland Coast Ramsar site and SPA.

C.2.48. The ExA considers that as the proposed development in-combination with other project and plans would result in an exceedance of the screening threshold in the EA and Defra guidance of 1% critical level for NO_x and 1% critical load for nitrogen

and acid deposition, atmospheric pollution impacts during operation to North York Moors SAC and SPA, and Northumbria Coast SPA and Ramsar site should be screened in for LSE and the impact assessed in further detail for AEoI.

C.2.49. The ExA notes that NE initially disputed the applicant's conclusion of no LSE from operational visual disturbance but recorded this matter as resolved at the close of examination. The applicant identified that operational lighting at the H_2 production facility would be designed in accordance with the Indicative Lighting Strategy (Operation) [APP-038] to minimise impacts to human and receptors. The ExA is satisfied that this is not mitigation relied upon to inform the LSE assessment. Based on the information provided, the ExA is satisfied that LSE from operational visual disturbance can be screened out of further assessment.

C.2.50. The ExA is satisfied, based on the information provided in the applicant's HRA Report and matters discussed above, that the correct impact-effect pathways on each European site have been assessed. The ExA is satisfied with the approach to the assessment of alone and in-combination LSE.

C.2.51. Taking into account the reasoning set out above, the ExA considers that the proposed development is likely to have a significant effect from the impacts identified in tables D-1 to D-11 in annex D of the HRA Report [REP6a-010]/ [REP6a-012] on the qualifying features of the European sites identified in Table C.2 below, when considered alone, or in-combination with other plans or projects.

Table C.2: European sites and features for which the ExA considers LSE could not be excluded

European site(s)	Qualifying feature(s)	LSE alone from:	LSE in-combination from:
Berwickshire and North Northumberland Coast SAC	Grey seal	**Construction and decommissioning** ▪ Disturbance in functionally linked habitat	
Humber Estuary SAC	Grey seal Sea lamprey	**Construction and decommissioning** ▪ Disturbance in functionally linked habitat	
North York Moors SAC	Northern Atlantic wet heaths with Erica tetralix European dry heaths Blanket Bogs	N/A	**Operation** ▪ Atmospheric pollution (NO_x, and nitrogen and acid deposition)
North Yorks Moors SPA	Merlin Golden plover	N/A	**Operation** ▪ Atmospheric pollution (NO_x, and nitrogen and acid deposition)

European site(s)	Qualifying feature(s)	LSE alone from:	LSE in-combination from:
Northumbria Coast SPA and Ramsar site	Purple sandpiper Ruddy turnstone Little tern	N/A	**Operation** ▪ Atmospheric pollution (NO_x and nitrogen deposition)
River Tweed SAC	Atlantic salmon Sea lamprey	**Construction and decommissioning** ▪ Disturbance in functionally linked habitat	
Teesmouth and Cleveland Coast SPA and Ramsar site	Common tern Pied avocet Ruff Redshank	**Construction and decommissioning** ▪ Horizontal directional drilling (HDD) collapse (construction only) ▪ Loss of FLL ▪ Visual disturbance ▪ Noise disturbance ▪ Atmospheric pollution (construction traffic) ▪ Water quality **Operation** ▪ Water quality	**Construction and decommissioning** ▪ HDD collapse (construction only) ▪ Loss of FLL ▪ Visual disturbance ▪ Noise disturbance ▪ Atmospheric pollution (construction traffic) ▪ Water quality **Operation** ▪ Water quality ▪ Atmospheric pollution (NO_x and nitrogen deposition)
	Little tern	**Construction and decommissioning** ▪ HDD collapse (construction only)	**Construction and decommissioning** ▪ HDD collapse (construction only)

European site(s)	Qualifying feature(s)	LSE alone from:	LSE in-combination from:
		▪ Atmospheric pollution (construction traffic) ▪ Water quality	▪ Atmospheric pollution (construction traffic) ▪ Water quality **Operation** ▪ Atmospheric pollution (NO_x and nitrogen deposition)
	Knot Sandwich tern	**Construction and decommissioning** ▪ HDD collapse (construction only) ▪ Visual disturbance ▪ Noise disturbance ▪ Atmospheric pollution (construction traffic) ▪ Water quality **Operation** ▪ Water quality	**Construction and decommissioning** ▪ HDD collapse (construction only) ▪ Visual disturbance ▪ Noise disturbance ▪ Atmospheric pollution (construction traffic) ▪ Water quality **Operation** ▪ Water quality ▪ Atmospheric pollution (NO_x and nitrogen deposition)
	Waterbird assemblage	**Construction and decommissioning** ▪ HDD collapse (construction only) ▪ Loss of FLL ▪ Visual disturbance ▪ Noise disturbance ▪ Atmospheric pollution (construction traffic) ▪ Water quality	**Construction and decommissioning** ▪ HDD collapse (construction only) ▪ Loss of FLL ▪ Visual disturbance ▪ Noise disturbance ▪ Atmospheric pollution (construction traffic) ▪ Water quality

European site(s)	Qualifying feature(s)	LSE alone from:	LSE in-combination from:
		Operation ▪ Noise disturbance (black-headed gull and herring gull) ▪ Water quality	**Operation** ▪ Noise disturbance (black-headed gull and herring gull) ▪ Water quality ▪ Atmospheric pollution (NO_x and nitrogen deposition)
The Wash and North Norfolk Coast SAC	Harbour seal	**Construction and decommissioning** ▪ Disturbance in functionally linked habitat	
Tweed Estuary SAC	Sea lamprey	**Construction and decommissioning** ▪ Disturbance in functionally linked habitat	

C.3. CONSERVATION OBJECTIVES

C.3.1. The conservation objectives for all European sites considered in the applicant's screening assessment, other than Ramsar sites, were included within section 3.3 of the HRA Report [APP-040]/ [APP-041]. Conservation objectives were not provided for Teesmouth and Cleveland Coast Ramsar site and Northumbria Coast Ramsar site. In response to ExQ1 ([PD-008], Q1.4.3), the applicant [REP2-022] confirmed that as there are no published conservation objectives for the Ramsar sites, objectives for the equivalent SPAs were used. NE [REP7-039] confirmed that as the SPAs encompass the Ramsar sites, it accepted the applicant's approach.

C.3.2. The HRA Report [APP-040]/ [APP-041] did not state whether the sites were in favourable or unfavourable condition. NE [RR-026] advised that the Teesmouth and Cleveland Coast SPA and Ramsar site are in unfavourable condition for nutrients due to high dissolved inorganic nutrient (DIN) concentrations in the Tees Estuary. In response to the ExA [PD-018], the applicant [REP7-025] stated that the European sites do not have published condition assessment data. The underlying Sites of Special Scientific Interest (SSSI) do have condition assessment data; however, the condition of the SSSIs may not be directly relatable to the European site. It stated that NE's Site Search website for the Teesmouth and Cleveland Coast SSSI reports the condition status of qualifying bird species as 'not recorded'. NE [REP7-039] clarified that its earlier reference to 'unfavourable condition' of the Teesmouth and Cleveland Coast SPA and Ramsar site was made in the specific context of protected sites subject to excess nutrients and provided a copy of the evidence pack [REP7-040], which contained more information about nutrient pressure and risk of eutrophication.

C.4. FINDINGS IN RELATION TO ADVERSE EFFECTS ON THE INTEGRITY

C.4.1. The following European sites and qualifying features as identified in Table C.2 were further assessed by the applicant to determine if they could be subject to AEoI from the proposed development, either alone or in-combination:

- Berwickshire and North Northumberland Coast SAC
- Humber Estuary SAC
- River Tweed SAC
- Teesmouth and Cleveland Coast Ramsar site
- Teesmouth and Cleveland Coast SPA
- The Wash and North Norfolk Coast SAC
- Tweed Estuary SAC

C.4.2. The assessment of AEoI was made in light of the conservation objectives for the European sites [APP-040]/ [APP-041].

C.4.3. The ExA has decided that the following additional European sites and qualifying features as identified in Table C.2 should be assessed for AEoI from the proposed development in-combination:

- North York Moors SAC and SPA
- Northumbria Coast SPA and Ramsar site

C.4.4. Subject to the inclusion of these additional matters, the ExA is satisfied based on the information provided that the correct impacts have been assessed.

C.4.5. This section discusses overarching themes raised during the examination about stack heights and assessment of operational air quality effects, in-combination assessment and proposed mitigation measures, before addressing site-specific issues and providing conclusions with respect to AEoI for each site assessed.

Stack height and air quality effects

C.4.6. NE [RR-026] sought clarification of sensitivity testing undertaken in the air quality modelling of the stacks (in ES Appendix 8B [APP-191]), and confirmation that greater dispersion from taller stacks would not impact European sites.

C.4.7. The applicant [REP1-007] stated that the stack height determination considered likely impacts within and at the upper and lower bounds of the Rochdale Envelope, as set out in [APP-191]. Paragraph 8B.7.2 of [APP-191] stated that emissions from the auxiliary boilers for Phases 1 and 2 were modelled at heights between 20m and 80m, at 5m increments between 30m and 70m. For the flare stack, emissions were modelled with an initial release height between 65m and 100m. Short-term emissions from the fired heaters were modelled at heights between 20m and 70m at 5m increments. The results of the modelling, showing predicted ground level concentrations for the annual mean and maximum one-hour NO_2 concentrations, are shown on Plate 8B-2. Paragraphs 8B.7.3 to 8B.7.5 of [APP-191] stated that the graphs show the optimum release heights for dispersion of pollutants against visual constraints for each of the stacks, with the applicant noting:

- Auxiliary boilers: the benefit of incremental increases in release heights become less pronounced at a height greater than 40m, although concentrations continue to reduce slowly. A release height of 70m is predicted to provide a sufficient degree of dispersion, with benefits levelling out above this height.
- Flare stacks: there is a predicted steady decline in ground level impacts with an increase in release height although there is no clear height at which the rate of decline diminishes. The minimum height proposed is 65m due to safety reasons.
- Fired heaters: the benefit of incremental increases in release height begins to be less pronounced at heights greater than 35m above ground level (AGL).

C.4.8. Schedule 15 of the draft DCO [REP2-004] secured minimum heights of each stack above the minimum release heights noted in [APP-191].

C.4.9. The first change application [CR1-044] [CR1-045] resulted in an additional flare stack for Phase 2 and removal of the air separation unit (ASU) from Phase 1. The additional flare stack would be subject to the same parameters as the Phase 1 flare stack specified in Schedule 15 of the draft DCO [REP2-004]. The applicant [CR1-050] stated that these components had potential to change conclusions regarding operational emissions to air and provided an updated HRA Report [CR1-023]/ [CR1-025] reflecting revised air quality modelling [CR1-045]. Some change was recorded in [CR1-045], but the applicant concluded it would not affect the AEoI conclusions.

C.4.10. The first change application [CR1-044] [CR1-045] resulted in an increase to the maximum height of the CO_2 absorber column (from 56m Above Ordinance Datum (AOD)) to 59m AOD) and the flash vessels (from 58m to 73m AOD). The revised parameters were secured in Schedule 15 of the draft DCO [CR1-015]. The applicant [CR1-050] stated that these components would not affect the HRA.

C.4.11. NE [REP2-072] stated that following discussion with the applicant, the approach was considered acceptable to establish the worst-case for stack heights and it was

satisfied that relevant ecological sites were assessed. NE ([REP4-028]) confirmed this matter was agreed.

C.4.12. Based on the findings of the examination, the ExA is satisfied that the worst-case for stack heights has been identified and assessed by the applicant, and that the associated parameters are appropriately secured through the draft DCO. The ExA is satisfied that an assessment of AEoI from operational air quality change as a result of the proposed development can be based on this information.

In-combination effects

C.4.13. The applicant's approach to in-combination assessment of AEoI is presented in sections 5 and 7 of the HRA Report [REP6a-010]/ [REP6a-012], as described in section C.2 of this appendix.

C.4.14. NE [RR-026] sought additional information about thematic areas and temporal overlap with neighbouring schemes to inform assessment. In response to ExQ1 [PD-008], NE ([REP2-072], Q1.4.14), provided a Gantt chart indicating the scope for temporal overlap with a range of Teesside projects, which it described as being significant. An Annex to NE's Gantt chart [REP2-071] provided supplementary information. It stated that the in-combination assessment needed to fully quantify impacts on SPA bird qualifying features, including impact over time.

C.4.15. In response to ExQ2, the applicant ([REP5-042], Q2.4.2) confirmed it had updated the HRA Report [REP5-011] to assess LSE alongside other plans and projects. It stated that [REP5-011], Table 7-1 provides a comprehensive summary. The applicant [REP5-051] stated that figure 7 of [REP5-011] shows spatial overlap between the proposed development, other projects and plans and the Teesmouth and Cleveland Coast SPA and Ramsar site. It stated that temporal overlap is inherent within the shortlisting process in ES Chapter 23 [REP5-015] so all other projects and plans shown on figure 7 can be considered to have temporal overlap.

C.4.16. The applicant stated [REP5-051] that impact pathways have been considered along with temporal overlaps in the assessment in [REP5-011] but it is not possible to include numbers of birds impacted for the proposed development in-combination with other projects and plans as data would be collected at different times and following different methods.

C.4.17. NE [RR-026] also queried the applicant's approach to assessment of in-combination effects, including whether local plan allocations of the relevant local authorities had been included in the cumulative traffic scenario in ES Chapter 8 [APP-060] and if point source emissions were included.

C.4.18. The applicant [REP1-007] responded as follows:

- TEMPRO was used to allow for local plan allocations, together with the combined impact from schemes listed in table 15A-42 of the Transport Assessment [APP-210].
- A standard approach to assessing cumulative and combined effects was used, considering sources with the potential to be considered cumulatively based on location, emission profiles and emissions' estimates and data where it exists.

C.4.19. The applicant [REP5-051] clarified that future year base traffic data was increased using TEMPRO factors, including an allowance for traffic generated by schemes in local plans. It confirmed that the in-combination assessment for traffic only includes

vehicle emissions and not point source emissions, as these are existing and accounted for in the background or construction.

C.4.20. NE was satisfied with the scope of the in-combination assessment [REP7a-061].

C.4.21. Based on the findings of the examination, the ExA is satisfied that an assessment of AEoI from the proposed development in-combination with other plans or projects can be based on this information and that no other plans or projects are required to be taken into account.

Mitigation measures

C.4.22. The HRA Report [REP6a-010]/ [REP6a-012] identified mitigation measures in section 6. These were taken into account in the applicant's assessment of effects on integrity. Measures included commitments on HDD design, timing of construction works, use of noise barriers and visual screening, a construction phase lighting scheme and water management plan (WMP).

C.4.23. The measures were set out in the Framework CEMP [REP8-003]/ [REP8-041] and its Appendix B Outline WMP [APP-045] and Appendix C Indicative Lighting Strategy [APP-046]. Submission and approval of a detailed CEMP that is substantially in accordance with the Framework CEMP is secured through Requirements 15(3) and 15(4) of the draft DCO [REP7a-003]/ [REP7a-006].

Sites for which AEoI can be excluded

C.4.24. The applicant concluded in its HRA Report [REP6a-010]/ [REP6a-012] that the proposed development would not adversely affect the integrity of all European sites and features assessed, either alone or in-combination with other projects or plans, namely:

- Berwickshire and North Northumberland Coast SAC
- Humber Estuary SAC
- River Tweed SAC
- Teesmouth and Cleveland Coast Ramsar site and SPA
- The Wash and North Norfolk Coast SAC
- Tweed Estuary SAC

C.4.25. Prior to the examination commencing, NE [RR-026] confirmed it agreed with the applicant's conclusion of no AEoI in respect of the European sites listed below, although it raised some concerns [RR-026] [REP2-072] about the assessment method and mitigation (as discussed in Table C.3):

- Berwickshire and North Northumberland Coast SAC
- Humber Estuary SAC
- The Wash and North Norfolk Coast SAC

C.4.26. In relation to the River Tweed SAC and the Tweed Estuary SAC, and the additional European sites for which the ExA considered LSE could not be excluded (North York Moors SAC and SPA, and Northumbria Coast SPA and Ramsar site) there was some examination around points of clarification as described in Table C.3. The applicant's conclusion of no AEoI was agreed by NE for these European sites and features by the close of examination. The matters of AEoI subsequently agreed for these sites and features are included in Table C.3.

C.4.27. The ExA is satisfied on the basis of the information provided that AEoI on all the European sites and qualifying features listed in Table C.3 can be excluded. The complete details are provided in Table C.3 below.

Table C.3: LSE to European sites and qualifying features for which AEoI from the proposed development can be excluded

European site(s)	Qualifying Feature(s)	AEoI alone or in-combination	Mitigation required to avoid AEoI
Berwickshire and North Northumberland Coast SAC Humber Estuary SAC	Grey seal	**Disturbance in functionally linked habitat.** The applicant concluded no AEoI in its HRA Report [REP6a-010]/ [REP6a-012]. The applicant assessed potential noise disturbance to seal using functionally linked habitat at Seal Sands and Greatham Creek. It used 134 decibel (dB) for the permanent threshold shift (PTS) and 154 dB for temporary threshold shift (TTS) at which there could be auditory impacts. It concluded that there would be an increase in total sound exposure level of 2dB above the ambient level (from 123dB to 125dB) at the HDD site that could result in perceptible change for seals but would be below the PTS and TTS. Mitigation in the form of trenchless technologies at watercourse crossings of the River Tees and Greatham Creek (shown on [APP-093], ES figure 5-2 and the [AS-008]) and noise abatement barriers was proposed to achieve a 10dB reduction. NE [RR-026] agreed with the PTS and TTS used but stated that disturbance can occur at levels below these thresholds. Predicted sound levels were close to the TTS. It requested additional assessment of cumulative noise and further information to provide confidence in the mitigation proposed. It requested information to justify the applicant's position that seals would haul out at Seal	Use of trenchless technologies, noise abatement barriers and restriction of HDD works at Seal Sands to take place between September and November. The proposed location of barriers is shown on figures 14a and 14b of annex A of the HRA Report [REP6a-010]/ [REP6a-012]. Measures are specified in the Framework CEMP [REP8-003]/ [REP8-041], which would be secured by Requirement 15(3) of the draft DCO [REP7a-003]/ [REP7a-006]. The ExA is satisfied based on the applicant's assessment and proposed mitigation that monitoring of seal qualifying features during construction is not
The Wash and Norfolk Coast SAC	Harbour seal		

European site(s)	Qualifying Feature(s)	AEoI alone or in-combination	Mitigation required to avoid AEoI
		Sands instead of Greatham Creek during HDD works, including assessment of potential barrier effects. The applicant [REP1-007] considered a new noise modelling location (Eb3) to represent the ambient noise level at the mouth of Greatham Creek. It provided updated modelling using A-weighting to allow a better comparison with auditory injury thresholds, stating that A-weighted values are considerably lower than the TTS and PTS thresholds. It concluded there was limited potential for disturbance and there would be no barrier to movement between Greatham Creek and Seal Sands. NE ([REP2-072], Q1.4.9) was satisfied there would be no visual disturbance but uncertainty remained about noise. NE advised that disturbance to behaviour should be monitored to inform the need for further mitigation. The applicant submitted an updated HRA Report [CR1-023]/ [CR1-025] responding to these matters. NE [REP4-028] requested M (mammal) weighted noise data to inform mitigation for noise impacts at Greatham Creek. It offered to provide information to support a seal monitoring programme for HDD works. The applicant [REP5-051] updated modelling to provide M-weighted adjusted results. It concluded that without noise abatement barriers, the sound exposure levels (SEL) at Greatham Creek would be 30dB below the TTS threshold in a worst-case scenario. The M-weighted SEL value at Greatham Creek would be only 4dB above the ambient sound level (of 100dB), which it described as a difference unlikely to be	required. The ExA does not propose any changes in the rDCO in this regard.

European site(s)	Qualifying Feature(s)	AEoI alone or in-combination	Mitigation required to avoid AEoI
		perceptible to seals or sufficient to cause disturbance. Use of noise abatement barriers around the entire HDD site was expected to further reduce SELs below ambient. Following NE's assessment method there was minimal potential for disturbance to seals during HDD works. Additional monitoring was not considered necessary. The applicant further amended the HRA Report [REP6a-010]/ [REP6a-012]. Annex I stated that with acoustic barriers around HDD sites, the cumulative M-weighted SEL in Greatham creek is 1dB above the ambient SEL (at 101dB). HDD works would occur behind natural mound at Greatham Creek, which would provide further screening. HDD works would be restricted to between September and November, avoiding sensitive periods at Seal Sands (mid-June to end of August). It maintained that due to negligible disturbance being predicted, monitoring was not required but in response to [PD-018], stated that it could be secured through amendment of Requirement 15(7)(l) of the draft DCO [REP7a-003]/ [REP7a-006] to refer to a Bird and Seal Mitigation and Monitoring Plan if the ExA disagreed. NE [REP7-039] confirmed that this matter was closed and agreed with the conclusion of no AEoI.	
Humber Estuary SAC	Sea lamprey	**Disturbance in functionally linked habitat.**	Standard working hours and lighting strategy for extended hours. Indicative Lighting Strategy (ILS)

European site(s)	Qualifying Feature(s)	AEoI alone or in-combination	Mitigation required to avoid AEoI
		The applicant concluded no AEoI in its HRA Report [REP6a-010]/ [REP6a-012]. NE agreed with the conclusion of no AEoI [RR-026].	(Construction) [APP-046] is Appendix C to the Framework CEMP [REP8-003]/ [REP8-041]. It would be secured by Requirement 15(7)(c) of the draft DCO [REP7a-003]/ [REP7a-006].
North York Moors SAC	Northern Atlantic wet heaths with Erica tetralix European dry heaths Blanket Bogs	**Atmospheric pollution during operation from the proposed development in-combination.** The applicant in its HRA Report [REP6a-010]/ [REP6a-012] maintained there would be no LSE and did not consider these European sites for AEoI. The ExA decided on a precautionary basis that this matter should be considered for AEoI (see section C.2 of this appendix). Whilst the initial 1% critical level or load used by the applicant for screening of significance in accordance with the EA and Defra guidance was exceeded, the applicant's air quality modelling as summarised in the HRA Report [REP6a-010]/ [REP6a-012] showed that for NO_x, nitrogen and acid deposition, the PC of the proposed development in combination would remain below 10% of	None required.
North York Moors SPA	Merlin		

European site(s)	Qualifying Feature(s)	AEoI alone or in-combination	Mitigation required to avoid AEoI
	Golden plover	the critical level or load on APIS (Tables 4-9, 4-11 and 4-12). The applicant in its HRA Report [REP6a-010]/ [REP6a-012] stated that the in-combination modelling showed that contribution of the proposed development to nitrogen and acid deposition would not be visible when reported to 2 decimal places. Annex D of the HRA Report [REP6a-010]/ [REP6a-012] stated that a review of habitat mapping showed blanket bog was not present in the area of North York Moors SAC that would be affected by deposition, and that heathland qualifying features (of which dwarf shrub heath may be used by the SPA birds during breeding) have a critical load of 5 to 10kg/N/ha/yr on APIS, for which the PC of the proposed development in combination would remain below 10%. NE ([REP7-039], Q2.5.1) confirmed no further assessment was required based on the entire in-combination impact of the assessed pollutants on the European sites. It confirmed [REP7a-061] that these matters were resolved and accepted the applicant's conclusion that there would not be a significant effect.	
Northumbria Coast SPA and Ramsar site	Purple sandpiper Ruddy turnstone Little tern		
River Tweed SAC	Atlantic salmon Sea lamprey	**Disturbance in functionally linked habitat.** The applicant concluded no AEoI in its HRA Report [REP6a-010]/ [REP6a-012]. NE [REP2-072] stated that noise and sediment can create a barrier to movement. Between 1 May and 30 November, activities should be restricted to daylight hours to avoid activity during peak migration periods for annual Salmonid migrations. It advised that	Standard working hours and lighting strategy for extended hours. ILS (Construction) [APP-046] is Appendix C to the Framework CEMP [REP8-003]/ [REP8-041]. It would be secured by Requirement 15(7)(c) of the
Tweed Estuary SAC	Sea lamprey		

European site(s)	Qualifying Feature(s)	AEoI alone or in-combination	Mitigation required to avoid AEoI
		AEoI could be ruled out based on proposed mitigation measures in table E4 and E5 of the HRA Report [REP6a-010]/ [REP6a-012]. NE [REP2-072] agreed with the conclusion of no AEoI.	draft DCO [REP7a-003]/ [REP7a-006].

C.4.28. The applicant's conclusions of no AEoI in relation to the Teesmouth and Cleveland Coast SPA and Ramsar site were disputed by IPs and discussed during the examination. The account of the examination of these matters is set out in the following sections.

Teesmouth and Cleveland Coast SPA and Ramsar site

C.4.29. A description of the European site and its qualifying features, and potential effects resulting from the proposed development, are provided in section 3 and 6 of the applicant's HRA Report [REP6a-010]/ [REP6a-012]. It provided an assessment of the potential for AEoI from:

- Direct habitat loss due to HDD collapse (construction) – habitats supporting bird qualifying features.
- Loss of FLL (construction, operation and decommissioning) – habitats supporting bird qualifying features.
- Noise disturbance (construction, operation and decommissioning) – bird qualifying features.
- Visual disturbance (construction and decommissioning) – bird qualifying features.
- Atmospheric pollution (construction, operation and decommissioning) – habitats supporting bird qualifying features.
- Water quality (construction, operation and decommissioning) – habitats supporting bird qualifying features.

Overarching issue – method for assessing effects to bird populations

C.4.30. The applicant's assessment of effects to bird qualifying features in the HRA Report [APP-040]/ [APP-041] was informed by baseline ornithology surveys, the results of which were summarised in tables by impact pathway (Tables 4-1, 4-2 and 4-4 to 4-6). The full results were presented in ES Appendix 13A [APP-208]. Paragraph 13A.2.5 of [APP-208] stated that survey work was carried out in 3 broad areas, including the Foundry, Seal Sands and North Tees Marshes during 2022 and 2023. The survey areas were divided into count sectors based on factors including habitat suitability within a 500m radius of the proposed development. Updated survey work for sectors that were previously subject to access restrictions was carried out between January and March 2024, and reported in the Ornithology Supplementary Baseline Report [AS-037]. Table 13A-1 presented peak counts and frequency of species exceeding 1% of the Teesmouth and Cleveland Coast SPA population. In response to a request from the ExA [PD-018], NE [REP7-039] confirmed it was satisfied with the level of survey effort.

C.4.31. The first change application [CR1-044] [CR1-045] resulted in some survey sectors where bird numbers were recorded greater than or equal to 1% of the SPA population no longer being affected. The assessments of loss of FLL, noise and visual disturbance to bird qualifying features were updated in the HRA Report [CR1-023]/ [CR1-025] to account for this. Sectors and birds no longer affected were identified as:

- Sector 3a: black headed gull, lapwing, redshank and teal.
- Sector 6: black headed gull, herring gull, knot, redshank and sanderling.
- Sector 7: black headed gull, common tern, cormorant, herring gull, redshank, sandwich tern and lapwing.
- Sector 8a: black headed gull, common tern, herring gull, lapwing, redshank and sandwich tern.

C.4.32. The first change application resulted in Cowpen Bewley being confirmed as the applicant's selected transmission and distribution infrastructure connection. The applicant [CR1-023]/ [CR1-025] stated that this increased certainty that count sectors B4, B5 and B6 could be affected, and that mitigation described in the HRA would be required for temporary loss of FLL during construction.

C.4.33. NE [RR-026] did not support the applicant's method for assessing the impact pathways of loss of FLL, noise and visual disturbance to bird qualifying features. The applicant's method was based on numbers recorded in sector surveys and the percentage of the SPA population this represented. NE [RR-026] stated that impacts on individual bird species should be assessed for the whole project rather than on a sector basis. It advised that the assessment should be presented for different stages of the proposed development, considering overlapping activities. It requested data be combined to provide a waterbird total.

C.4.34. The applicant [REP1-007] stated that impacts were assessed field by field due to project complexity, duration of construction works and that works are not likely to occur across all parts of the proposed development simultaneously. It stated that the peak bird counts for the whole development area were not totalled as it covers a large area and birds would use different locations at different times. The applicant considered that sufficient conservatism was built into the assessment.

C.4.35. In response to a question from the ExA [PD-015], NE ([REP5-065], Q2.4.2) stated there was still inadequate information to fully assess the impacts of the proposed development on SPA bird populations. It stated that the applicant was undertaking an assessment of how the SPA birds might be impacted across sectors during construction and it was awaiting the results of this work.

C.4.36. The applicant [REP5-051] developed a new bird count method with input from NE to progress revised calculations and assessment. It presented the updated information in the HRA Report [REP6a-010]/ [REP6a-012]. Annex J assessed impacts on the waterbird assemblage accounting for work phases of the proposed development based on an indicative outline construction programme (Chart 1 in Annex J), which the applicant stated represented a worst-case scenario for noise-generating activities. Section 2.4 of Annex J described the method used for the assessment. Section 2.5 explained why the applicant considers the assessment to be conservative. It used peak counts and the percentage of the SPA birds that could be disturbed was calculated based on the assumption that the peak count could occur in any month when works are taking place although it was considered unlikely that the peak counts would be present during each month of construction. Annex J4 summarised the monthly peak counts for individual bird qualifying features of the SPA and Ramsar site in each count sector and the percentage of the population that could be affected during each month.

C.4.37. NE [REP7a-060] agreed with the assessment method in Annex J of HRA Report [REP6a-010]/ [REP6a-012] and confirmed it was a robust assessment on which to inform impacts on the SPA.

C.4.38. The ExA is satisfied, on the basis of the information provided, that the applicant's method for assessment of AEoI to bird qualifying features of the Teesmouth and Cleveland Coast SPA and Ramsar site as presented in the HRA Report at D6a is appropriate and provides a suitable basis from which to inform AEoI conclusions on loss of FLL, noise and visual disturbance.

Overarching issue – mitigation and monitoring

C.4.39. Whilst NE [REP7a-060] was satisfied with the assessment method for bird qualifying features in the HRA Report [REP6a-010]/ [REP6a-012], it did not agree with the applicant's definition of the wintering period and stated that the wintering period should be defined as October to March. It was satisfied that assessment conclusions were valid but advised that mitigation and monitoring should be secured for the winter period.

C.4.40. The applicant provided an updated Framework CEMP [REP8-003]/ [REP8-041] that included a commitment to prepare a bird mitigation and monitoring plan that accounted for the final construction programme, and defined the winter period as October to March. The draft DCO [REP7a-003]/ [REP7a-006] was updated to require submission and approval by the relevant planning authority of a bird mitigation and monitoring plan, following consultation with NE, under Requirement 15(7)(l).

Direct habitat loss due to HDD collapse (construction)

C.4.41. The applicant assessed the potential for AEoI because of direct habitat loss from use of trenchless technologies, including HDD and micro-bored tunnelling (MBT), at watercourse crossings in section 6.1 of the HRA Report [REP6a-010]/ [REP6a-012]. The potential for HDD collapse and drilling fluid leakage to adversely affect water quality resulting in AEoI was considered. It concluded that through detailed design of the HDD launch point and management and monitoring during installation there would be no AEoI. Commitments were specified in the Framework CEMP [APP-043], including a drilling method statement, which would form the basis of contingency plans for clean-up and pollution control in the event of accidental spillage. In-combination effects were assessed in Table 7-1 of the HRA Report [REP6a-010]/ [REP6a-012] and no AEoI was concluded.

C.4.42. NE [RR-026] advised that commitments should be logged in a framework CEMP and mitigation and compensation for HDD collapse should be secured in the DCO. The ExA ([PD-008], Q1.4.11) sought clarification as to what were needed given commitments in the Framework CEMP ([APP-043], Tables 7-2 and 7-7). NE [REP2-072] provided suggested wording for consultation on clean-up and advance agreement of access routes in intertidal areas, and the applicant submitted an updated Framework CEMP [REP2-011], which included a commitment to produce a clean-up plan and to review any lessons learnt from HDD works on NZT. The applicant [AS-039] stated that [REP2-011] addressed the principle of what NE sought although it did not use NE's suggested wording. It confirmed that no access was required to the intertidal environment and consultation with NE about HDD works was secured in the Framework CEMP [REP2-011]. The applicant ([REP2-027], Q1.4.4) confirmed an 'approximate worst-case theoretical area of 708m^2 of the SPA could be subject to collapse and… direct loss if HDD collapse occurred.'

C.4.43. NE [REP4-028] considered this matter was agreed based on commitments being included in the Framework CEMP [REP2-011] and secured in a final iteration. Requirement 15(3) of the draft DCO [REP7a-003]/ [REP7a-006] requires submission and approval of a detailed CEMP, which must be substantially in accordance with the Framework CEMP [REP8-003]/ [REP8-041].

C.4.44. The ExA is satisfied that this LSE pathway will not result in AEoI to the European site from the proposed development alone or in-combination based on the identified mitigation being implemented.

Temporary and permanent loss of FLL (construction and operation)

C.4.45. The applicant assessed potential for AEoI from the permanent and temporary loss of FLL used by bird qualifying features of the SPA and Ramsar site as a result of the proposed development alone in section 6.2 and 6.3 of the HRA Report [APP-040]/ [APP-041]. In-combination effects were assessed in Table 7-1.

C.4.46. The applicant [APP-040]/ [APP-041] stated that permanent loss would only occur in main site count sectors 9 and 12, where blacked-headed and herring gull were recorded but at frequencies below 1% of the site populations during the wintering period. The species were recorded at frequencies more than 1% of the population during breeding season but the applicant noted that the SPA designation is for non-breeding birds. The applicant stated that habitats within and surrounding the main site have been subject to ongoing disturbance from industrial activity and data shows that use of the habitats is opportunistic.

C.4.47. The applicant [APP-040]/ [APP-041] considered temporary FLL loss at The Foundry, Seal Sands and North Tees Marshes. At The Foundry, blacked headed and herring gull were recorded in some count sectors at a frequency above 1% of the site population (other bird qualifying features recorded were all below 1% of the site population) but for similar reasons as to the permanent loss, concluded that AEoI would not occur. At sector G4 Seal Sands, the applicant committed to construction works only taking place between March and September to avoid disturbance of non-breeding birds recorded, including lapwing, shoveler and blacked headed gull. It stated that habitat at Seal Sands would be restored post-construction and available to non-breeding birds. At sectors B4, B5 and B6 North Tees Marshes a similar commitment was made to avoid impacts from temporary loss of FLL to non-breeding shoveler, lapwing, ruff, wigeon and blacked-headed gull if connection at Cowpen Bewley was selected. Figure 14a in [APP-040]/ [APP-041] showed locations subject to time limited works.

C.4.48. NE [REP2-072] stated that the scale of habitat loss was unclear and requested an outline of the function of FLL to be lost through pipeline construction and a phasing plan for restoration. The applicant updated the HRA Report [CR1-023]/ [CR1-025] to reflect the Ornithology Supplementary Baseline Report [AS-037]. It stated [AS-039] that survey information identifies bird roosts and that other areas surveyed support foraging birds, although occasional roosting could not be ruled out. It confirmed that all habitats surveyed north of the River Tees were assessed as FLL.

C.4.49. In response to the ExA [PD-008], the applicant ([REP2-022], Q1.4.20) stated that the approach to biodiversity reinstatement is set out in the Outline LBMP [REP2-009], with paragraph 4.7.1 committing to this being like-for-like. Figure 1 of the Indicative Pipeline Routings [APP-093] shows the location of reinstatement with detail available. A final LBMP is secured through Requirement 4 of the draft DCO [CR1-015].

C.4.50. This matter remained under discussion with NE at D4 [REP4-028] and the ExA ([PD-008], 2.4.2) sought an update. NE [REP5-065] confirmed it was awaiting quantification of FLL losses and information on how soon temporarily lost FLL would be restored. The applicant [REP5-051] confirmed that in a worst-case scenario 21.9 hectares of FLL could be temporarily lost, comprising 14.15 hectares at Saltholme to Cowpen Bewley for 7 months between March and September (avoiding breeding season) and 7.75 hectares at Brinefields (avoiding breeding season but no duration specified). It stated that permanent FLL loss would be less than 21.9 hectares but was not yet quantified as the working width was undetermined. It confirmed

[REP5-051] that land would be functional as soon as pipeline installation is complete and working areas removed, as the soft unvegetated surface soils would provide foraging resources regardless of efforts to restore habitats. It stated [REP5-051] that aside from the main site, permanent structures are located within or adjacent to existing infrastructure or areas undergoing earthworks or industrial activity that render habitat useless other than for opportunistic use by small numbers of water birds. It provided an updated HRA Report [REP5-011] including this information. Figures 16a and 16b showed the extent of permanent FLL loss and locations, determined through analysis of the baseline bird count data to identify areas of suitable habitat that overlap with the proposed development, or that would otherwise be impacted by visual or noise disturbance.

C.4.51. NE [REP6a-034] and [REP7-039] advised that permanent loss of FLL remained an outstanding matter. It stated that the applicant's survey information showed the main site was used by significant number of SPA birds, with 28 herring gull recorded roosting in March 2022, an important behaviour which was essential to survival. NE requested an assessment of permanent loss of FLL in the context of the wider environment and available roosting habitat, and further information to inform assessment of permanent loss of habitat either side of the River Tees crossing.

C.4.52. The applicant [REP7-024] stated that permanent habitat loss would occur in count sectors 9 and 12 of the main site. Based on count data, and the site clearance and industrial activity in Teesworks, the applicant did not regard any habitats within or immediately adjacent to the main site, including count sectors 9 and 12, as being functionally linked to the SPA. It stated that FLL is defined as being critical to, or necessary for, the ecological or behavioural functions in a relevant season of a qualifying feature for which a European site has been designated. The main site habitat comprises of bare ground and crushed hardcore; the land is used by birds for loafing and resting, but the function and integrity of the SPA is not dependent on this land. It provided the following clarifications of its survey count data:

- At low tide, a peak count of 6 herring gulls in count sector 9 in January 2022 (mean frequency of 0.5), below 1% of the SPA and Ramsar site population.
- At low tide, a peak count of 40 herring gulls in count sector 12 in April 2023 (mean frequency of 5.75). This exceeds 1% of the SPA and Ramsar site population but the qualifying feature is non-breeding herring gull, and the count was recorded outside of the winter period.

C.4.53. The applicant [REP7-024] maintained its conclusion that there would be no AEoI from permanent loss of habitat within the main site.

C.4.54. The ExA [PD-020] requested the applicant to explain the implications of permanent loss of count sectors 9 and 12 if the habitat were assumed to be FLL, in the wider context of available roosting habitat. The applicant [REP7a-040] stated that the industrial land immediately south of the River Tees is in a state of constant flux as parts of it are cleared and new structures are built. Black-headed gulls and herring gulls are known to use terrestrial habitats opportunistically, as is the case with count sectors 9 and 12 and some of the adjacent count sectors. These bird species are known to roost, nest and loaf on the flat or gently sloping roofs of buildings and will readily utilise these and immediately adjacent terrestrial habitats that are close to coastal habitat. Such behaviour was observed on occasion on some of the now-absent former steelworks buildings by surveyors carrying out surveys for NZT. It did not regard construction of the proposed development on count sectors 9 and 12 as a complete loss of FLL (if it was considered to have that status), as it is likely to provide opportunities for gulls to use the proposed buildings opportunistically.

Roosting and foraging habitat of higher quality is abundant throughout the wider area, and most is covered by the SPA designation, the boundary of which was revised in 2020 to capture the most important areas of land and water used. Outside of the SPA the grassland and farmland habitats across Brinefields, Cowpen Bewley and land west of the railway line toward Greatham are favoured by these and other bird species. For count sectors 9 and 12 it considered there is no evidence these are of any more than local level importance for wetland birds, nor would the habitat losses in current form result in an effect on the individual species, waterbird assemblage or function and integrity of the SPA that is greater than negligible, taking into account the likely ongoing use of some of the proposed building infrastructure and surrounding habitats. The applicant did not regard this land as playing a key functional supporting role to the SPA in the context of the wider landscape and stated that the actual losses of habitat are unlikely to negate use by herring gull and black-headed gull.

C.4.55. The ExA [PD-020] requested NE to provide any further evidence it held that supports categorisation of count sectors 9 and 12 of the main site as FLL, and to comment on the applicant's definition of FLL and any implications for its advice if that definition was applied. NE [REP7a-060] confirmed it did not hold bird data on count sectors 9 and 12. It noted that the main site supports numbers of non-breeding herring gull of more than 1% of the SPA population over the wintering period (October to March) indicating that it is functionally linked, as shown in the HRA Report ([REP6a-010]/ [REP6a-012], Annex J Table J4-3). This included:

- sector 9 – peak count of 28 in March
- sector 10 – peak count of 38 in January
- sector 12 – peak count of 29 in March
- sector 14 – peak count of 58 in March

C.4.56. NE [REP7a-060] [REP7a-061] was satisfied with additional information provided by the applicant on the significance of permanent loss of FLL to herring gull and black-headed gull in [REP7a-040] and agreed with its conclusion of no AEoI.

C.4.57. The applicant also provided an assessment of potential permanent loss of habitat that could comprise FLL at Navigator Terminal (western landfall of the proposed River Tees crossing), which is used by wading birds, curlew and lapwing ([REP7-024], Appendix 1). It stated that permanent habitat loss would only occur at the location of the Above Ground Installation (AGI). It noted that the proposed development would be adjacent to a proposed CO_2 storage terminal, which received planning permission under ref 24/1208/FUL. The shadow HRA for this project had concluded that the land was not FLL. The applicant [REP7-024] concluded there would be no loss of FLL for qualifying species of the SPA and Ramsar site and stated its position aligned with advice provided by NE provided for planning permission ref 24/1208/FUL. The ExA [PD-020] sought confirmation from NE as to whether it was satisfied with the applicant's assessment of the Navigator Terminal. NE [REP7a-060] agreed with the applicant's conclusion of no AEoI based on the photographs showing that the FLL to be lost is unsuitable for SPA birds, as it comprises tall sward with bramble.

C.4.58. NE [REP7a-061] was satisfied with information about temporary loss of FLL based on the proposed timescales and details of restoration. It noted that the applicant committed to restore temporarily lost land immediately post works and confirmed that works should not prevent use of land by SPA birds. It advised that these measures should be secured in the DCO. It confirmed that it agreed with the applicant's conclusion of no AEoI in the HRA Report [REP6a-010]/ [REP6a-012].

NE [REP7-039] confirmed that proposals for restoration of temporarily lost FLL were sufficient subject to measures being secured in a CEMP.

C.4.59. In response to NE, the applicant [REP8-019] clarified that species recorded using the temporarily lost FLL were principally waders and gulls feeding by probing soft ground for invertebrates or other food items. The habitats present are short sward grassland and arable land. Installation of the proposed pipeline would require soil excavation and storage, followed by backfilling of the trench that would create unvegetated soils, which regardless of efforts to restore habitat would provide foraging resources immediately following construction. The applicant confirmed it had made no commitment to immediate restoration of temporarily lost FLL so no amendments to the draft DCO [REP7a-003]/ [REP7a-006] were made in response to NE. It clarified that measures for protection of retain vegetation, soil protection and handling, and temporary soil storage would be set out in the final CEMP, building on measures in the Framework CEMP [REP7a-011]. The Outline LBMP [REP7-021] commits to reinstatement of temporarily lost or damaged habitat on a like-for-like basis as shown in annex A, within timescales for reaching target condition used in the Defra metric. Final versions of the CEMP and LBMP are secured by Requirement 15(3) and 4 of the draft DCO [REP7a-003]/ [REP7a-006] respectively.

C.4.60. The ExA notes that the applicant and NE remained in dispute about whether count sectors 9, 10, 12 and 14 of the main site are FLL for herring gull and black-headed gull qualifying features of the Teesmouth and Cleveland Coast SPA and Ramsar site but NE agreed at close of examination that AEoI from permanent loss of FLL could nonetheless be excluded based on the applicant's assessment. The ExA is satisfied that permanent loss of FLL will not result in AEoI to the European site from the proposed development alone or in-combination based on the information presented about significance of the loss, including the identified potential for opportunistic use of some buildings forming part of the proposed development by the affected qualifying features for roosting and the abundance of more optimal habitat in the wider environment.

C.4.61. The ExA is satisfied that temporary loss of FLL will not result in AEoI to the European sites from the proposed development alone or in-combination based on the identified mitigation being implemented.

Noise disturbance (construction and operation)

C.4.62. The applicant [APP-040]/ [APP-041] assessed the potential for AEoI from noise disturbance to bird qualifying features. Construction phase impacts from the proposed development alone to common tern, sandwich tern, pied avocet, knot, ruff, redshank and waterbird assemblage were considered in section 6.5. Mitigation was proposed in the form of timing of works between March and September to avoid the non-breeding period in certain locations, and the avoidance of construction works in the European sites other than trenchless crossings, as illustrated on figures 14a and 14b in annex A. Operational phase impacts from the proposed development alone to black-headed gull and herring gull were considered in section 6.7. The proposed development in-combination with other project and plans was assessed for the same bird qualifying features in Table 7-1.

C.4.63. The applicant used guidelines in the Waterbird disturbance mitigation toolkit (Institute of Coastal and Estuarine Studies (IECS), 2013) (the 'Waterbird Toolkit') as part of its assessment. It stated that the methodology was discussed with NE and included a 70dB threshold, consistent with the NZT DCO, and change in baseline

noise of more than 3dB. The applicant stated that worst-case construction noise predictions were used in the absence of site-specific details, which would only be available after contractor appointment. With the proposed mitigation (outlined in ES Chapter 11 [PDA-007] and secured through the Framework CEMP [REP8-003]/ [REP8-041]), the applicant concluded no AEoI from noise disturbance during construction. It concluded no AEoI from noise disturbance during operation, as predicted noise levels would be below 60dB at the worst affected location (a small area of dune habitat north of the main site, where black-headed gull and herring gull were recorded).

C.4.64. NE [RR-026] did not support the use of the Waterbird toolkit to establish noise levels for bird disturbance. It confirmed ([REP2-072, Q1.4.12) in response to the ExA [PD-008] that it is not aware of any alternative formal guidance but had advised the applicant during meetings how to approach the assessment. NE confirmed [REP4-028] that its concerns about use of the Waterbird toolkit were being addressed through broader dialogue on the assessment of disturbance from noise.

Construction noise

C.4.65. NE [RR-026] requested more detail about predicted change to the baseline noise environment, and quantification of impulsive noise. It stated [REP2-072] that the noise measurement type is required, without which the dB level is meaningless as the level stated could be an average that masks damaging noise effects.
NE [RR-026] was supportive of the proposed mitigation (noise barriers and timing of works) but was unclear if measures would be effective in the absence of the requested information. It disagreed that birds would be habituated to noise. It requested more detail about works close to the River Tees pipeline crossing and an appraisal of mitigation opportunities, noting that this is a critical area for waterbirds.

C.4.66. The applicant [REP1-007] reiterated that assessment had followed the approach used in the NZT DCO and considered change from baseline in locations where a change of more than 3dB would occur, which would result in noise levels exceeding 55dB. It stated that baseline noise data is presented in table 4-3 of [APP-040]/ [APP-041], showing LA_{eq}^2 values (day and night) at 13 monitoring locations. Predicted noise levels in the absence of mitigation were shown on figures 7 to 10 of [APP-040]/ [APP-041]. The applicant confirmed that construction of the River Tees crossing is expected to take 50 weeks (worst-case), with acoustic barriers proposed to mitigate effects. It stated that further assessment was not possible without a detailed construction programme.

C.4.67. NE stated [REP5-065] that it was awaiting noise modelling of LA_{max} noise levels during construction and a technical note on noise and bird disturbance from the applicant. The applicant [REP5-051] stated that the revised bird sector count method would be used alongside noise contours to show the attenuation that would be achieved by acoustic barriers. It confirmed [REP6-006] that pipe-stringing was assessed in the HRA Report [REP5-011] and mitigation applied in the form of screening. The applicant submitted an updated HRA Report [REP6a-010]/ [REP6a-012]. Annex J described the applicant's revised method for assessing disturbance impacts to bird qualifying features during construction (as described above). Figures 18c, 20c and 22c of annex A provided noise contours showing the highest predicted L_{Aeq} noise levels (the average noise level) during construction at the main site, Bran Sands Lagoon and Dabholm Gut, Navigator, Seal Sands and Cowpen Bewley, taking into account mitigation including use of rotary or continuous flight auger (CFA) piling and acoustic barriers. The percentage of each count sector with habitat available to bird qualifying features during

construction after mitigation was applied, based on noise levels being below the 60dB threshold was summarised in Table J-3. A commitment to use of rotary or CFA piling was secured in the Framework CEMP (table 8-4) [REP8-003]/ [REP8-041].

C.4.68. The applicant also updated the HRA Report [REP6a-010]/ [REP6a-012] with Annex K, which provided L_{Amax} contours (representing the loudest single noise event during construction), without and with mitigation. The applicant stated that due to high fluctuation in noise emissions, it considered the L_{Amax} from activities generating impulsive noise would likely be significantly higher than the time averaged L_{Aeq} noise levels. It assessed impulsive noise from a pneumatic breaker breaking concrete and a hydraulic hammer for set up and anchor of HDD crossings. Predicted unmitigated L_{Amax} noise levels at decreasing distance from the main site and AGIs (50m to 500m) were presented in Table K-2; predicted levels with mitigation (assuming a reduction of 10dB from acoustic barriers) were presented in Table K-4. Information was also displayed visually on figures K.1a to K.6d. The likely time and duration of activities generating impulsive noise is provided in Table K-5. The applicant stated that as it had committed to use of rotary or CFA piling, which does not result in impulsive noise, piling L_{Amax} was not considered further.

C.4.69. Annex L of the updated HRA Report [REP6a-010]/ [REP6a-012] provided more information about design parameters of the acoustic barriers and the construction plant likely to be used, including at the HDD drilling and stringing sites. It stated that additional mitigation could be implemented to achieve up to a further 20dB sound reduction if it was identified during detailed design (post-DCO consent) this was needed. It provided examples of jackets on pneumatic drills, acoustic covers on compressors, shrouds on piling rigs and cranes, and mufflers on machinery.

C.4.70. The applicant maintained its conclusion of no AEoI from construction noise based on the information in the updated HRA Report [REP6a-010]/ [REP6a-012].

C.4.71. The applicant's Second Change Application Report [REP7-011] stated that change 5 would further increase the distance between the European sites and noise-generating activity, as locations assessed would be removed from the order limits. The HRA Report was not updated to reflect this change, but the applicant stated that its HRA conclusions were more precautionary because of the change.

C.4.72. NE [REP7a-061] was satisfied with the overall method in Annex J. It noted that Annex J states that with mitigation less than 1% of the waterbird assemblage would be disturbed in all months except for March 2027 based on the outline construction programme. However, in March 2027 up to 1.13% of the waterbird assemblage could be disturbed, including more than 1% of the redshank population. NE advised that despite this level of disturbance, it agreed with the applicant's conclusion of no AEoI from the proposed development alone and in-combination based on details in the applicant's indicative outline construction programme, Annexes J and K of [REP6a-010]/ [REP6a-012] and the following factors:

- duration of when more than 1% of the SPA waterbird assemblage will be disturbed is limited to 1 month
- the month is March, at the end of wintering period and unlikely to experience freezing period when birds are under most stress, and
- the nature and scale of works and predicted noise levels.

C.4.73. NE [REP7a-061] advised that the applicant's commitment in Annex K to mitigation delivering a further 10dB reduction in noise during construction should be secured in

the CEMP and DCO, with monitoring during construction and post-construction to determine effectiveness. It asked to be consulted on the final mitigation.

C.4.74. The applicant updated the Framework CEMP [REP8-003]/ [REP8-041] to include a commitment to implementing mitigation to achieve a further 10dB reduction in noise and outlined potential measures to achieve this in table 8-6. It requires the final location and specification of acoustic measures to be detailed in a bird monitoring and mitigation plan, which would be secured in the DCO as described above.

Operational noise

C.4.75. NE [REP7a-061] agreed that there would be no AEoI from noise disturbance at the main site based on levels not exceeding 60dB, or 55dB in the areas of land used by bird qualifying features in significant numbers (such as Bran Sands Lagoon). It noted potential for noise disturbance during maintenance and repair works at AGI sites, where activities such as concrete breaking have potential to exceed 55dB. It advised that a DCO requirement should be included for consultation with NE on maintenance and repair works outside of the main site to determine potential for noise disturbance, and to identify avoidance or mitigation measures if needed. It also advised that monitoring of birds during operation should be undertaken to aid better understanding of the technology associated with the proposed development, and its potential to result in noise disturbance.

C.4.76. The applicant [REP8-019] confirmed that maintenance works on the pipeline corridor including AGIs and at the River Tees crossing are assessed in the HRA Report [REP6a-010]/ [REP6a-012]. It stated that works would typically involve the occasional arrival by vehicle and walkover visual inspection, which would not exceed 55dB, and that operational activities in the vicinity of the River Tees crossing would not result in prolonged and continuous disturbance. It considered that the first planned extended shutdown maintenance of the proposed development would involve more extensive maintenance activities that have potential to cause noise effects. Requirement 17 of the draft DCO [REP7a-003]/ [REP7a-006] requires submission and approval of an environmental management plan for that period, and the applicant was content for NE to be a consultee on this plan if necessary.

In-combination noise

C.4.77. NE [REP7a-061] agreed with the applicant's conclusion of no AEoI due to noise disturbance from the proposed development in-combination with other projects and plans based on the applicant's phasing plan, bird assessment and noise modelling in the HRA Report [REP6a-010]/ [REP6a-012], including Annexes J and K.

C.4.78. The ExA is satisfied that the LSE pathway of noise disturbance (construction and operation) will not result in AEoI to the European sites from the proposed development alone or in-combination. For construction this is based on the identified mitigation in the HRA Report and Framework CEMP being implemented. The ExA is content based on the applicant's description of operational maintenance activities outside of the main site that these are not likely to generate noise levels in excess of 55dB and therefore does not consider that an additional requirement for consultation with NE in advance of such activities is needed in the DCO. The ExA cannot exclude the possibility that shutdown maintenance at the main site would generate noise levels more than 60dB and therefore recommends that Requirement 17 in the DCO provides for consultation with NE on the environmental management plan to ensure that it includes mitigation as needed. The ExA is satisfied that the applicant's conclusion of no AEoI during operation is based on noise modelling using worst-case parameters and has seen no evidence to indicate that the

structures and technology at the main site would generate additional or different noise beyond the identified effects. The ExA is therefore content that monitoring of birds during operation is not required.

Visual disturbance (construction)

C.4.79. The applicant [APP-040]/ [APP-041] assessed visual disturbance of bird qualifying features recorded at a frequency of above 1% of the SPA population in survey sectors that would be affected by the proposed development. The bird species considered were red knot, ruff, redshank, sandwich tern, common tern, northern shoveler, wigeon, lapwing, herring gull and black-headed gull. The applicant concluded that with mitigation there would be no AEoI from the proposed development alone (section 6.4) or in-combination (Table 7-1). Proposed mitigation included restriction on timing of works, visual screening, and noise abatement.

C.4.80. NE [RR-026] advised that impacts of visual disturbance could be compounded by noise, and would depend on factors such as proximity of disturbance events to the receptor and sightlines. It requested further assessment of loss of sightlines for bird qualifying features, including from the Blast Furnace Pool due to the presence of the proposed H_2 production facility. It advised that areas proposed for visual screening may need to be modified once further analysis of noise disturbance and sightline loss was provided.

C.4.81. The applicant [REP1-007] stated that assessments were carried out on a worst-case scenario using available information, and that the proposed mitigation accounted for interaction between different factors including noise and visual disturbance. It [AS-039] stated that the location of proposed screening would be updated after further detailed assessment. It stated that the sound and noise reduction from a barrier depends on the path difference of the sound wave as it travels over the barrier compared with the direct transmission to receiver, and the frequency content of the sound. A broad rule of thumb of a 10dB reduction where the source is totally obscured or 5dB reduction for partial obstruction was identified.

C.4.82. NE [REP2-072] considered that cumulative effects to bird qualifying features could arise from noise and visual disturbance during construction of the proposed development. The applicant undertook an assessment of impacts on the waterbird assemblage from noise and visual disturbance during the different construction work phases. The assessment was presented in Annex J of the HRA Report [REP6a-010]/ [REP6a-012]. The applicant concluded that without mitigation the proposed development alone could disturb more than 1% of the waterbird assemblage through direct displacement, noise and visual disturbance. It stated that the construction programme was designed to avoid the most sensitive periods for waterbirds but also committed to additional mitigation in the form of noise and visual screening. The applicant concluded no AEoI to waterbird assemblage from this pathway with mitigation.

C.4.83. The applicant provided a technical note about Blast Furnace Sightlines in Appendix 2 to [REP5-051] as described in section C.2 of this appendix.

C.4.84. NE [REP7a-061] agreed that the AEoI could be excluded from visual disturbance during construction, including due to loss of sightlines for bird qualifying features using the Blast Furnace Pool [REP7-038] based on the applicant's further evidence in [REP5-051], assessment in the HRA Report [REP6a-010]/ [REP6a-012] and commitments to monitoring. NE [REP7a-061] also agreed with the applicant's conclusion of no AEoI from the proposed development in-combination based on the

applicant's phasing plan, and bird assessment and noise modelling in the HRA Report [REP6a-010]/ [REP6a-012], including Annexes J and K.

C.4.85. Whilst NE advised that AEoI could be excluded for this LSE pathway, it did not accept the applicant's justification that habituation of bird qualifying features to current sources of noise and visual disturbance meant there would be no harmful effects during construction of the proposed development alone and requested a demonstration of how the predicted disturbance would be comparable to sources currently tolerated by birds. The applicant provided an evaluation of potential disturbance compared with existing tolerances in annex A of its Environmental Position Statement [REP8-019]. It described the relatively high levels of disturbance in the baseline as follows:

- Main site – ongoing demolition of the former steelworks and site remediation. Quantitative comparison of the baseline and predicted disturbance is not possible as demolition prevented noise monitoring.
- North of the River Tees – count sectors are immediately adjacent to the A1185, a national speed limit road linking Cowpen Bewley and Billingham with operational ports and industry at Seal Sands. It carries large volumes of traffic including HGVs.
- Count sectors B7 and B12 – within an operational landfill site and afforded visual screening by roadside vegetation and a vegetated embankment. The landfill ponds are within lower lying pits.
- Count sector G6 - immediately adjacent to the A178, a national speed limit road carrying large volumes of traffic including HGVs.

C.4.86. The applicant [REP8-019] noted that there is a high degree of natural visual screening provided by topography and roadside vegetation. It stated that despite proposed development areas being characterised by relatively high levels of disturbance, bird surveys consistently recorded birds using these sectors.

C.4.87. The ExA is satisfied that this LSE pathway will not result in AEoI to the European site from the proposed development alone or in-combination based on the identified mitigation being implemented.

Atmospheric pollution (construction traffic emissions)

C.4.88. The applicant initially screened this pathway out for LSE but at D5 submitted an updated HRA Report [REP5-011], which included an assessment of the potential for AEoI due to construction traffic emissions from the proposed development (section 6.6) in response to NE [RR-026] concerns that NH_3 was not considered as a pollutant or a component of nitrogen deposition. NE was also concerned that SO_2 had not been considered as a component of acidifying pollution alongside NO_x, which it said could be locally important even where its concentration does not exceed the critical level. The applicant stated that the assessment included consideration of the proposed development alone and in-combination as the traffic modelling upon which it was based was inherently cumulative.

C.4.89. The applicant [REP5-011] identified an LSE on the basis that the maximum nitrogen deposition at the closest part of the SPA would be 0.2kgN/ha/yr, exceeding the screening threshold of 1% of the critical load. It stated that predicted deposition values would decrease further away from the road, reaching 1% of the critical load at 10m from the road. In determining if the LSE pathway would result in AEoI, it further considered the ecological sensitivity of the interest features and how nitrogen deposition or NO_x may affect the features. It stated that APIS showed that nesting terns (little tern, common tern and Sandwich tern) and avocet are the only qualifying

features that are sensitive to vehicle exhaust emissions, and that these are not sensitive to NO_x, acid deposition or NH_3 in the atmosphere. The worst-case in-combination nitrogen deposition was modelled as 10.1% of the critical load but the applicant stated that the part of the SPA and Ramsar site this affected did not support the nesting qualifying features. The HRA ES Chapter 23 ([REP5-015], Table 23-1) stated that the assessment of combined effects incorporated NH_3 from traffic. Based on data from the Industry Nature Conservation Association (INCA, 2024), the main nest areas were recorded as being a minimum of 2.9km west of the main site for avocet, and 2.8km west for little tern. A historic nesting site at South Gare (1.7km north of the main site) had not had successful nesting since before 2018. The applicant acknowledged that little tern was known to shift colony locations but stated that this had been addressed through only using the most recent known nesting locations and the closest historic location.

C.4.90. The applicant [REP5-011] stated that a historic tern nesting location at Coatham Dunes was no longer suitable for nesting due to recreational disturbance and the need to remove dune vegetation, which would affect the SSSI interest. It stated that even if the habitat was rendered suitable, terns were not guaranteed to return to nest at Coatham Dunes. Away from nesting habitat, the only habitat tern and avocet particularly rely on during nesting is foraging habitat. In both cases this is open water. It stated that there is no evidence on APIS or elsewhere that fish in the open sea or tidal river water column are sensitive to atmospheric nitrogen deposition, and there are no critical loads or levels available. It considered that Coatham Dunes performs no ecological function for avocet and tern populations.

C.4.91. The applicant [REP5-051] justified using the 'higher plant' critical level of 3µg/m^3 from APIS based on APIS stating that none of the SPA birds are sensitive to NH_3, by which it means the ability of their habitats to support the SPA birds will not be affected. It stated that APIS has columns to list if lichens or bryophytes are integral to any feature for which a site is designated, and for the SPA these are blank; for the SSSI they are either blank or it says 'no'.

C.4.92. The applicant [REP5-011] confirmed that the main public highways used by construction traffic would be more than 200m from the SPA boundary, and not within 200m of identified or historic nesting locations for the avocet and tern qualifying features. It concluded no AEoI.

C.4.93. In response to ExQ2 ([PD-015], Q2.4.7), NE [REP5-065] confirmed its comments about the underpinning Teesmouth and Cleveland Coast SSSI [RR-026] may also be of relevance as the HRA could not consider impacts on qualifying bird features without considering impacts on their habitat. It clarified that changes to the designated features of the SSSI could result in harm to the habitat features without adversely affecting the integrity of the SPA and Ramsar site, for example if the area of habitat affected is not used or never would be used by the qualifying birds, or any pollution-induced change would not affect how the birds used it.

C.4.94. In response to the ExQ2 ([PD-015], Q2.4.8) the applicant was confident that it would be able to resolve this matter with NE as the European sites are designated for different features than the SSSI and the relevant sensitive locations to air quality are not significantly affected in combination. This contrasts with the SSSI, which is partly designated for sand dune vegetation that is sensitive to air quality.

C.4.95. NE [REP5a-015] suggested that the applicant prepare and submit a separate report on the implications for SSSI, which provides clarity between the impacts to the SSSI interest features and the SPA qualifying features. The applicant [REP6-006]

confirmed that a separate assessment of impacts on the SSSI was presented in [CR1-044] and [CR1-045] and the cumulative effects considered in updated cumulative documentation submitted at DL5 including [REP5-015].

C.4.96. Whilst it retained concerns about impacts to the SSSI as discussed in chapter 3 (section 3.7) of this Report, NE [REP7a-061] confirmed that it regarded this matter as closed in respect of the European sites.

C.4.97. The ExA is satisfied that this LSE pathway will not result in AEoI to the European sites from the proposed development alone or in-combination.

Atmospheric pollution (operation)

C.4.98. The applicant ([APP-040]/ [APP-041], section 6.6) assessed potential for AEoI from atmospheric pollution during operation of the proposed development in combination with other projects and plans. The assessment initially considered effects from nitrogen deposition, for which it was identified at screening that there could be exceedance of the 1% critical load, and to which the breeding avocet and tern features could be sensitive. The applicant concluded no AEoI.

C.4.99. NE [RR-026] was not clear that all pollutant sources were considered, particularly for NH_3, which could lead to an underestimation of its contribution to nitrogen deposition. NE listed potential additional sources, including the effluent treatment plants, venting from pipework, amine emissions, CO_2 from the vent stack, emissions from the air separation unit, indirect emissions from waste removed from the site, emissions associated with the identified 4 yearly major overhaul and combined operational traffic emissions.

C.4.100. The applicant [REP1-007] confirmed NE's observations about likely release points for substances such as CO_2, H_2, oxygen and nitrogen gas were correct but these emissions were not relevant since assessment is confined to NO_x, NH_3, deposition of nitrogen and acid in line with guidance. It stated that total emissions would be considered by the EA through the environmental permit process, on a mass balance basis assuming release to air at stated locations (providing a conservative basis for evaluation). Amines associated with the carbon capture facility would not be released to air, as it is a closed loop process. The applicant committed to providing information about operational traffic flows and combined impacts of ammonia emissions from road traffic and operational plant in an updated HRA Report.

C.4.101. NE ([REP2-072], Q1.4.13) accepted that the environmental permit would address emissions but noted this would not cover the entire DCO boundary, for example traffic emissions. It stated that the full extent of emissions should be considered in the DCO application. It also awaited further information on the closed loop carbon capture process. It listed the following pathways that remained of concern:

- acid deposition from aerial emissions
- in-combination nitrogen deposition
- amines from aerial emissions
- excluded sources
- scope of emissions from main site
- emissions during 4 year overhaul

C.4.102. The applicant submitted an updated HRA Report [CR1-023]/ [CR1-025]. It stated [AS-039] that this addressed comments about atmospheric pollution from traffic. It provided information about the closed loop carbon capture system, confirming that amines and associated degradation products are not discharged to the atmosphere.

The amine solution would be recycled through a reclaimer system and returned for reuse, with any amine wastes being minimal. The applicant noted that ES Chapter 8 [APP-060] considered all emissions from the operational phase. ES Chapter 15 [APP-068] concluded that operational traffic movements are expected to be below the screening threshold for further assessment.

C.4.103. NE [REP4-028] commended the closed loop approach but requested more detail on handling of maintenance phases, unplanned events leading to temporary releases, and contingency planning for venting or emergency emissions. It stated that consideration of waste emissions should be provided, and confirmation of whether amine wastes were included in the air quality assessment for nitrogen deposition. Responses had not been provided on chemical storage, waste from pre-treatment of natural gas to remove sulphur and emissions from the 4 yearly overhaul.

C.4.104. The applicant [REP5-051] reiterated that plant emissions would be controlled via an environmental permit but responded to assist understanding as follows:

- Maintenance, including 4 yearly overhaul: liquids would be drained and stored for re-use, or removed offsite. Unplanned releases would be contained by hardstanding in a bunded area, capture in the closed drain system. CO_2 venting would be limited and infrequent.
- Unplanned events: H_2 would be routed to the flare. The system includes a mechanism to prevent amines from reaching the flare. Flaring emissions are assessed in [APP-060] and [CR1-045].
- Inputs and outputs: natural gas comes into the plant as feedstock. Heat, water and oxygen are used to reform the natural gas into H_2 and CO_2. Excess water that cannot be recycled into the process goes to the wastewater treatment plant and is treated prior to discharge via the outfall to sea. CO_2 is captured by the amine in a closed loop system. Amine is cycled round the process between the carbon capture system and the regeneration system.
- Amine waste: where it cannot be regenerated and re-used it will be drained from the process and taken off site for disposal.
- Chemical storage: no emissions are anticipated. In the unlikely event of an unplanned release this will be captured by the closed drain system.
- Waste from pre-treatment of natural gas: sulphur removed from natural gas will be trapped within removal beds. Filter material used to capture sulphur would be routinely replaced and spent material removed and taken offsite.

C.4.105. NE [REP5a-015] welcomed the ExA's intention to seek further explanation of the closed loop carbon capture process and treatment of amine and non-amine emissions at the ISH on 14 January 2025, which the applicant did at ISH3 [EV9-004] (at 25:38 (minutes/ seconds) and 35:03 (minutes/ seconds)). It confirmed that the process is a pre-combustion carbon capture process, with no planned exhaust gas output during normal operations. The 2 main outputs (CO_2 and H_2) would be contained. It provided a diagram summarising the process, as requested by NE [REP4-028] and the ExA [PD-018], in appendix 1 of the Summary of Applicant's Oral Submissions at ISH3 [REP6a-019]. The applicant [REP7-024] stated that some amine could be entrained in gases directed to the flare, but this would be captured and returned for use in the closed loop or combusted in the flare. It stated that the HyNet DCO employs a similar closed-loop method, and the EA recognised the absence of an impact pathway as demonstrated by the lack of emission limit values or monitoring requirements for amine emissions in the granted environmental permit (provided as appendix 2 to [REP6a-019]).

C.4.106. NE subsequently confirmed that its concerns about aerial emissions had been addressed based on the submitted evidence [REP7-038] [REP7-039].

C.4.107. NE [RR-026] advised that further nitrogen deposition could undermine nesting sites and attempts to improve conditions for breeding avocet and tern qualifying features. It requested clarification of the applicant's assessment about how existing sites had been considered. The applicant [REP1-007] stated that ES Chapter 12 [APP-064] showed in-combination nitrogen deposition is forecast to be 13.89 kgN/ha/yr at Teesmouth and Cleveland SSSI, whereas in 2003 it was up to 14.77 kgN/ha/yr. A net improvement is forecast and rates would be materially lower than when the habitat was established, at a time when there were industrial emissions in the area that have since ceased. Despite the elevated nitrogen deposition rates, nesting locations for bird qualifying features are extremely sparsely vegetated, indicating that in practice nitrogen deposition is having little effect on vegetation encroachment and therefore the small increase won't affect it. It stated the same case was used to support the NZT DCO. It stated that the HRA used the SPA boundary as the assessment location rather than the actual nesting location of terns and avocet, which are much further from the (as described above). As such nitrogen deposition to these areas is much lower than reported in the HRA.

C.4.108. NE [REP4-028] acknowledged the historical context but advised that sensitive habitats within the Teesmouth and Cleveland Coast SSSI remain vulnerable, and even minor increases in nitrogen could delay recovery or encourage invasive vegetation. It stated that the sites are currently exceeding lower critical loads for nitrogen deposition for sand dunes (5 to 15kgN/ha/yr). It considered that the proposed development in combination has potential to undermine the conservation objective to restore the site to below critical loads. It sought clarification on cumulative nitrogen sources and confirmation that minor increases would not hinder habitat recovery. As little terns were known for shifting colony locations linking an assessment to a single location would not be appropriate.

C.4.109. The applicant [REP5-051] referred to information provided in its response on construction phase traffic emissions (as described above) noting that it had used the most recent known nesting locations and the closest nesting location as reported in the updated HRA Report [REP5-011]. It stated that it was questionable if habitat could be restored without harming the botanical interest in the SSSI and even with habitat restoration there was no guarantee that terns would return to nest. It further justified use of the slightly higher critical load of 10kgN/ha/yr on the basis that sand dunes at the SSSI were calcareous as demonstrated by the presence of calcareous vegetation. It stated that notwithstanding any change in the critical load applied, its view remained that if the total nitrogen deposition rate remains lower with the proposed development than it has been historically, it cannot be argued that it would be harming the interest of the SSSI, even by impeding restoration.

C.4.110. The applicant ([REP5-042], 2.4.6) stated that a discussion was held with NE and the EA on 4 December 2024, where it was suggested that removal of industrial emitters and other industrial changes may have recently reduced pollutant emissions and nitrogen deposition to Teesmouth and Cleveland Coast SSSI. These recent changes may not yet be visible in the baseline data contained within APIS. This would reinforce the position that there is headroom for limited further emissions.

C.4.111. NE [REP5a-015] noted that [REP5-011] excluded the proposed development from in-combination assessment referencing the Wealden judgment and it did not agree with this approach. NE subsequently confirmed that it agreed that AEoI could be excluded from the proposed development alone ([REP7-039], Q3.4.2) and that it

was satisfied with the scope and conclusions of the in-combination assessment [REP7a-061].

C.4.112. The ExA is satisfied that this LSE pathway will not result in AEoI to the European sites from the proposed development alone or in-combination.

Water quality (construction)

C.4.113. The applicant's assessment of water quality change during construction that could affect habitat supporting SPA and Ramsar bird qualifying features was presented in section 6.5 of the HRA [REP6a-010]/ [REP6a-012] for the proposed development alone, and Table 7-1 for in-combination effects. Effects from surface water and construction runoff, spill risk and dewatering were assessed. The applicant concluded no AEoI based on mitigation measures that would be secured in a CEMP and WMP. Mitigation would be secured through Requirement 15(3) and Requirement 15(7)(b) of the draft DCO [REP7a-003]/ [REP7a-006], which requires submission and approval of finals plans that are substantially in accordance with the Framework CEMP [REP8-003]/ [REP8-041] and Outline WMP [APP-045]. The Outline WMP states that a water quality monitoring plan would be produced to ensure that the proposed mitigation operates as planned.

C.4.114. NE [RR-026] noted that the sites are in unfavourable condition for nutrients due to high DIN concentrations in the Tees Estuary and requested confirmation of the expected scale of temporary construction impacts to surface water quality from mobilisation of sediment and release of contaminants. It requested consideration of any negative impacts from increased scour and sedimentation that could affect supporting SPA habitat.

C.4.115. The applicant [REP1-007] stated that construction impacts would be short term and temporary. It stated there is relatively little requirement for direct in-channel works to watercourses, which would have the greatest risk of sediment or contaminant mobilisation. The closest works would be at a tributary of Greatham Creek circa 350m away. It confirmed there would be no direct works to the Tees Estuary and the method for HDD crossing of the River Tees and Greatham Creek would include measures to minimise risk to the environment. For the same reasons, no potential for increased scour and sedimentation to supporting SPA habitat was expected.

C.4.116. NE [REP2-072] stated that this matter was agreed on the basis presented, including mitigation commitments in the Framework CEMP [REP8-003]/ [REP8-041].

C.4.117. The ExA is satisfied that this LSE pathway will not result in AEoI to the European site from the proposed development alone or in-combination based on the identified mitigation being implemented.

Water quality (operation)

C.4.118. The applicant's assessment of water quality change during operation was presented in section 6.7 of the HRA [REP6a-010]/ [REP6a-012] for the proposed development alone, and Table 7-1 for in-combination effects. Effects from surface water drainage, and discharge of process wastewater and foul wastewater were assessed. The assessment of process wastewater effects was informed by a Nutrient Neutrality Assessment [APP-047] that screened potential for nutrient output from various discharges associated with the proposed development to generate additional nutrient load to the Teesmouth and Cleveland Coast SPA and Ramsar site, which is impacted by excess nutrients. It identified that if the option for treatment of processed effluent in a bio-treatment plant and discharge via the NZT outfall to Tees

Bay (Case 2B) was selected, a total nitrogen load of 1.1kg per hour would be discharged. It undertook hydrodynamic dispersion modelling to ascertain if the discharge was likely to be dispersed to the Tees Estuary. Modelling is presented in ES Appendix 9B [APP-193] and showed that discharging the combined process effluent and surface water would not result in a reduction in water quality in Tees Bay at any point over a tidal cycle. The effluent discharged to Tees Bay (alone and in-combination with NZT) would be diluted to below the Environmental Quality Standards (EQS) (0.252 milligrams per litre (mg/l) as calculated in accordance with the Water Framework Directive (WFD) standards for moderate status) within a short distance. The maximum increase recorded was 0.017mg/l for DIN. It stated [APP-047] that the overall nutrient load in the Seal Sands area was likely to reduce as raw water for the proposed development would be abstracted from the River Tees upstream and process water would not return to the Tees Estuary.

C.4.119. The applicant concluded no AEoI based on water quality modelling, and mitigation that would be secured through Requirement 10(3) of the draft DCO [REP7a-003]/ [REP7a-006]. Requirement 10(4)(a) of the draft DCO requires details of systems for surface water, process effluent and foul water drainage to be in substantial accordance with measures set out in ES Chapter 9 [APP-061] and the Nutrient Neutrality Assessment [APP-047].

C.4.120. NE [RR-026] requested confirmation of the level reduction that would be applied if minimalised liquid discharge (MLD) from an onsite effluent treatment plant (Case 1B) was selected for handling of process wastewater, to ensure the liquid waste discharge was nutrient neutral. The applicant updated its HRA Report [CR1-023]/ [CR1-025] to reflect that Case 2B had been selected (and Case 1B removed). NE ([REP2-072], Q1.2.9) acknowledged that Case 2B is to be taken forward. The EA ([REP2-065], Q1.2.9) confirmed that the 2 options (Case 1B and Case 2B) proposed for effluent management were acceptable and deferred to NE on nutrient neutrality matters

C.4.121. The ExA [PD-018] sought confirmation from the applicant as to how the draft DCO would restrict discharge of treated process wastewater to Case 2B. The applicant amended the draft DCO [REP7a-003]/ [REP7a-006] to include Requirement 10(4)(b), which states that the process effluent drainage system must not use Case 1B.

C.4.122. NE [RR-026] requested model outputs showing the total maximum increase in DIN for the proposed development alone and in-combination, noting that information submitted for the NZT DCO suggested discharges may be carried into the Tees Estuary via tides contrary to the position in [APP-193] and [AS-016]. It stated that limits for denitrification treatment prior to discharge may need to be reconsidered once environmental permit limits are calculated so as not to allow exceedance. The applicant [REP1-007] stated revised modelling was being undertaken for NZT based on design progress including an onsite treatment plant not accounted for in the modelling. Cumulative discharge would not breach the EQS or change the WFD status for DIN, and revised modelling to reflect the final design parameters for the proposed development and NZT would be provided at the appropriate stage and in the application for a discharge permit to Tees Bay.

C.4.123. NE [REP2-072] sought clarity over in-combination effects of combined effluent discharge impact on the Tees Bay, and whether the discharge would result in an unfavourable condition. The applicant [REP3-006] confirmed that ES Appendix 9B [APP-193] included combined modelling of the discharge of process water effluent and surface water runoff, for the proposed development and NZT. NE [REP4-028]

accepted that the modelling in ES Appendix 9B [APP-193] includes the impact of discharge plus the combined discharge of process effluence and surface water, and also the proposed development in combination with NZT. It agreed that the modelling showed the combined effluent discharge does not change whether nutrients end up in the Tees Estuary, and that in-combination discharge is not sufficient to cause an increase in DIN that would adversely impact the condition of the Tees transitional waterbody or Tees Bay. It showed these matters as agreed.

C.4.124. Regarding nitrogen load from Case 2B, NE noted that the EA regularly monitor opportunistic macroalgae in the Tees Estuary, which is the ecological element expected to be most responsive to elevated nutrients. It requested the applicant to consider this monitoring when accounting for potential adverse effects. NE [REP2-072] subsequently advised this matter was agreed based on the applicant's confirmation [REP1-007] that the WFD Assessment [APP-048] considered the macroalgae element and demonstrated no deterioration or prevention of future improvement because of the proposed development, and that appropriate mitigation is included to ensure no additional nutrients enter the Tees Estuary.

C.4.125. The ExA is satisfied that this LSE pathway will not result in AEoI to the European site from the proposed development alone or in-combination based on the identified mitigation being implemented.

Ecotoxicology – amines to air and water (operation)

C.4.126. The applicant assessed change to air and water quality arising from emissions from the proposed development alone and in-combination in the HRA Report [APP-040]/ [APP-041] as described above. It considered amines in the context of discharge of surface water and process wastewater (section 6.7).

C.4.127. NE [RR-026] requested further information about amine and amine degradation products alluded to in ES Chapter 4 Proposed Development [APP-056]. It sought confirmation of the worst-case parameters for use of contaminants and release to air and water. It sought clarification about how process condensate is treated and how discharge of treated wastewater had been assessed and mitigated, noting the potential for impacts arising from a combination of discharge with toxic metals in the baseline ([APP-061], Table 9-20) and a reduced volume of river water.

C.4.128. The applicant [REP1-007] stated that process condensate was expected to contain one contaminant subject to EQS), which is NH_3. This would be limited through DIN EQS, with the final treated effluent discharged to Tees Bay containing 15 mg/l N as DIN as outlined in [APP-193]. It stated that the EA would assess operational emissions for the environmental permit application, and NE would be consulted.

C.4.129. The applicant stated [REP3-006] that near and far field modelling results [APP-193] show that there is no significant impact on water quality in Tees Bay due to the cumulative impact of discharges and therefore the condition of Tees Bay would not be adversely impacted. The discharged substances would be rapidly dispersed and would not be expected to build up in the sediment based on the nature of the substances. It did not consider that modelling of contaminants portioning into sediment was required. NE [REP4-028] noted that information related to water quality not air quality and stated [REP5a-015] that details of the closed loop system were required to determine the release of pollutants. The applicant described the closed-cycle process at ISH3, as described above. It [REP7-024] reiterated that there would be no pathway for liquid amine to the atmosphere due to the closed

loop system used, noting that the amines are present in liquid form and not volatile meaning they remain liquid even if the process is shut down.

C.4.130. NE ([REP7-039], QT3.1.9a) acknowledged the applicant's evidence that liquid amine waste would be managed and disposed of in an appropriately permitted manner but sought assurance that should any disposal take place in the Tees Nutrient Neutrality catchment, additional nitrogen loading as a result of discharge would be calculated and mitigated for. The applicant inserted a new commitment into Requirement 10(4)(c) of the draft DCO [REP7a-003]/ [REP7a-006] that amines must not be disposed of via a licenced facility to the Teesmouth and Cleveland Coast SPA and Ramsar site. NE [REP7a-061] recorded that this matter was resolved based on this commitment. It was also satisfied with the scope and conclusions of the in-combination assessment with regard to air and water quality.

C.4.131. The ExA is satisfied that LSE pathways from ecotoxicology, including from discharge of amine and amine degradation products to air and water, will not result in AEoI to the European site from the proposed development alone or in-combination based on the water quality modelling and the identified mitigation, including use of the closed-loop system and restrictions on discharge of liquid amine, being secured and implemented.

Decommissioning

C.4.132. The applicant in its HRA Report [REP6a-010]/ [REP6a-012] stated that at the end of its operational life, the most likely scenario would be removal of all above ground infrastructure at the main site and ground remediation. Pipelines within the connection corridors would be likely to remain in situ. It concluded that land would become available to bird qualifying features and no AEoI was anticipated from loss of FLL.

C.4.133. It also stated in it HRA Report [REP6a-010]/ [REP6a-012] a decommissioning environmental management plan (DEMP) would consider environmental risks during decommissioning. Mitigation to manage noise and visual disturbance during construction could also be incorporated into the DEMP, submission and approval of which would be secured by Requirement 28 of the draft DCO [REP7a-003]/ [REP7a-006]. The applicant concluded that with mitigation there would be no AEoI from noise and visual disturbance, changes in air or water quality, during decommissioning.

C.4.134. NE [RR-026] [REP8-026] did not dispute the applicant's conclusions and recorded all HRA matters as agreed in the final signed SoCG.

C.4.135. The ExA is satisfied that LSE pathways during decommissioning will not result in AEoI to the European site from the proposed development alone or in-combination based on a DEMP being secured and implemented.

C.5. HRA CONCLUSIONS

C.5.1. The proposed development is not directly connected with, or necessary to, the management of a European site, and therefore the implications of the proposed development with respect to adverse effects on potentially affected sites must be assessed by the SoS.

C.5.2. Thirteen European Sites and their qualifying features were considered in the applicant's assessment of LSE as identified in Table C.1 of this appendix. LSE

were identified for 11 of these sites (as listed in Table C.3 of this appendix, together with Teesmouth and Cleveland Coast SPA and Ramsar site) both from the proposed development alone and in-combination with other plans or projects.

C.5.3. The methodology and outcomes of the applicant's screening for LSE on European sites was subject to some discussion and scrutiny and the HRA Report was updated to include additional impact pathways to the Teesmouth and Cleveland Coast SPA and Ramsar site during examination. By the close of examination, the sites and features for which LSE were identified were not disputed by any IP. The ExA considered on a precautionary basis the potential for AEoI from the LSE pathway of operational atmospheric pollution from the proposed development in-combination effects with other projects and plans to the North York Moors SAC and SPA, and Northumbria Coast Ramsar site and SPA. The ExA is satisfied that the correct European sites and qualifying features have been identified for the purposes of assessment, and that all potential impacts which could give rise to significant effects have been identified.

C.5.4. The ExA's findings are that, subject to the mitigation measures to be secured in the draft DCO, AEoI on the European sites listed below from the proposed development when considered alone or in-combination with other plans or projects can be excluded from the impact-effect pathways assessed:

- Berwickshire and North Northumberland Coast SAC
- Humber Estuary SAC
- North York Moors SAC
- North York Moors SPA
- Northumbria Coast Ramsar site
- Northumbria Coast SPA
- River Tweed SAC
- Teesmouth and Cleveland Coast Ramsar site
- Teesmouth and Cleveland Coast SPA
- The Wash and North Norfolk Coast SAC
- Tweed Estuary SAC

C.5.5. The ExA considers that there is sufficient information before the SoS for the DESNZ to enable them to undertake an appropriate assessment to fulfil their duty under the requirements of the Habitats Regulations.

APPENDIX D: THE RECOMMENDED DCO (Excluding Cowpen Bewley Arm)

STATUTORY INSTRUMENTS

202* No.

INFRASTRUCTURE PLANNING

The H2Teesside Order 202*

Made - - - - ***

Coming into force - - ***

CONTENTS

PART 5
POWERS OF ACQUISITION

PART 6
MISCELLANEOUS AND GENERAL

SCHEDULES

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 appointed by the Secretary of State pursuant to Chapter 3 of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act

(**a**) 2008 c.29. Section 37 was amended by section 137(5) of, and Schedule 13 to, the Localism Act 2011 (c.20).
(**b**) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522 S.I. 2013/755, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682, S.I. 2017/524, S.I. 2017/572, S.I. 2018/378, and S.I. 2019/734.

and the Infrastructure Planning (Examination Procedure) Rules 2010(**a**). The panel having considered the application with the documents that accompanied the application, and the representations made and not withdrawn, has, in accordance with section 74(2)(**b**) 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 appointed panel and having taken into account the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(**c**) and having had regard to the documents and matters referred to in section 104(2)(**d**) (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.

In accordance with section 132(3)(**e**) of the 2008 Act, the Secretary of State is satisfied, having considered the report and recommendation of the Panel, that the parcels of land comprised in the coatham marsh special category land (as defined in article 2 of this Order) when burdened with a new right created under this Order, will be no less advantageous than they were before the making of this Order to the following person: (a) the persons in whom they are vested; (b) other persons, if any, entitled to rights of common or other rights; and (c) the public.

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

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the H2Teesside Order 202* and comes into force on ****.

Interpretation

2.—(1) In this Order—

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

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

"the 1966 Act" means the Tees and Hartlepools Port Authority Act 1966(**i**);

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

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

(**a**) S.I. 2010/103, amended by S.I. 2012/635.
(**b**) Section 74 was amended by the Localism Act 2011 (c.20) section 240(2), Schedule 13 paragraph 29 and Schedule 25, Part 20.
(**c**) S.I. 2017/572.
(**d**) Section 104 was amended by section 58(5) of the Marine and Coastal Access Act 2009 (c.23) and by section 240(2) and Schedule 13 paragraph 49 of the Localism Act 2011 (c.20).
(**e**) Section 132 was amended by section 24(3) of the Growth and Infrastructure Act 2013 (c.27).
(**f**) 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).
(**g**) 1961 c.33.
(**h**) 1965 c.56.
(**i**) 1966 c.xxv.
(**j**) S.I. 1975/693.
(**k**) 1980 c.66.

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

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

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

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

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

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

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

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

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

"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 44 (certification of plans etc.) for the purposes of this Order;

"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 fibreoptic 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 44 for the purpose 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 44 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(**j**) for a carbon dioxide storage site;

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

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

"change application report" means the document of that description which is certified as the change application report by the Secretary of State under article 44 for the purposes of this Order;

"change application report – appendices" means the document of that description which is certified as the change application report – appendices by the Secretary of State under article 44 for the purposes of this Order;

"coatham marsh special category land" means the land identified as comprising open space and shown hatched blue on sheets 4 and 5 of the special category land and crown land plans;

(**a**) 1981 c.66.
(**b**) 1984 c.27.
(**c**) 1986 c.44.
(**d**) 1989 c.29.
(**e**) 1990 c.8.
(**f**) 1991 c.22.
(**g**) S.I. 1994/2064.
(**h**) 2004 c.18.
(**i**) 2008 c.29.
(**j**) 2008 c.32.

"commence" means beginning to carry out a material operation, as defined in section 56(4) of the 1990 Act (which explains when development begins), comprised in or carried out for the purposes of the authorised development and "commencement", "commenced" and cognate expressions are to be construed accordingly;

"commissioning" means the process of testing systems, infrastructure and components of any part of the authorised development (which is installed or in relation to which installation is nearly complete) in order to ensure that that part functions in accordance with the plant design specifications and the undertaker's operational, contractual 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 Schedules 15 to 43 (protective provisions);

"date of final commissioning" means the date on which commissioning of the authorised development is completed and it commences operation on a commercial basis or where specified in this Order, the date on which a specified Work No. commences operation on a commercial basis;

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

"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;

"emergency" means a situation where, if the relevant action is not taken, there will 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;

"the environmental statement" means the statement certified as the environmental statement by the Secretary of State under article 44 for the purposes of this Order;

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

"flood risk assessment" means the document of that description which is certified as part of the environmental statement by the Secretary of the State under article 44 for the purposes of this Order;

"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 44 for the purposes of this Order;

"framework construction traffic management plan" means the document of that description which is certified as the framework construction traffic management plan by the Secretary of State under article 44 for the purposes of this Order;

"framework construction workers travel plan" means the document of that description which is certified as the framework construction workers travel plan by the Secretary of State under article 44 for the purposes of this Order;

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

"HyGreen Teesside" means a proposed project for a green hydrogen production facility in the administrative boundary of Redcar and Cleveland Borough Council;

"H2 Teesside Limited" means H2 Teesside Limited (company number 14523230) whose registered office is at Chertsey Road, Sunbury on Thames, Middlesex, England, TW16 7BP;

"indicative lighting strategy (construction)" means the document appended at appendix C of the framework construction environmental management plan;

(**a**) 2000 c.7.

"indicative lighting strategy (operation)" means the document of that description which is certified as the indicative lighting strategy (operation) by the Secretary of State under article 44 for the purposes of this Order;

"indicative surface water drainage plan" means the document of that description which is certified as the indicative surface water drainage plan by the Secretary of State under article 44 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 44 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;

"The Net Zero Teesside Order 2024" means the development consent order as made by the Secretary of State on 16 February 2024(**a**);

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

"NSMP entities" means Northern Gas Processing Limited (company number 2866642) of Suite 1, 7th Floor 50 Broadway, London, SW1H 0BL, Teesside Gas and Liquids Processing (company number 02767808) of Suite 1, 7th Floor 50 Broadway, London, SW1H 0BL and Teesside Gas Processing Limited (company number 05740797) of Suite 1, 7th Floor 50 Broadway, London, SW1H 0BL;

"nutrient neutrality assessment" means the document of that description which is certified as the nutrient neutrality assessment by the Secretary of State under article 44 for the purposes of this Order;

"Order land" means the land shown coloured pink and the land shown coloured blue on the land plans, which is described in the book of reference;

"Order limits" means the limits of land to be acquired permanently or used temporarily as shown on the land plans, and the limits of land within which the authorised development, as shown on the works plans may be carried out;

"outline landscape and biodiversity management plan" means the document of that description which is certified as the outline landscape and biodiversity management plan by the Secretary of State under article 44 for the purposes of this Order;

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

"outline water management plan" means the document appended at appendix B of the framework construction environmental management plan;

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

"permit scheme" means any schemes made under Part 3 of the 2004 Act in force at the date on which this Order is made;

"permitted preliminary works" means works consisting of environmental surveys (including archaeological investigations), geotechnical surveys, surveys and protection of existing infrastructure, and other investigations for the purpose of assessing ground conditions, the

(**a**) S.I. 2024/174.
(**b**) 1981 c.67. The definition of "owner" was amended by 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.

preparation of facilities for the use of contractors, the provision of temporary means of enclosure and site security for construction, temporary access roads, paving, diversion of existing services and laying of services (but not including the laying of any of Work Nos. 2, 3, 4, 5, 6, 7 and 8), 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;

"relevant highway authority" means the highway authority responsible for the relevant highway 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;

"special category land" means the coatham marsh special category land shown hatched blue on the special category land and crown land plans;

"special category land and crown land plans" means the document of that description which is certified as the special category land and crown land plans by the Secretary of State under article 44 for the purposes of this Order;

"Sembcorp" means Sembcorp Utilities (UK) Limited (company number 04636301) whose registered office is at Sembcorp UK Headquarters, Wilton International, Middlesbrough, Cleveland, TS90 8WS;

"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;

"street" means a street within the meaning of 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 includes any footpath 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;

"temporary traffic regulation measures plan" means the plans which are certified as the temporary traffic regulation measures plan by the Secretary of State under article 44 for the purposes of this Order;

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

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

"undertaker" means, subject to articles 7 (benefit of this Order) and 8 (consent to transfer benefit of this Order), H2 Teesside Limited;

"water framework directive assessment" means the document of that description which is certified as the water framework directive assessment by the Secretary of State under article 44 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;

(**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.

"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(**a**);

"works plans" means the plans which are certified as the works plans by the Secretary of State under article 44 for the purposes of this Order; and

"The York Potash Harbour Facilities Order 2016" means the development consent order as made by the Secretary of State on 20 July 2016(**b**).

(2) All distances, directions and lengths referred to in this Order, except for the parameters referred to in Schedule 14 (design parameters), 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.

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

(4) 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 (authorised development) and shown on the works plans.

(5) The expression "includes" is to be construed without limitation.

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

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; and

(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 assessed 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.

(**a**) 1971 c.80.
(**b**) S.I. 2016/772.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by this Order

4.—(1) Subject to the provisions of this Order and to the requirements, the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Each numbered work must be 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 solely for the benefit of the undertaker.

Consent to transfer benefit of this Order

8.—(1) Subject to paragraph (2), the undertaker may—

(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) 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) and such related statutory rights as may be so agreed.

(2) The consent of the Secretary of State is required for a transfer or lease pursuant to this article, except where paragraph (6) applies.

(3) Where a transfer or grant has been made in accordance with paragraph (1) references in this Order to the undertaker, except in this paragraph (3), include references to the transferee or the lessee.

(4) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) 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.

(5) Where an agreement has been made in accordance with paragraph (1)—

(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;

(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;

(c) the transferee or lessee is a holding company, associated company or subsidiary of the undertaker; and

(d) the transferee or lessee holds a licence under section 7 of the Energy Act 2023(**a**).

(6) This paragraph applies 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(**b**) or section 7 (licensing of public gas transporters)(**c**) of the 1986 Act;

(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 limits; or

(iii) in relation to any works to provide a connection between any part of Work No. 6A and a person to whom a supply of hydrogen is to be provided (and including Work No. 6B), that person; 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.

(7) Where the consent of the Secretary of State is not required under paragraph (2), 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).

(8) The notification referred to in paragraph (7) 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 (7), 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.

(9) The date specified under paragraph (8)(b) must not be earlier than the expiry of five working days from the date of the receipt of the notice.

(10) The notice given under paragraph (7) 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.

(**a**) 2023 c.52.

(**b**) 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.

(**c**) 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.

Application 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, operation or maintenance of any part of numbered works 1, 2, 4, 5, 6A, 6B, 8, 9 or 10 and works that may be carried out in association with those numbered works—

(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 and Hartlepool Authority or the harbour master to any such works; and

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

(3) The following provisions do not apply in relation to the construction or maintenance of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction, operation or maintenance of any part of the authorised development—

(a) section 23 (prohibition of obstructions, etc. in watercourses) of the Land Drainage Act 1991(**a**);

(b) section 32 (variation of awards) of the Land Drainage Act 1991(**b**);

(c) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991(**c**);

(d) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (byelaw making powers of authority) to the Water Resources Act 1991(**d**); and

(e) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(**e**) in respect of a flood risk activity only.

(4) Regulation 6 of the Hedgerows Regulations 1997(**f**) is modified so as to read for the purposes of this Order only as if there were inserted after paragraph (1)(j) the following—

"or (k) for carrying out development which has been authorised by an order granting development consent pursuant to the Planning Act 2008.".

PART 3

STREETS

Power to alter layout etc. of streets

10.—(1) The undertaker may for the purposes of 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.

(**a**) 1991 c.59. Section 23 was amended by paragraph 192 of Schedule 22 to the Environment Act 1995 (c.25), paragraphs 25 and 32 of Schedule 2 to the Flood and Water Management Act 2010 (c.29) and S.I. 2013/755.

(**b**) Section 32 was amended by S.I. 2013/755.

(**c**) Section 66 was amended by paragraphs 25 and 38 of Schedule 2 to the Flood and Water Management Act 2010 and section 86 of the Water Act 2014 (c.21).

(**d**) 1991 c.57. Paragraph 5 was amended by section 100 of the Natural Environment and Rural Communities Act 2006 (c. 16), section 84 of, and paragraph 3 of Schedule 11 to the 2009 Act and S.I. 2013/755. Paragraph 6 was amended by section 105 of, and paragraph 26 of Schedule 15 to the Environment Act 1995, sections 224, 233 and 321 of and paragraphs 20 and 24 of Schedule 16 and Part 5(B) of Schedule 22 to the 2009 Act and S.I. 2013/755. Paragraph 6A was inserted by section 103(3) of the Environment Act 1995.

(**e**) S.I. 2016/1154. Regulation 12 was amended by S.I. 2018/110.

(**f**) S.I. 1997/1160.

(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) 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, change the position or remove apparatus in or under the street; 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 closure of streets and public rights of way

13.—(1) The undertaker, during and for the purposes of carrying out and maintaining the authorised development, may temporarily close, 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 closure, 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 close, prohibit the use of, restrict the use of or, for the purposes of sub-paragraph (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 closed) to the extent specified in column (3) of that Table 4; and

(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 closed) to the extent specified in column (3) of that Table 5.

(4) The undertaker must not temporarily close, 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; or

(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.

(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 which has been temporarily closed 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) 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 street 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 measures

16.—(1) Subject to the provisions of this article, the undertaker may at any time, in the interests of safety and for the purposes of, or in connection with the construction of the

authorised development, temporarily make provision for traffic regulation measures as specified in columns 3 and 4 of Table 6 of Schedule 7 (traffic regulation measures) including, as relevant, temporarily placing traffic signs and signals and the placing of those traffic signs and signals is deemed to have been permitted by the traffic authority for the purposes of section 65 of the 1984 Act and the Traffic Signs Regulations and General Directions 2016(**a**).

(2) Subject to the provisions of this article and without limitation to the exercise of powers conferred by paragraph (1), the undertaker may make temporary provision for the purposes of the authorised development—

(a) as to the speed at which vehicles may proceed along any road;

(b) permitting, prohibiting or restricting the stopping, parking, waiting, loading or unloading of vehicles on any road;

(c) as to the prescribed routes for vehicular traffic or the direction of priority of vehicular traffic on any road;

(d) permitting, prohibiting or restricting the use of vehicular traffic or non-vehicular traffic of any road; and

(e) suspending or amending in whole or in part any order made, or having effect as if made, under the 1984 Act.

(3) No speed limit imposed by or under this Order applies to vehicles falling within regulation 3(4) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011(**b**) when in accordance with regulation 3(5) of those regulations.

(4) Before exercising the power conferred by paragraph (2) the undertaker must—

(a) consult with the chief officer of police in whose area the road is situated; and

(b) obtain the written consent of the traffic authority.

(5) The undertaker must not exercise the powers under paragraph (1) or (2) 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).

(6) Any prohibition, restriction or other provision made by the undertaker under article 13 (temporary closure of streets and public rights of way) or paragraph (1) or (2) 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)(**c**) 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.

(7) In this article—

(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.

(**a**) S.I. 2016/362.
(**b**) S.I. 2011/935.
(**c**) Relevant amendments to section 32 were made by the 1991 Act section 168(1) and Schedule 8, paragraph 39.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

17.—(1) 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.

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 the undertaker reasonably believes it to be necessary to do so to prevent the tree or shrub—

(**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.

(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.

(4) The undertaker may, for the purposes of constructing, maintaining or operating the authorised development but subject to paragraph (2), remove any hedgerow within the Order limits that is required to be removed.

(5) In this article, "hedgerow" has the same meaning as in the Hedgerows Regulations 1997(**a**).

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

(**a**) S.I. 1997/1160.

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 46 (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

---

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

(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 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) In this article "specified land" means any land within the Order limits.

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

(3) Before any such remains are removed from the specified land the undertaker must give notice of the intended removal, describing the specified 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 specified land; and

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

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

(5) At any time within 56 days after the first publication of a notice under paragraph (3) 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.

(6) Where a person has given notice under paragraph (5), 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 (11).

(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) 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.

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

(9) If—

(a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or

(b) such notice is given and no application is made under paragraph (7) 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 (7) 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, subject to paragraph (10),

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.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) 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.

(11) 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 (9) must be sent by the undertaker to the relevant planning authority mentioned in paragraph (4).

(12) No notice is required under paragraph (3) before the removal of any human remains where the undertaker is satisfied that—

(a) that the remains were interred more than 100 years ago; and

(b) that no relative or personal representative of the deceased is likely to object to the remains being removed in accordance with this article.

(13) In the case of remains in relation to which paragraph (12) applies, the undertaker—

(a) may remove the remains;

(b) must apply for direction from the Secretary of State under paragraph (15) as to their subsequent treatment; and

(c) must deal with the remains in such manner, and subject to such conditions, as the Secretary of State directs.

(14) In this article references to the personal representative of the deceased are to a person or persons who—

(a) is the lawful executor of the estate of the deceased; or

(b) is the lawful administrator of the estate of the deceased.

(15) The removal and subsequent treatment 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.

(16) Any jurisdiction or function conferred on the county court by this article may be carried out in accordance with any directions which may be given by the Secretary of State.

(17) 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.

(**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).

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 25 (compulsory acquisition of rights etc.), article 32 (temporary use of land for carrying out the authorised development) and article 42 (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) 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 156 (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 is to be served under Part 1 (compulsory purchase under acquisition of Land Act of 1946) of the 1965 Act; and

(b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act (as applied by article 27 (application of the 1981 Act)).

(2) The authority conferred by article 32 (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 also 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 pursuant to article 8(2) (consent to transfer benefit of this Order).

(3) The powers of paragraph (1) may also be exercised by a statutory undertaker in any case where the undertaker transfers the power to a statutory undertaker and the Secretary of State's consent is not required pursuant to article 8(6) and the undertaker has notified the Secretary of State and, where the transfer or grant relates to the STDC area, STDC and Teesworks Limited in writing pursuant to article 8(7).

(4) Where in consequence of paragraph (2) or (3), 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.

(5) In the case of the Order land specified in column (1) of Table 7 in Schedule 8 (land in which new rights etc. may be acquired) and which is shaded blue on the land plans 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.

(6) 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.

(7) 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 9 (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.

(8) Schedule 9 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.

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

(10) 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.

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

(12) This article is subject to article 42 (Crown 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 restrictions 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 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 34 (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 (notices after execution of declaration), in subsection (1)(b) 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 (constructive notice to treat), in subsection (1)(a), 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 that Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (as modified by article 30 (modification of Part 1 of the 1965 Act) to the compulsory acquisition of land under this Order).

Acquisition of subsoil or 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.

Special category land

29.—(1) On the exercise of the relevant Order powers, the rights to be acquired over the coatham marsh special category land are to vest in the undertaker and 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.

(2) So much of the special category land as is required for the purposes of exercising the powers pursuant to article 32 (temporary use of land for carrying out the authorised development) or article 33 (temporary use of land for maintaining the authorised development) 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 article 32 or article 33.

(3) In this article, "relevant Order powers" means articles 22 (compulsory acquisition of land), 25 (compulsory acquisition of rights etc.) and 32 (temporary use of land for carrying out the authorised development).

Modification of Part 1 of the 1965 Act

30.—(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 H2Teesside Order 202*".

(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 H2Teesside Order 202*, 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 32 (temporary use of land for carrying out the authorised development) or article 33 (temporary use of land for maintaining the authorised development) of the H2Teesside Order 202*.".

Rights under or over streets

31.—(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 to be 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

32.—(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 10 (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 10; 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 10 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—

(a) replace a building or any debris removed under this article; or

(b) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development.

(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 8 (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 31 (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 10.

(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 necessary for the authorised development within the Order land.

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

Temporary use of land for maintaining the authorised development

33.—(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, but the undertaker is not to be required to replace a building or any debris removed under this article.

(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.

Statutory undertakers

34. Subject to the provisions of Schedules 15 to 42 (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

35. 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 closure of streets and public rights of way) 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 Schedules 15 to 43 (protective provisions), as if this Order had not been made.

Recovery of costs of new connections

36.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 34 (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 34 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 35 (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.

(**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).

Compulsory acquisition of land – incorporation of the mineral code

37. Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981 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

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; and

(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, 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.

(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.

Planning permission, etc.

39.—(1) It does not constitute a breach of the terms of this Order, if, following the coming into force of this Order, any development is carried out or used within the Order limits in accordance with any planning permission granted (either prior to or after the Order has come into force) under the powers conferred by the 1990 Act, any development consent granted (either prior to or after the Order has come into force) under the powers conferred by the 2008 Act or other equivalent consent.

(2) 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.

(3) To the extent any development carried out or used pursuant to a planning permission granted under section 57 (requirement of planning permission) of the 1990 Act, any development consent granted (either prior to or after the Order has come into force) under the powers conferred by the 2008 Act or other equivalent consent, or compliance with any conditions or requirements of that permission or consent is inconsistent with the exercise of any power or right under this Order or the authorised development—

(a) that inconsistency is to be disregarded for the purposes of establishing whether any development which is the subject matter of that permission or consent is capable of physical implementation; and

(b) in respect of that inconsistency, no enforcement action under the 1990 Act may be taken in relation to development carried out or used pursuant to that permission or consent whether inside or outside the Order limits.

(4) Any development or any part of a development within the Order limits which is constructed or used under the authority of a permission granted under section 57 of the 1990 Act including permissions falling under paragraph (1) or (3) or otherwise, is deemed not to be a breach of, or inconsistent with, this Order and does not prevent the authorised development being carried out or used or any other power or right under this Order being exercised.

(5) Any works carried out under this Order are deemed to be work requiring development consent under section 31 (when development consent is required) of the 2008 Act for the purpose of paragraph 7(3) of Schedule 3 to the Flood and Water Management Act 2010(**a**).

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(**b**) 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—

(a) the defendant shows that the nuisance—

(i) 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(**c**); or

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

(b) 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. Schedules 15 to 45 (protective provisions) have effect.

Crown rights

42.—(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 licensee to take, use, enter upon or in any manner interfere with any land or

---

(**a**) 2010 c.29.

(**b**) 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.

(**c**) 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).

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

43.—(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 11 (appeals to the Secretary of State) has effect.

(4) Schedule 12 (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.

(5) Save for applications made pursuant to Schedule 12 and 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.

(6) 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 (5).

Certification of plans etc.

44.—(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 11 in Schedule 13 (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

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

(a) by post; and

(b) subject to article 3 (electronic communications) 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

46.—(1) 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 is required under any provision of this Order is not subject to arbitration.

Funding for compulsory acquisition compensation

47.—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to the relevant 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 the relevant Order land in respect of which a power is to be exercised; 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 31 (rights under or over streets);

(f) article 32 (temporary use of land for carrying out the authorised development);

(g) article 33 (temporary use of land for maintaining the authorised development); and

(h) article 34 (statutory undertakers).

(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.

(5) In this article "the relevant Order land" means the part of the Order land in relation to which the undertaker proposes to exercise the powers referred to in paragraph (2).

Interface with anglo american permit

48.—(1) The carrying out of an authorised activity shall not constitute a breach of, or non-compliance with, the anglo american permit.

(2) In this article—

"anglo american permit" means environmental permit number FB3601GS; and

"authorised activity" means any works or activities authorised by this Order, works carried out in connection with the authorised development, or the exercise by the undertaker of functions conferred by this Order.

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

Name

Address

Title

Date

Department for Energy Security and Net Zero

SCHEDULES

SCHEDULE 1 Article 2

AUTHORISED DEVELOPMENT

In the Borough of Redcar and Cleveland, the Borough of Stockton-on-Tees and the Borough of Hartlepool a development which is to be treated as development for which development consent is required by direction under sections 35(1) and 35ZA of the 2008 Act, and associated development under section 115(1)(b) of that Act, comprising—

Work No. 1 – a carbon capture enabled hydrogen production facility of up to 1.2 Gigawatt Thermal (GWth) lower heating value, comprising—

(a) **Work No. 1A.1** – one carbon capture enabled hydrogen unit of 600 MW, which is designed to capture a minimum rate of 95% of the carbon dioxide emissions of this hydrogen unit operating at full load, comprising—

(i) compressors;

(ii) pre-treatment facilities including heaters and saturators;

(iii) start-up fired heater;

(iv) reformers;

(v) shift reactors;

(vi) carbon dioxide absorber;

(vii) amine regeneration system;

(viii) methanator;

(ix) hydrogen drying unit;

(x) pressure swing adsorber;

(xi) cooling water circulation system;

(xii) steam system;

(xiii) auxiliary boiler;

(xiv) steam turbine generator;

(xv) flare;

(xvi) fire water system; and

(xvii) emergency diesel generator.

(b) **Work No. 1A.2** – a second carbon capture enabled hydrogen unit of 600 MW, which is designed to capture a minimum rate of 95% of the carbon dioxide emissions of this hydrogen unit operating at full load, comprising—

(i) compressors;

(ii) pre-treatment facilities including heaters and saturators;

(iii) start-up fired heater;

(iv) reformers;

(v) shift reactors;

(vi) carbon dioxide absorber;

(vii) amine regeneration system;

(viii) methanator;

(ix) hydrogen drying unit;

(x) pressure swing adsorber;

(xi) air separation units;

(xii) cooling water circulation system;

(xiii) steam system;

(xiv) auxiliary boiler;

(xv) steam turbine generator;

(xvi) flare;

(xvii) fire water system; and

(xviii) emergency diesel generator.

(c) **Work No. 1B.1** – water connections and water and effluent treatment plant for Work Nos. 1A.1 and 1A.2, comprising—

(i) process water treatment plant;

(ii) demineralisation plant;

(iii) bio-treatment plant;

(iv) effluent treatment plant; and

(v) water networks, pipework, cables, racks, infrastructure, instrumentation and utilities including connections between Work Nos. 1A.1 and 1A.2 and parts of Work Nos. 4 and 5.

(d) **Work No. 1B.2** – water connections and water and effluent treatment plant for Work No. 1A.2, comprising—

(i) process water treatment plant;

(ii) demineralisation plant;

(iii) bio-treatment plant;

(iv) effluent treatment plant; and

(v) water networks, pipework, cables, racks, infrastructure, instrumentation and utilities including connections between Work No. 1A.2 and parts of Work Nos. 4 and 5.

(e) **Work No. 1C** – above ground pressurised hydrogen storage including high pressure compression and let down facilities.

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

(i) administration and control buildings and gatehouse; and

(ii) workshop and stores buildings;

(g) **Work No. 1E.1** – connections and ancillary works in connection with Work Nos. 1A.1, 1A.2, 1B.1, 1B.2, 1C and 1D—

(i) above ground installations;

(ii) ancillary plant, buildings, enclosures, structures and substations;

(iii) pipework, pipe runs and pipe racks;

(iv) firefighting equipment, buildings and distribution pipework;

(v) lubrication oils storage facilities;

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

(vii) chemical storage including tanks;

(viii) nitrogen storage facilities;

(ix) carbon dioxide vents; and

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

(h) **Work No. 1E.2** – connections and ancillary works in connection with Work Nos. 1A.2 and 1B.2—

(i) above ground installations;

(ii) ancillary plant, buildings, enclosures, structures and substations;

(iii) pipework, pipe runs and pipe racks;

(iv) firefighting equipment, buildings and distribution pipework;

(v) lubrication oils storage facilities;

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

(vii) chemical storage including tanks;

(viii) nitrogen storage facilities; and

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

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

(a) **Work No. 2A** – high pressure gas pipelines, connecting Work No. 2B to the above ground installation at Work Nos. 1E.1 and 1E.2, comprising—

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

(ii) cathodic protection posts;

(iii) marker posts; and

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

(b) **Work No. 2B** – above ground installations relating to Work No. 2A, 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; and

(c) **Work No. 2C** – works to bring back to use and recommission an existing high pressure gas pipeline of up to 600 millimetres nominal bore diameter, connecting Work No. 2B to the above ground installation at an existing gas supply network, comprising—

(i) cathodic protection posts;

(ii) marker posts; and

(iii) electrical supply cables, transformers and control systems cables.

Work No. 3 – electrical connection works for the import of electricity from electricity transmission networks to Work Nos. 1E.1 and 1E.2, comprising—

(a) **Work No. 3A** – electrical connection works comprising underground electrical cables running from Work Nos. 1E.1 and 1E.2 to Work Nos. 3B.1, 3B.2 and 3B.3.

(b) **Work No. 3B.1** – above ground installation connecting Work No. 3A to Pellet-Sinter substation, including above ground works within the substation;

(c) **Work No. 3B.2** – above ground installation connecting Work No. 3A to Tod Point substation, including above ground works within the substation; and

(d) **Work No. 3B.3** – above ground installation connecting Work No. 3A to a new substation.

Work No. 4 – water supply connection works to provide cooling and make-up water to Work Nos. 1B.1 and 1B.2, 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 Nos. 1B.1 and 1B.2 comprising pipelines connecting to existing wastewater infrastructure.

Work No. 6 – a hydrogen distribution network, being works for the transport of hydrogen gas from Work Nos. 1A.1 and 1A.2, comprising—

(a) **Work No. 6A** – underground and overground pipelines of up to 600mm nominal bore diameter for the transport of hydrogen gas connecting to Work No. 6B; and

(b) **Work No. 6B** – above ground installations connecting Work No. 6A to:

(i) existing gas transmission system and gas distribution networks including tunnel head; and

(ii) tie-in points to connect to premises or land to which a supply of hydrogen is to be provided;

Work No. 7 – a carbon dioxide export pipeline, comprising—

(a) **Work No. 7A** – an overground or underground pipeline of up to 600 millimetres nominal bore diameter and associated power and fibre-optic cables connecting the above ground installation at Work Nos. 1E.1 and 1E.2 to Work No. 7B; and

(b) **Work No. 7B** – above ground installation connection between Work No. 7A and a carbon dioxide pipeline network.

Work No. 8 – gas connections, being works for the transport of oxygen and nitrogen to Work Nos. 1E.1 and 1E.2, comprising an oxygen gas connection comprising of underground and or overground pipelines and a nitrogen gas connection comprising of underground and or overground pipelines.

Work No. 9 – temporary construction compounds comprising laydown and open storage areas, contractor offices and 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.

Work No. 10 – access and highway improvements and use, comprising works to create, improve, repair or maintain streets, roads, haul roads and access points comprising access and highway improvements and use relating to Work Nos. 1, 2, 3, 4, 5, 6A, 6B, 7, 8 and 10.

In connection with and in addition to Work Nos. 1 to 10, further ancillary development comprising such other works or operations for the purposes of or in connection with the construction, operation and maintenance of the authorised development but only within the Order limits and insofar as they are unlikely to give rise to any materially new or materially different environmental effects which are worse than those assessed in 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 compounds, including—

(i) materials and plant storage and laydown areas;

(ii) contractor facilities;

(iii) generators;

(iv) concrete batching facilities;

(v) vehicle and cycle parking facilities;

(vi) pedestrian and cycle routes and facilities;

(vii) offices and staff welfare facilities;

(viii) security fencing and gates;

(ix) external lighting;

(x) roadways and haul routes;

(xi) wheel wash facilities; and

(xii) 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

Articles 2 and 4

REQUIREMENTS

Commencement of the authorised development

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

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

(3) Notice of the intended date of final commissioning of Work No. 1A.1 must be given to the relevant planning authority no later than fourteen days prior to the date of final commissioning.

(4) Notice of the intended date of final commissioning of Work No. 1A.2 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, after consultation with STDC, approved by the relevant planning authority—

(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, cycle parking and routes, and pedestrian routes.

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

(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, after consultation with STDC, Sembcorp and the NSMP entities, approved by the relevant planning authority—

(a) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings and structures, and all of which must be no higher than 4 metres above ground level;

(b) hard standings; and

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

(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, after consultation with STDC and Sembcorp, approved by the relevant planning authority—

(a) the route and method of installation of the electrical cables and control system cables;

(b) works to create new or improve any existing substation 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 route and method of construction of the water supply pipelines for that part have been submitted to and, after consultation with STDC, approved by the relevant planning authority.

(6) No part of the authorised development comprised in Work No. 5 may commence, save for the permitted preliminary works, until details of the route and method of construction of any new wastewater pipelines for that part have been submitted to and, after consultation with STDC, approved by the relevant planning authority.

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

(a) the route and method of installation of the hydrogen distribution network 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. 6B may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, after consultation with STDC and Sembcorp, approved by the relevant planning authority—

(a) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings and structures of the hydrogen distribution network above ground installations, and all of which must be no higher than 4 metres above ground level;

(b) hard standings; and

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

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

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

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

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

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

(b) hard standings; and

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

(11) 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, after consultation with STDC and Sembcorp, approved by the relevant planning authority—

(a) the route and method of installation of the oxygen and nitrogen pipelines and any electrical supply, telemetry and other apparatus; and

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

(12) Work Nos. 1, 2, 3, 4, 5, 6, 7 and 8 must be carried out in accordance with the design parameters in Schedule 14 (design parameters) and carried out in accordance with the approved details, unless otherwise agreed with the relevant planning authority.

Landscape and biodiversity management plan

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

(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 the authorised development may be commissioned until a landscape and biodiversity management plan for that part has been submitted to and, after consultation with STDC, approved by the relevant planning authority.

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

(a) implementation and management of any 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; and

(e) landscape and biodiversity management, maintenance and monitoring.

(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 substantial accordance with the outline landscape and biodiversity management plan; and

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

Public rights of way

5.—(1) No public rights of way may be temporarily diverted or closed until a management plan for the relevant section of the public right of way 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 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.

(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 23) 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 in that part (with the exception of the aviation warning lighting required by virtue of requirement 23) has been submitted to and approved by the relevant planning authority.

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

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

(5) The schemes submitted and approved pursuant to sub-paragraphs (1) and (2) must be implemented as approved unless otherwise agreed with the relevant planning authority.

Means of enclosure

7.—(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, after consultation with STDC, approved by the relevant planning authority.

(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

8.—(1) No part of Work No. 1 may be commissioned 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 scheme must be implemented as approved and must be maintained and operated throughout the operation of the relevant part of the authorised development.

Fire prevention

9.—(1) No part of Work No. 1 may commence, save for the permitted preliminary works, until a fire prevention method statement providing details of fire detection measures, fire suppression measures including measures to contain and treat water used to suppress any fire 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 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 suppression measures 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.

Drainage

10.—(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 substantial accordance with the construction environmental management plan and the surface water drainage strategy to ensure that the systems remain fully operational throughout the construction of the relevant parts of the authorised development have, for that part, been submitted to, and after consultation with the Environment Agency, the lead local flood authority 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 water, process effluent and foul water drainage systems, including a water quality risk assessment and programme for their implementation and a surface water maintenance and monitoring plan, must be submitted to and, after consultation with the Environment Agency, the lead local flood authority and STDC, 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—

(a) be in substantial accordance with the mitigation measures set out in chapter 9 of the environmental statement, flood risk assessment, indicative surface water drainage plan, nutrient neutrality assessment and water framework directive assessment;

(b) in the case of the process effluent drainage system, provide that case 1B, as described in the nutrient neutrality assessment, is not to be used; and

(c) provide that amines are not disposed of via a licenced facility into the Teesmouth and Cleveland Coast Special Protection Area and Ramsar site.

(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 surface and foul water drainage systems.

Flood risk mitigation

11.—(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, the lead local flood authority 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, the lead local flood authority 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 the flood risk assessment.

(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) No part of the authorised development may be commissioned until the scheme for the mitigation of flood risk approved under sub-paragraph (3) has been implemented and a flood management plan has been submitted to, and after consultation with the Environment Agency, the lead local flood authority and STDC, approved by the relevant planning authority.

(7) The flood management plan approved pursuant to sub-paragraph (6) must be implemented and maintained 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

12.—(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, the preparation of facilities for the use of contractors and the provision of temporary means of enclosure and site security for construction (where no foundations are required), 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 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**);

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

(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 environmental risk assessment including a contaminated land conceptual site 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) Where a remediation strategy is required and approved under sub-paragraph (2)(c), following its implementation, 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.

(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 the authorised development 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 limits where the undertaker demonstrates to the relevant planning authority following consultation with the Environment Agency that the relevant part of the Order limits 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 limits 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

13.—(1) No part of the authorised development may commence until a written scheme of investigation for that part has been submitted to and approved by the relevant planning authority.

(2) The scheme submitted and approved must be in accordance with chapter 17 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 unless otherwise agreed with the relevant planning authority.

Protected species

14.—(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(**a**).

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

Construction environmental management plan

15.—(1) No part of the permitted preliminary works may be carried out until a permitted preliminary works construction environmental management plan for that part has been submitted to and, after consultation with STDC, approved by the relevant planning authority.

(2) The permitted preliminary works construction environmental management plan submitted must be in substantial accordance with the framework construction environmental management plan, to the extent that it is relevant to the permitted preliminary works.

(3) 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.

(4) The plan submitted and approved in sub-paragraph (3) must be in substantial accordance with the framework construction environmental management plan.

(5) 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.

(6) The relevant planning authority must not withhold its approval of a plan under sub-paragraph (3) on the basis that the proposed activities in the plan include 24-hour working, if the activities proposed to be subject to 24-hour working are consistent with those listed in the framework construction environmental management plan.

(7) No part of the authorised development may commence, save for the permitted preliminary works, unless the following plans for that part have been submitted to and, after consultation with the Environment Agency, Sembcorp and STDC, approved by the relevant planning authority—

(a) site waste management plan (produced in substantial accordance with the outline site waste management plan);

(b) water management plan (produced in substantial accordance with the outline water management plan);

(c) lighting strategy (construction) (produced in substantial accordance with the indicative lighting strategy (construction));

(d) soils management plan;

(e) pollution prevention plan;

(f) emergency response plan;

(g) construction dewatering strategy;

(h) flood risk management action plan;

(i) materials management plan;

(j) hazardous materials management plan, including an asbestos management plan;

(k) invasive plant species management plan;

(l) bird mitigation and monitoring plan (produced following consultation by the undertaker with Natural England);

(m) groundwater risk assessment;

(n) UXO emergency response plan;

(o) foundation works risk assessment;

(p) hydraulic fracture risk assessment;

(q) drilling method statement;

(r) HDD collapse clean-up plan; and

(s) a scheme for the notification of any significant construction impacts on local residents and for handling of any complaints received from local residents relating to construction impacts.

(8) The plans may be submitted under sub-paragraph (7) using a combination of any of the following methods—

(a) appended to the construction environmental management plan submitted and approved under sub-paragraph (3);

(b) submitted as separate, individual plans; or

(c) where a number of the related sub-sets of plans listed in sub-paragraph (7) have been merged into fewer documents as required and reasonably practicable to achieve the desired effect as set out in the framework construction environmental management plan.

(9) All construction works associated with the authorised development must be carried out in accordance with the plans approved under sub-paragraph (7) unless otherwise agreed with the relevant planning authority.

Protection of highway surfaces

16.—(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 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.

Extended planned shutdown maintenance period

17.—(1) Prior to the authorised development's first extended planned shutdown maintenance period, an environmental and traffic management plan for that period must be submitted and, after consultation with National Highways on matters relating to traffic management, approved by the relevant planning authority.

(2) The plan in sub-paragraph (1) must be implemented as approved unless otherwise agreed with the relevant planning authority.

(3) Prior to each subsequent extended planned shutdown maintenance period, a statement must be submitted to the relevant planning authority to either confirm no changes or notify changes to environmental and traffic management plan submitted in sub-paragraph (1).

(4) If the statement in sub-paragraph (3) is a notification of changes to the plan, then these changes must be approved, after consultation with National Highways to the extent that the changes relate to traffic management, by the relevant planning authority before that extended planned shutdown maintenance period can begin.

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, the relevant highway authority, the NSMP entities and STDC, approved by the relevant planning authority.

(2) The plan submitted and approved must be in substantial accordance with 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;

(f) details of how the undertaker will seek to engage with the undertaker as defined in the Net Zero Teesside Order 2024 and the developer of HyGreen Teesside to manage cumulative construction transport impacts;

(g) details of the monitoring to be undertaken; and

(h) a construction workers travel plan (which must be substantially in accordance with the framework construction workers travel 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 hours

19.—(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) do 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 20;

(b) are carried out with the prior approval of the relevant planning authority, including as part of a construction environmental management plan approved under requirement 15; 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, including as part of a construction traffic management plan approved under requirement 18.

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

(a) mobilisation and de-mobilisation periods from 0600 to 0700 and from 1900 to 2000 Monday to Friday;

(b) mobilisation and de-mobilisation periods from 0600 to 0700 and from 1300 to 1400 on a Saturday; or

(c) maintenance at any time of plant and machinery engaged in the construction of the authorised development where such activities do not exceed a noise limit measured at the Order limits agreed with the relevant planning authority in accordance with Requirement 20.

Control of noise - construction

20.—(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.

(2) The scheme submitted and approved must 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.

Piling and penetrative foundation design

21.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a written piling and penetrative foundation design method statement, informed by a risk assessment for that part, has been submitted to and, after consultation with the Environment Agency, Natural England 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.

Restoration of land used temporarily for construction

22.—(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 only for construction must, for each relevant Work No. of the authorised development, be submitted to and, after consultation with STDC, approved by the relevant planning authority.

(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 environmental risk assessment and any further ground investigation reports and groundwater monitoring required by requirement 12(2)(f).

Aviation warning lighting

23.—(1) No part of the authorised development comprised within Work No. 1 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

24. No part of Work No. 1 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

25.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until the undertaker has established, or has convened jointly with either both or one of the undertaker as defined in The Net Zero Teesside Order 2024 and the promoter of HyGreen Teesside, a group to liaise with local residents and organisations about matters relating to the authorised development (a 'local liaison group').

(2) The undertaker must invite the relevant planning authority, STDC, the NSMP 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 and its contractors; 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.

(5) In this requirement, "convened" means either the undertaker establishing a new group or becoming part of an existing local liaison group established pursuant to requirement 29 of The Net Zero Teesside Order 2024.

Employment, skills and training plan

26.—(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 authority.

(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.

(5) The plans submitted pursuant to sub-paragraphs (1) and (3) may be submitted jointly with either both or one of the undertaker as defined in The Net Zero Teesside Order 2024 and the promoter of HyGreen Teesside.

Carbon dioxide transport and storage

27.—(1) No part of the authorised development other than 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; and

(b) that an environmental permit has been granted for Work No. 1A.1.

Decommissioning

28.—(1) Within 12 months of the date that a Work No. permanently ceases operation (or such longer period as may be agreed in writing with the relevant planning authority), the undertaker must submit to the relevant planning authority for its approval (following consultation with the Environment Agency, Sembcorp, CF Fertilisers, Anglo American and, on matters relating to traffic management arrangements pursuant to sub-paragraph (6)(h), National Highways)—

(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) Prior to the start of decommissioning works for any part of the authorised development, the undertaker must carry out surveys to determine the presence or absence of protected species, notable species and invasive non-native species in that part of the authorised development to inform the plan submitted pursuant to sub-paragraph (1)(a).

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

(a) approved the plan 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).

(4) 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 paragraph 5(1) of Schedule 13 (procedure for discharge of requirements).

(5) Where the undertaker has submitted an appeal pursuant to paragraph 5(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 receiving 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.

(6) 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 plan;

(h) traffic management arrangements during any demolition, removal and remediation works;

(i) the monitoring and control of noise;

(j) waste management measures required; and

(k) how the undertaker has applied the waste hierarchy.

(7) 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

29. 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

30.—(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 44 (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

31.—(1) Where the words "unless otherwise agreed by the relevant planning authority" appear in the above 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

32. 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.

Highway accesses

33.—(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 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 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.

Operational traffic management plan

34.—(1) No part of the authorised development may be commissioned until an operational traffic management plan has, for that part, been submitted to and, after consultation with National Highways, approved by the relevant planning authority.

(2) The plan submitted for approval under sub-paragraph (1) must include—

(a) information on the staff numbers and proposed shift times for the operational phase of the authorised development;

(b) an assessment of the impacts to the strategic road network on the basis of the information provided under paragraph (a);

(c) measures in relation to operational travel movements consistent with the principles of the measures set out in section 6.0 (travel plan measures) of the framework construction workers travel plan; and

(d) arrangements for monitoring operational traffic impacts.

SCHEDULE 3

Article 9

MODIFICATIONS TO AND AMENDMENTS OF THE YORK POTASH HARBOUR FACILITIES ORDER 2016

1. Article 34 is deleted and replaced with "Schedules 7 to 13 have effect".

2. After Schedule 12 insert new Schedule 13—

"SCHEDULE 13

FOR THE PROTECTION OF THE H2T UNDERTAKER

Interpretation

1. For the protection of the H2T Undertaker, the following provisions have effect, unless otherwise agreed in writing between the Parties.

2. The following definitions apply in 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;

"expert" means a person appointed pursuant to paragraph 12(b);

"H2T Apparatus" means the pipeline, cables, structures to be owned, occupied or maintained by the H2T Undertaker within the Shared Area;

"H2T Order" means the H2Teesside Order 202*;

"H2T Project" means the construction, operation or maintenance of the authorised development as is defined by the H2T Order;

"H2T Specified Works" means so much of the H2T Project as is within the Shared Area;

"H2T Undertaker" means the undertaker as defined by the H2T Order;

"Land Plans" means the land plans as defined by the H2T Order;

"Parties" means the H2T 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 as at the date of the H2T Order;

"Respective Projects" means the H2T 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 so far within the H2T Order limits;

"Shared Area Plan" means the plan which is certified as the H2 Teesside Anglo American Shared Area Plan by the Secretary of State under article 44 (certification of plans etc.) for the purposes of the H2T 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 H2T Undertaker is required under the provisions of this Schedule the undertaker must give at least 21 days written notice to the H2T 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 H2T 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 H2T Project it requires to be taken into account;

(c) the named point of contact for the H2T 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 H2T Undertaker pursuant to 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 H2T Undertaker.

(5) Wherever in this Schedule provision is made with respect to the agreement approval or consent of the H2T Undertaker, that approval or consent must be in writing and subject to such reasonable terms and conditions as the H2T 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 H2T Project (where the conditions proposed or any refusal relate to such matters, a reasoned explanation or other form of evidence will be provided by the H2T Undertaker to provide an understanding of the matters raised); and/or

(b) prevent the ability of the H2T Undertaker to have uninterrupted access to the H2T Project; and/or

(c) make regulatory compliance materially more difficult or expensive,

provided that before the H2T Undertaker can validly refuse consent for any of the reasons set out in sub-paragraphs (a) and (c) 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 H2T 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 H2T 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 H2T 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 14.

(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 H2T Undertaker by recorded delivery and addressed to Chris Daykin, BP Hydrogen & CCU, 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 chris.daykin@uk.bp.com and clare.haley@uk.bp.com.

(9) In the event that the H2T 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 H2T Undertaker written notice requiring the H2T Undertaker to give their decision within a further 28 days beginning with the date upon which the H2T 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 H2T Undertaker has failed to notify the undertaker of its decision the H2T 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 H2T Specified Works are or may be undertaken concurrently with the Specified Works within any of the Shared Area, the undertaker must—

(a) co-operate with the H2T Undertaker with a view to ensuring—

(i) the co-ordination of programming of all activities and the carrying out of works within the relevant Shared Area; and

(ii) that access for the purposes of the construction and operation of the H2T Project is maintained for the H2T 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 H2T Undertaker obtained pursuant to, and in accordance with, the provisions of paragraph 3.

(2) Where under paragraph 3(5) the H2T 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 H2T 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 the Specified Works 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 14(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 12.

(5) The undertaker must give to the H2T 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 H2T 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 H2T 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 H2T 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 H2T 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) above, the H2T 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 H2T Undertaker to the H2T Specified Works unless first agreed in writing by the H2T 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 H2T Specified Works is materially obstructed, the undertaker must provide such alternative means of access to the H2T Specified Works as will enable the H2T Undertaker to construct, maintain or operate the H2T 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 H2T Undertaker of the location of any part of its then existing or proposed H2T 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 H2T Specified Works without the prior written consent of the H2T 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 H2T 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); and

(e) article 15 (protective works to buildings).

(4) In the event that the H2T 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.

Constructability Principles

7.—(1) Subject to sub-paragraph (3), the undertaker must in respect of the Specified Works (unless otherwise agreed, or in an emergency relating to potential death or serious injury, or where it would render the H2T Specified Works, H2T Apparatus, Specified Works or Anglo American Apparatus unsafe, or put the undertaker in breach of its statutory duties)—

(a) carry out the Specified Works in such a way that will not prevent or interfere with the continued construction of the H2T Specified Works, or the maintenance or operation of the H2T Apparatus unless the action leading to such prevention or interference has the prior written consent of H2T 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 H2T Undertaker in respect of any H2T Apparatus will be of adequate specification to bear the loads;

(c) prior to the carrying out 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 H2T Undertaker and obtain agreement thereof from the H2T Undertaker (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 7;

(ii) provide a copy to the H2T Undertaker any relevant construction environmental management plan approved under Requirement 6 which relate to construction activities in the Shared Area;

(iii) where applicable, confirm to the H2T Undertaker in writing the identity of the client for the purposes of the relevant Construction Design and Management Regulations applicable from time to time; and

(iv) at all times construct the Specified Works in compliance with the relevant approved construction traffic and access management plan;

(d) update on a monthly basis the construction programme approved under sub-paragraph (c)(i) and supply a copy of the updated programme to the H2T Undertaker every month;

(e) notify the H2T Undertaker of any incidence 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;

(f) report to the H2T Undertaker of any environmental incidents which occur as a consequence of or are found in association with the carrying out of the Specified Works including the identification of contamination or hazards to construction;

(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 or if required by the H2T Undertaker earlier than three months of the date of completion, providing reasonable information

regarding the layout of the Specified Works in the shared area in question, subject to the H2T Undertaker providing reasonable notice to the undertaker;

(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 H2T Undertaker 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;

(i) in respect of land in which the undertaker 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 H2T Specified Works;

(j) obtain the prior written consent of the H2T Undertaker for the use of any re-cycled aggregate material within the Shared Area;

(k) prior to carrying out any works in plots 13/1, 13/2 and 13/3 of the Land Plans and adjacent waterside, obtain the H2T Undertaker's approval for such works, such approval not to be unreasonably withheld or delayed and will consider (l); and

(l) ensure the H2T Undertaker has unhindered land and waterside access (as applicable) to plots 13/1, 13/2 and 13/3 of the Land Plans, including the ability to berth and/or moor vessels to the existing infrastructure.

(2) Any spoil from the H2T 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 the event that the H2T Undertaker notifies the undertaker in writing that the H2T Undertaker will not construct part of the H2T Specified Works ("H2T Abandoned Works"), the undertaker can construct, operate and maintain the Specified Works without regard to and without complying with paragraphs 7(1) and 7(2) insofar as those paragraphs apply to the H2T Abandoned Works.

(4) In considering a request for any consent under the provisions of this Schedule, the H2T 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)(i) (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 H2T 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 H2T 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 H2T 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 H2T Undertaker.

(5) In considering any request for consent or approval under this Schedule, the H2T Undertaker must not refuse consent for details that are consistent with those approved under sub-paragraph (2) unless the H2T 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 authorised development or the H2T Project.

Miscellaneous provisions

9.—(1) The undertaker and the H2T 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 H2T Undertaker the reasonable expenses incurred by the H2T 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 H2T 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 H2T Apparatus used in connection with the H2T Specified Works or damage is caused to any part of the H2T Specified Works or there is any interruption in any service provided, or the operations of the H2T Undertaker, or in the supply of any goods, by the H2T Undertaker, the undertaker must—

(a) bear and pay the costs reasonably incurred by H2T Undertaker in making good such damage or restoring the service, operations or supply; and

(b) compensate the H2T Undertaker for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the H2T 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 the H2T Undertaker, its officers, employees, servants, contractors or agents; or

(b) any indirect or consequential loss or loss of profits by the H2T Undertaker.

(3) The H2T Undertaker 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 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 subparagraph (3) it must—

(a) keep the H2T Undertaker fully informed of the developments and material elements of the proceedings;

(b) take account of the views of the H2T Undertaker before taking any action in relation to the claim;

(c) not bring the name of the H2T Undertaker 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 the H2T Undertaker such consent not to be unreasonably withheld or delayed.

(5) The H2T 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 H2T 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).

(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 the H2T Undertaker has not used its reasonable endeavours to mitigate and/or minimise that claim accordance with sub-paragraph (5).

(7) The fact that any work or thing has been executed or done with the consent of the H2T Undertaker and in accordance with any conditions or restrictions prescribed by the H2T Undertaker or in accordance with any plans approved by the H2T Undertaker or to its satisfaction or in accordance with any directions or award of any expert appointed pursuant to paragraph 12 does not relieve the undertaker from any liability under this paragraph.

(8) The undertaker shall only be liable under this paragraph 10 for claims reasonably incurred by the H2T Undertaker.

Dispute resolution

11. Article 40 (arbitration) does not apply to provisions of this Schedule.

12. Any difference in relation to the provisions in this Schedule must be referred to—

(a) a meeting of BP Vice President Hydrogen and Carbon Capture and Storage in the United Kingdom and the Project Manager, Anglo American Woodsmith Mine and the Company Secretary of Anglo American 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 H2T Undertaker and the undertaker or, in the absence of agreement identified by the President of the Law Society, who must be sought to be appointed within 28 days of the notification of the dispute.

13. The fees of the expert appointed pursuant to paragraph 12(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.

14. 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.

15. The expert must consider where relevant—

(a) the development outcomes sought by the H2T Undertaker and the undertaker;

(b) the ability of the H2T 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 H2T Order or the Order, the H2T Undertaker's or the undertaker's outcomes could be achieved in any alternative manner without the H2T Specified Works being materially compromised in terms of increased cost or increased length of programme; and

(e) any other important and relevant considerations.

16. 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 Law Society.".

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 Borough of Stockton-on-Tees	A1185	Works for the improvement of the access at the point marked B4 and B4a on sheets 2 and 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Tees Road (A178)	Works for the improvement of the access at the point marked C1 and C1a on sheet 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178)	Works for the improvement of the access at the point marked D1 and D1a on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178)	Works for the improvement of the access at the point marked D2 and D2a on sheet 3 of the access and right of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178)	Works for the improvement of the access at the point marked D3 and D3a on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178)	Works for the improvement of the access at the point marked D4 and D4a on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178)	Works for the improvement of the access at the point marked D5 on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road	Pipeline works beneath the width of the highways for the proposed pipeline crossing between the points X and X1 on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road	Works for the improvement of the access at the point marked E2 and E2a on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road	Works for the improvement of the access at the point marked E3 and E3a on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road	Works for the improvement of the access at the point marked E4 on sheet 5 of the access and

		rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road	Works for the installation of a new access at the point marked E5 on sheet 5 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road	Works for the improvement of the access at the point marked E6 on sheet 6 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road	Works for the installation of a new access at the point marked E7 on sheet 5 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Huntsman Drive	Works for the improvement of the access at the point marked F1 on sheet 5 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Cowpen Bewley Road	Works for the improvement of the access at the point marked G1 and G1a on sheets 1 and 2 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Cowpen Bewley Road	Works for the improvement of the access at the point marked G2 on sheets 1 and 2 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Nelson Avenue	Works for the improvement of the access at the point marked H1 and H1a on sheets 1 and 2 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Nelson Avenue	Works for the improvement of the access at the point marked H2 on sheets 1 and 2 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Belasis Avenue (B1275)	Works for the installation of a new access at the point marked I1 and I1a on sheet 1 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Belasis Avenue (B1275)	Works for the improvement of the access at the point marked I2 on sheet 1 of the access and rights of way plans
In the Borough of Redcar and Cleveland	Trunk Road (A1085)	Works for the improvement of the access at the point marked K1 on sheet 8 of the access and rights of way plans
In the Borough of Stockton-on-Tees	New Road	Pipeline works above the width of the highway for the proposed pipeline crossing at the point marked L1 on sheet 1 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Tees Road (A178)	Works for the improvement of the access at the point marked M1 and M1a on sheet 4 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 Borough of Stockton-on-Tees	A1185 / unnamed private track	That part of the access cross-hatched in blue at the point marked B4a on sheets 2 and 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Tees Road (A178) / PD Teesport Ltd private access track	That part of the access cross-hatched in blue at the point marked C1a on sheet 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178) / unnamed private track	That part of the access cross-hatched in blue at the point marked D1a on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178) / unnamed private track	That part of the access cross-hatched in blue at the point marked D2a on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178) / Sembcorp Linkline Corridors private access track	That part of the access cross-hatched in blue at the point marked D3a on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178) / unnamed private track	That part of the access cross-hatched in blue at the point marked D4a on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road / new private track	That part of the access cross-hatched in blue at the point marked E2 on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road / new private track	That part of the access cross-hatched in blue at the point marked E3a on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Cowpen Bewley Road / unnamed private track	That part of the access cross-hatched in blue at the point marked G1a on sheets 1 and 2 of the access and rights of way plans
In the Borough of Stockton-	Nelson Avenue / unnamed	That part of the access cross-

on-Tees	private track	hatched in blue at the point marked H1a on sheets 1 and 2 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Belasis Avenue (B1275) / unnamed private track	That part of the access cross-hatched in blue at the point marked I1a on sheet 1 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Tees Road (A178) / PD Teesport Ltd private access track	That part of the access cross-hatched in blue at the point marked M1a on sheet 4 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 Borough of Stockton-on-Tees	A1185 / unnamed private track	That part of the access cross-hatched in red at the point marked B4 on sheets 2 and 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Tees Road (A178) / PD Teesport Ltd private access track	That part of the access cross-hatched in red at the point marked C1 on sheet 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178) / unnamed private track	That part of the access cross-hatched in red at the point marked D1 on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178) / unnamed private track	That part of the access cross-hatched in red at the point marked D2 on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178) / Sembcorp Linkline Corridors private access track	That part of the access cross-hatched in red at the point marked D3 on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178) / unnamed private track	That part of the access cross-hatched in red at the point marked D4 on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178) / unnamed private track	That part of the access cross-hatched in red at the point marked D5 on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road / unnamed private track	That part of the access cross-hatched in red at the point marked E2 on sheet 3 of the

		access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road / Sabic Brine Fields Site private access track	That part of the access cross-hatched in red at the point marked E3 on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road / Seal Sands Power Station private access track	That part of the access cross-hatched in red at the point marked E4 on sheet 5 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road / new private track	That part of the access cross-hatched in red at the point marked E5 on sheet 5 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road / unnamed private track	That part of the access cross-hatched in red at the point marked E6 on sheet 6 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road / new private track	That part of the access cross-hatched in red at the point marked E7 on sheet 5 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Huntsman Drive / unnamed private track	That part of the access cross-hatched in red at the point marked F1 on sheet 5 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Cowpen Bewley Road / unnamed private track	That part of the access cross-hatched in red at the point marked G1 on sheets 1 and 2 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Cowpen Bewley Road / unnamed private track	That part of the access cross-hatched in red at the point marked G2 on sheets 1 and 2 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Nelson Avenue / unnamed private track	That part of the access cross-hatched in red at the point marked H1 on sheets 1 and 2 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Nelson Avenue / unnamed private track	That part of the access cross-hatched in red at the point marked H2 on sheets 1 and 2 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Belasis Avenue (B1275) / unnamed private track	That part of the access cross-hatched in red at the point marked I1 on sheet 1 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Belasis Avenue (B1275) / unnamed private track	That part of the access cross-hatched in red at the point marked I2 on sheet 1 of the access and rights of way plans
In the Borough of Redcar and Cleveland	Trunk Road (A1085) / unnamed private track	That part of the access cross-hatched in red at the point marked K1 on sheet 8 of the

		access and rights of way plans
In the Borough of Stockton-on-Tees	Tees Road (A178) / PD Teesport Ltd private access track	That part of the access cross-hatched in red at the point marked M1 on sheet 4 of the access and rights of way plans

SCHEDULE 6

Article 13

TEMPORARY CLOSURE OF STREETS AND PUBLIC RIGHTS OF WAY

PART 1

THOSE PARTS OF THE STREET TO BE TEMPORARILY CLOSED

Table 4

(1) *Area*	*(2)* *Street subject to temporary closure of use*	*(3)* *Extent of temporary closure of use of street*
In the Borough of Stockton-on-Tees	A1185	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked BG and BH on sheets 2 and 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Tees Road (A178)	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked CA and CB on sheet 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178)	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked DA and DB on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178)	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked DC and DD on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked EA and EB on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked EC and ED on sheet 3

		of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked EE and EF on sheet 5 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked EG and EH on sheet 5 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked EI and EJ on sheet 6 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Huntsman Drive	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked FA and FB on sheet 5 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Cowpen Bewley Road	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked GA and GB on sheets 1 and 2 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Nelson Avenue	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked HA and HB on sheets 1 and 2 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Belasis Avenue (B1275)	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked IA and IB on sheet 1 of the access and rights of way plans
In the Borough of Stockton-on-Tees	New Road	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked LA and LB on sheet 1

		of the access and rights of way plans
In the Borough of Stockton-on-Tees	Tees Road (A178)	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked MA and MB on sheet 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Unnamed private track	Temporarily close, prohibit the use of, restrict the use of, alter or divert the private access between the points marked Z11 and Z12 on sheets 2 and 3 of the access and rights of way plans

PART 2

THOSE PUBLIC RIGHTS OF WAY TO BE TEMPORARILY CLOSED

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 the public right of way*
In the Borough of Redcar and Cleveland	Public footpath – England Coast Path / Teesdale Way LDR	Temporarily close, prohibit the use of, restrict the use of, alter or divert the footpath between the points marked W1 and W2 on sheet 8 of the access and rights of way plans
In the Borough of Redcar and Cleveland	Public bridleway – England Coast Path / Teesdale Way LDR	Temporarily close, prohibit the use of, restrict the use of, alter or divert the bridleway between the points marked W3 and W4 on sheet 8 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Public footpath – England Coast Path	Temporarily close, prohibit the use of, restrict the use of, alter or divert the footpath between the points marked W7 and W8 on sheet 3 of the access and rights of way plans

SCHEDULE 7

Article 16

TRAFFIC REGULATION MEASURES

Table 6

(1) *Area*	*(2)* *Street*	*(3)* *Description of traffic regulation measures*	*(4)* *Traffic regulation measure reference as shown on the temporary traffic regulation measures plan*
In the Borough of Stockton-on-Tees	A1185	Contraflow between points BG and BH, and temporary 30mph speed limit and parking restrictions between points BG1 and BH1	TM05
In the Borough of Stockton-on-Tees	Tees Road (A178)	Contraflow between points CA and CB, and temporary 30mph speed limit and parking restrictions between points CA1 and CB1	TM06
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178)	Contraflow between points DA and DB, and temporary 30mph speed limit and parking restrictions between points DA1 and DB1	TM07
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178)	Contraflow between points DC and DD, and temporary 30mph speed limit and parking restrictions between points DC1 and DD1	TM08
In the Borough of Stockton-on-Tees	Seal Sands Road	Contraflow between points EA and EB, and temporary 30mph speed limit and parking restrictions between points EA1 and EB1	TM09
In the Borough of Stockton-on-Tees	Seal Sands Road	Contraflow between points EC and ED, and temporary 30mph speed limit and parking restrictions between points EC1	TM10

		and ED1	
In the Borough of Stockton-on-Tees	Cowpen Bewley Road	Contraflow between points GA and GB, and temporary 30mph speed limit and parking restrictions between points GA1 and GB1	TM11
In the Borough of Stockton-on-Tees	Nelson Avenue	Contraflow between points HA and HB, and parking restrictions between points HA1 and HB1	TM12
In the Borough of Stockton-on-Tees	Belasis Avenue (B1275)	Contraflow between points IA and IB, and temporary 30mph speed limit and parking restrictions between points IA1 and IB1	TM13
In the Borough of Redcar and Cleveland	Trunk Road (A1085)	Lane closure between points JC and JD, and temporary 30mph speed limit and parking restrictions between points JC1 and JD	TM14
In the Borough of Redcar and Cleveland	Trunk Road (A1085)	Lane closure between points KA and KB and temporary 30mph speed limit and parking restrictions between points KA1 and KB	TM15
In the Borough of Stockton-on-Tees	New Road	Road closure between points LA and LB	TM16
In the Borough of Stockton-on-Tees	New Road	Contraflow between points LA and LB, and temporary 30mph speed limit and parking restrictions between points LA1 and LB1	TM17

SCHEDULE 8

Article 25

LAND IN WHICH NEW RIGHTS ETC. MAY BE ACQUIRED

Interpretation

In this Schedule—

"Work No. 1A.1 infrastructure" means any works or development comprised within Work No. 1A.1, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 1A.1 on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 1A.2 infrastructure" means any works or development comprised within Work No. 1A.2, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 1A.2 on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 1B.1 infrastructure" means any works or development comprised within Work No. 1B.1, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 1B.1 on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 1B.2 infrastructure" means any works or development comprised within Work No. 1B.1, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 1B.2 on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 1C infrastructure" means any works or development comprised within Work No. 1C, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 1C on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 1D infrastructure" means any works or development comprised within Work No. 1D, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 1D on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 1E.1 infrastructure" means any works or development comprised within Work No. 1E.1, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 1E.1 on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 1E.2 infrastructure" means any works or development comprised within Work No. 1E.2, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 1E.2 on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"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. 2C infrastructure" means any works or development comprised within Work No. 2C, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 2C on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 3A infrastructure" means any works or development comprised within Work No. 3A, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 3A on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 3B.1 infrastructure" means any works or development comprised within Work No. 3B.1, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 3B.1 on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 3B.2 infrastructure" means any works or development comprised within Work No. 3B.2, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 3B.2 on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 3B.3 infrastructure" means any works or development comprised within Work No. 3B.3, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 3B.3 on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 4 infrastructure" means any works or development comprised within Work No. 4, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 4 on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 5 infrastructure" means any works or development comprised within Work No. 5, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 5 on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 6A infrastructure" means any works or development comprised within Work No. 6A, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 6A on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 6B infrastructure" means any works or development comprised within Work No. 6B, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 6B on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 7A infrastructure" means any works or development comprised within Work No. 7A, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 7A on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 7B infrastructure" means any works or development comprised within Work No. 7B, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 7B 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;

"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 pink on the land plans— 13/16, 13/19, 13/20, 13/21, 13/23, 14/1, 14/2, 14/3, 14/4, 14/5	For and in connection with the Work No. 1A.1 infrastructure, the right to create, maintain 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, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 1A.1 infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 1A.1 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. 1A.1 infrastructure, or interfere with or obstruct access from and to the Work No. 1A.1 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— 13/16, 13/19, 13/21, 13/23, 14/1, 14/2, 14/9	For and in connection with the Work No. 1A.2 infrastructure, the right to create, maintain or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pas and re-pass, on foot, with or without vehicles, plant, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 1A.2 infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 1A.2 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. 1A.2 infrastructure, or interfere with or obstruct access from and to the Work No. 1A.2 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— 13/16, 13/20, 14/4, 14/5	For and in connection with the Work No. 1B.1 infrastructure, the right to create, maintain 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, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 1B.1 infrastructure, together with the right to install, retain, use, maintain, alter,

	replace and remove the Work No. 1B.1 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. 1B.1 infrastructure, or interfere with or obstruct access from and to the Work No. 1B.1 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— 13/19, 13/21, 13/23, 14/1, 14/2, 14/9	For and in connection with the Work No. 1B.2 infrastructure, the right to create, maintain 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, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 1B.2 infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 1B.2 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. 1B.2 infrastructure, or interfere with or obstruct access from and to the Work No. 1B.2 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— 13/16, 13/19, 13/21, 13/23, 14/1, 14/2, 14/3, 14/4	For and in connection with the Work No. 1C infrastructure, the right to create, maintain 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, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 1C infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 1C 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. 1C infrastructure, or interfere with or obstruct access from and to the Work No. 1C 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— 13/16, 13/19, 13/20, 13/21, 13/23, 14/1, 14/2, 14/3, 14/4, 14/5, 14/9	For and in connection with the Work No. 1D infrastructure, the right to create, maintain 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, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 1D infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 1D 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. 1D infrastructure, or interfere with or obstruct access from and to the Work No. 1D infrastructure, including the right to prevent or remove the whole of any building, or 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.
The following plots shown coloured pink on the land plans— 13/16, 13/20, 14/1, 14/2, 14/3, 14/4, 14/5, 14/9	For and in connection with the Work No. 1E.1 infrastructure, the right to create, maintain 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, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 1E.1 infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 1E.1 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. 1E.1 infrastructure, or interfere with or obstruct access from and to the Work No. 1E.1 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— 13/16, 13/20, 14/1, 14/2, 14/9	For and in connection with the Work No. 1E.2 infrastructure, the right to create, maintain 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, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 1E.2 infrastructure, together with

	the right to install, retain, use, maintain, alter, replace and remove the Work No. 1E.2 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. 1E.2 infrastructure, or interfere with or obstruct access from and to the Work No. 1E.2 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— 9/5, 9/7, 9/9, 9/10, 13/17, 13/18, 13/22, 14/6, 14/7, 14/8, 14/14, 14/23, 14/25, 14/26, 14/27, 14/28, 14/29, 15/3, 15/4, 15/5, 15/7. 15/8, 15/9, 15/17, 15/25, 15/26, 15/27, 15/28, 15/29, 15/30, 15/43, 15/47, 15/48, 15/49, 15/50, 15/51, 15/52, 15/53, 15/54, 15/55, 15/56, 15/70, 15/71, 15/72, 15/87, 15/88, 15/90, 15/93, 15/94, 15/97, 15/98, 15/103, 15/104, 15/105, 15/106, 15/107, 15/110, 15/111, 15/113 The following plots shown coloured pink on the land plans— 13/20, 14/5, 15/69	For and in connection with the Work No. 2A infrastructure, the right to create, maintain 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, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 2A infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove 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— 9/8, 14/16, 14/17, 14/18, 14/19, 14/20, 14/21, 15/69	For and in connection with the Work No. 2B infrastructure, the right to create, maintain 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, machinery and equipment, at all times and 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, maintain, alter, replace and remove 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— 9/2, 9/3, 9/4, 9/5, 9/48, 9/49, 9/50, 10/48, 11/1, 11/2, 11/3, 11/22c, 11/25a, 11/28, 11/29, 11/31, 11/45a, 11/53, 11/60, 11/62a, 11/65, 11/70, 11/101, 11/102, 11/123, 11/124, 11/132, 11/133, 11/137, 12/2, 12/3, 12/4, 12/6, 15/82, 15/84, 15/86, 15/87, 15/88, 15/106, 15/244, 15/245	For and in connection with the Work No. 2C infrastructure, the right to create, maintain 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, machinery and equipment, at all times and for all purposes in connection with the bringing back into use, recommissioning and maintenance of the Work No. 2C infrastructure, together with the right to lay, retain, use, maintain, alter, replace and remove the Work No. 2C infrastructure, and a right of support for it as well as a right to use the Work No. 2C infrastructure, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 2C infrastructure, or interfere with or obstruct access from and to the Work No. 2C 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 plot shown coloured pink on the land plans— 11/66	
The following plots shown coloured blue on the land plans— 13/17, 13/18, 13/22, 14/10, 14/10a, 14/11, 14/12, 14/13, 14/14, 14/23, 14/25, 14/26, 14/27, 14/28, 14/29, 14/38, 14/39, 14/6, 14/7, 14/8, 15/1, 15/10, 15/103, 15/104, 15/105, 15/106, 15/107, 15/11, 15/110, 15/111. 15/113, 15/12, 15/13, 15/14, 15/140, 15/141, 15/15, 15/16, 15/160, 15/163, 15/164, 15/165, 15/166, 15/17, 15/18, 15/19, 15/20, 15/21, 15/22, 15/23, 15/24, 15/25, 15/26, 15/27, 15/28, 15/29, 15/3, 15/30, 15/31, 15/32, 15/33, 15/34, 15/35, 15/36, 15/37, 15/38, 15/39, 15/4, 15/40, 15/41, 15/42, 15/43, 15/45, 15/47, 15/48, 15/49, 15/5, 15/50, 15/51, 15/52, 15/53, 15/54, 15/55, 15/56, 15/60, 15/61, 15/63, 15/7, 15/70, 15/71, 15/8, 15/87, 15/88, 15/9, 15/90, 15/93, 15/94, 15/97, 15/98	For and in connection with the Work No. 3A infrastructure, the right to create, maintain 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, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 3A infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 3A 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. 3A infrastructure, or interfere with or obstruct access from and to the Work No. 3A infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or 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— 13/20, 14/16, 14/17, 14/18, 14/19, 14/20, 14/21, 14/5, 15/157	
The following plots shown coloured pink on the land plans— 14/49	For and in connection with the Work No. 3B.1 infrastructure, the right to create, maintain 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, machinery and equipment, at all times and for all purposes in connection with

	the laying, installation, use and maintenance of the Work No. 3B.1 infrastructure, together with the rights to install, retain, use, maintain, alter, replace and remove the Work No. 3B.1 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. 3B.1 infrastructure, or interfere with or obstruct access from and to the Work No. 3B.1 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— 15/157	For and in connection with the Work No. 3B.2 infrastructure, the right to create, maintain 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, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 3B.2 infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 3B.2 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. 3B.2 infrastructure, or interfere with or obstruct access from and to the Work No. 3B.2 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 coloured pink on the land plans— 14/16, 14/17, 14/18, 14/19, 14/20, 14/21	For and in connection with the Work No. 3B.3 infrastructure, the right to create, maintain 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, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 3B.3 infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 3B.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. 3B.3 infrastructure, or interfere with or obstruct access from and to the Work No. 3B.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 blue on the land plans— 13/17, 13/18, 13/22, 14/10, 14/10a, 14/11, 14/12, 14/14, 14/23, 14/25, 14/26, 14/27, 14/28, 14/29, 14/30, 14/31, 14/32, 14/33, 14/34, 14/35, 14.36, 14/37, 14/38, 14/39, 14/40, 14/41, 14/42, 14/43, 14/44, 14/45, 14/46, 14/47, 14/48, 14/6, 14/7, 14/8, 15/10, 15/11, 15/12, 15/13, 15/14, 15/15, 15/16, 15/17, 15/18, 15/19, 15/20, 15/235, 15/236, 15/237, 15/238, 15/239, 15/240, 15/241, 15/242, 15/243, 15/3, 15/4, 15/5, 15/7, 15/8, 15/9 The following plots shown coloured pink on the land plans— 13/20, 14/16, 14/17, 14/18, 14/19, 14/20, 14/21, 14/5	For and in connection with the Work No. 4 infrastructure, the right to create, maintain 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, machinery and equipment, at all times and 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, maintain, alter, replace and remove 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— 13/17, 13/18, 13/22, 14/10, 14/10a, 14/11, 14/12, 14/14, 14/23, 14/25, 14/26, 14/27, 14/28, 14/29, 14/30, 14/31, 14/32, 14/33, 14/34, 14/35, 14/37, 14/38, 14/39, 14/6, 14/7, 14/8, 15/10, 15/11, 15/12, 15/13, 15/14, 15/15, 15/16, 15/17, 15/18, 15/19, 15/20, 15/3, 15/4, 15/5, 15/7, 15/8, 15/9 The following plots shown coloured pink on the land plans— 13/20, 14/16, 14/17, 14/18, 14/19, 14/20, 14/21, 14/5	For and in connection with the Work No. 5 infrastructure, the right to create, maintain 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, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 5 infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 5 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. 5 infrastructure, or interfere with or obstruct access from and to the Work No. 5 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— 1/12, 1/13, 1/19, 1/20, 1/22, 1/24, 1/26, 1/30, 1/43, 1/44, 1/5, 1/6, 1/7, 10/1, 10/10, 10/14, 10/15, 10/16, 10/25, 10/26, 10/28, 10/38, 10/39, 10/43, 10/45, 11/10, 11/100, 11/101, 11/102, 11/103, 11/104, 11/105, 11/106,	For and in connection with the Work No. 6A infrastructure, the right to create, maintain 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, machinery and equipment, at all

11/107, 11/108, 11/109, 11/110, 11/111, 11/112, 11/113, 11/114, 11/115, 11/116, 11/117, 11/118, 11/119, 11/12, 11/120, 11/121, 11/122, 11/123, 11/124, 11/125, 11/127, 11/13, 11/130, 11/131, 11/132, 11/133, 11/135, 11/15, 11/16, 11/19, 11/23, 11/26, 11/27, 11/29, 11/31, 11/33, 11/36, 11/38, 11/43, 11/44, 11/47, 11/5, 11/52, 11/53, 11/54, 11/57, 11/59, 11/60, 11/61, 11/63, 11/64, 11/65, 11/67, 11/68, 11/69, 11/70, 11/71, 11/72, 11/73, 11/74, 11/75, 11/76, 11/77, 11/78, 11/79, 11/8, 11/80, 11/81, 11/82, 11/83, 11/84, 11/85, 11/86, 11/87, 11/88, 11/89, 11/90, 11/91, 11/92, 11/93, 11/94, 11/95, 11/96, 11/97, 11/98, 11/99, 12/2, 12/3, 12/4, 12/5, 13/12, 13/13, 13/17, 13/18, 13/22, 14/14, 14/6, 14/7, 14/8, 15/100, 15/101, 15/102, 15/103, 15/104, 15/105, 15/106, 15/107, 15/108, 15/109, 15/110, 15/111, 15/112, 15/113, 15/114, 15/115, 15/116, 15/127, 15/128, 15/129, 15/130, 15/131, 15/132, 15/133, 15/134, 15/135, 15/136, 15/137, 15/138, 15/14, 15/140, 15/141, 15/142, 15/143, 15/144, 15/145, 15/147, 15/148, 15/15, 15/151, 15/153, 15/154, 15/155, 15/156, 15/16, 15/160, 15/163, 15/164, 15/165, 15/166, 15/17, 15/173, 15/177, 15/178, 15/179, 15/18, 15/182, 15/183, 15/184, 15/186, 15/187, 15/188, 15/189, 15/19, 15/195, 15/20, 15/209, 15/21, 15/210, 15/211, 15/212, 15/213, 15/214, 15/215, 15/216, 15/22, 15/220, 15/221, 15/222, 15/223, 15/224, 15/226, 15/23, 15/231, 15/24, 15/25, 15/26, 15/27, 15/28, 15/29, 15/3, 15/30, 15/31, 15/32, 15/33, 15/34, 15/35, 15/36, 15/37, 15/38, 15/39, 15/4, 15/40, 15/41, 15/42, 15.43, 15/45, 1546, 1547, 15/48, 15/49, 15/5, 15/50, 15/51, 15/52, 15/53, 15/54, 15/55, 15/56, 15/60, 15/61, 15/62, 15/70, 15/71, 15/72, 15/73, 15/74, 15/75, 15/76, 15/77, 15/78, 15/79, 15/80, 15/81, 15/82, 15/85, 15/86, 15/97, 15/88, 15/89, 15/90, 15/91, 15/92, 15/93, 15/94, 15/95, 15/96, 15/97, 15/98, 15/99, 18/1, 18/4, 18/7, 19/19, 19/2, 19/22, 19/24, 19/26, 19/28, 19/3, 19/32, 19/36, 19/6, 2/1, 2/13, 2/14, 2/15, 2/17, 2/18, 2/2, 2/22, 2/23, 2/26, 2/27, 2/29, 2/32, 2/33, 2/38, 2/39, 2/42, 2/45, 2/47, 2/48, 2/5, 2/52, 2/53, 2/54, 2/55, 2/56, 2/57, 2/58, 2/59, 2/60, 2/61, 2/63, 2/8, 20/1, 20/17, 20/6, 21/3, 3/1, 3/10, 3/11, 3/12, 3/2, 3/3, 3/6, 3/7, 3/9, 5/1, 5/106, 5/12, 5/13, 5/16, 5/17, 5/18, 5/2, 5/23, 5/25, 5/27, 5/28, 5/29, 5/30, 5/32, 5/35, 5/36, 5/37, 5/38, 5/39, 5/4, 5/40, 5/41, 5/42, 5/44, 5/45, 5/48, 5/49, 5/5, 5/50, 5/51, 5/54, 5/55, 5/56, 5/57, 5/58, 5/59, 5/62, 5/63, 5/64, 5/65, 5/70, 5/8, 5/90, 5/92, 6/10, 6/11, 6/12, 6/13, 6/2, 6/5, 6/8, 7/1, 7/10, 7/11, 7/12, 7/13, 7/14, 7/15, 7/16, 7/17, 7/18, 7/19, 7/2, 7/20, 7/21, 7/22, 7/23, 7/24, 7/25, 7/3, 7/38, 7/39, 7/4, 7/40b, 7/41, 7/5, 7/6, 7/7, 7/8, 7/9, 9/11, 9/12, 9/13,	times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 6A infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 6A 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. 6A infrastructure, or interfere with or obstruct access from and to the Work No. 6A 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.

9/15, 9/17, 9/18, 9/19, 9/21, 9/27, 9/30, 9/32, 9/33, 9/38, 9/40	
The following plots shown coloured pink on the land plans— 13/20, 14/5, 15/157, 15/69, 20/11	
The following plots shown coloured pink on the land plans— 1/36, 7/40, 10/9, 11/126, 11/128, 11/129, 11/134, 11/56, 11/58, 11/66, 15/146, 15/149, 15/150, 15/152, 19/4, 19/5, 2/35, 2/36, 2/37, 20/11, 5/21, 9/16, 9/41	For and in connection with the Work No. 6B infrastructure, the right to create, maintain 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, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 6B infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 6B 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. 6B infrastructure, or interfere with or obstruct access from and to the Work No. 6B 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— 13/17, 13/18, 13/22, 14/10, 14/10a, 14/11, 14/12, 14/14, 14/23, 14/24, 14/25, 14/26, 14/27, 14/28, 14/29, 14/6, 14/7, 14/8, 15/17, 15/25, 15/26, 15/3, 15/4, 15/5, 15/7, 15/8, 15/9	For and in connection with the Work No. 7A infrastructure, the right to create, maintain 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, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 7A infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 7A 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. 7A infrastructure, or interfere with or obstruct access from and to the Work No. 7A 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— 13/20, 14/5	
The following plots shown coloured pink on the land plans— 14/16, 14/17, 14/18, 14/19, 14/20, 14/21	For and in connection with the Work No. 7B infrastructure, the right to create, maintain 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, machinery and equipment, at all times and for all purposes in connection with

	the laying, installation, use and maintenance of the Work No. 7B infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 7B 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. 7B infrastructure, or interfere with or obstruct access from and to the Work No. 7B 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— 13/17, 13/18, 13/22, 14/14, 14/6, 14/7, 14/8, 15/100, 15/101, 15/102, 15/103, 15/104, 15/105, 15/106, 15/107, 15/108, 15/109, 15/110, 15/111, 15/112, 15/113, 15/114, 15/115, 15/116, 15/117, 15/119, 15/120, 15/121, 15/127, 15/131, 15/133, 15/134, 15/135, 15/136, 15/14, 15/15, 15/16, 15/17, 15/18, 15/19, 15/20, 15/21, 15/22, 15/23, 15/24, 15/25, 15/26, 15/27, 15/28, 15/29, 15/3, 15/30, 15/31, 15/32, 15/33, 15/34, 15/35, 15/37, 15/39, 15/4, 15/40, 15/41, 15/42, 15/43, 15/47, 15/48, 15/49, 15/5, 15/50, 15/51, 15/52, 15/53, 15/54, 15/55, 15/56, 15/64, 15/70, 15/71, 15/87, 15/88, 15/89, 15/90, 15/91, 15/92, 15/93, 15/94, 15/95, 15/96, 15/97, 15/98, 15/99, 16/10, 16/11, 16/12, 16/13, 16/14, 16/15, 16/18, 16/8, 16/9 The following plots shown coloured pink on the land plans— 13/20, 14/5, 15/69	For and in connection with the Work No. 8 infrastructure, the right to create, maintain 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, machinery and equipment, at all times and 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, maintain, alter, replace and remove 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— 1/1, 1/2, 1/29, 10/11, 10/12, 10/13, 10/17, 10/29, 10/30, 10/31, 10/32, 10/33, 10/34, 10/35, 10/36, 10/4, 10/40, 10/42, 10/7, 11/1, 11/18, 11/2, 11/20, 11/28, 11/3, 11/35, 11/36, 11/37, 11/38, 11/6, 11/7, 14/36, 15/170, 15/171, 15/172, 15/232, 15/83, 15/84, 16/1, 16/16, 16/2, 16/22, 16/23, 16/24, 16/25, 16/26, 16/27, 16/28, 16/29, 16/3, 16/5, 16/6, 16/7, 18/5, 19/1, 19/16, 19/18, 19/23, 19/30, 19/7, 19/8, 20/19, 20/2, 20/5, 21/1, 21/13, 3/15, 3/16, 3/17, 5/46, 5/52, 5/53, 5/60, 5/61, 5/66, 5/67, 5/72, 5/73, 5/74, 5/96, 7/26, 7/27, 7/28, 8/1, 8/10, 8/11, 8/12, 8/2, 8/3, 8/4, 8/5, 8/6, 8/7, 8/8, 8/9, 9/1, 9/2, 9/3, 9/36, 9/4, 9/46, 9/47, 9/6	For and in connection with the Work No. 10 access and highway improvements, the right to create, maintain 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, machinery and equipment, at all times and 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.

SCHEDULE 9

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 9 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictive covenants) to the H2Teesside Order 202*; 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 9 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictive covenants) to the H2Teesside Order 202* 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 30 (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

(**a**) 1973 c.26.

(b) with such other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4(a) are as follows.

(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 as to secure 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 (entry on warrant in the event of obstruction)(**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 30(3) (modification of Part 1 of the 1965 Act) 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

---

(**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.

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—

"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 1981 Act) of the H2Teesside Order 202* 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 H2Teesside Order 202* 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 decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority do 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 serve 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 10

Article 32

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*
1/10, 1/11, 1/14, 1/15, 1/16, 1/17, 1/18, 1/21, 1/23, 1/25, 1/27, 1/28, 1/3, 1/37, 1/38, 1/39, 1/4, 1/40, 1/41, 1/42, 1/45, 1/8, 1/9, 10/2, 10/24, 10/27, 10/37, 10/41, 10/44, 10/8, 11/11, 11/136, 11/14, 11/17, 11/21, 11/22, 11/22a, 11/22b, 11/24, 11/25, 11/30, 11/32, 11/34, 11/4, 11/41, 11/42, 11/45, 11/45b, 11/45c, 11/46, 11/48, 11/49, 11/50, 11/51, 11/55, 11/62, 11/9, 12/1, 13/12a, 13/15, 15/233, 15/234, 18/11, 18/12, 18/13, 18/14, 18/15, 18/6, 18/8, 18/9, 19/17, 19/20, 19/21, 19/25, 19/27, 19/29, 19/31, 19/33, 19/34, 19/35, 19/37, 2/10, 2/11, 2/12, 2/16, 2/19, 2/20, 2/21, 2/24, 2/25, 2/28, 2/3, 2/30, 2/31, 2/34, 2/4, 2/40, 2/41, 2/43, 2/44, 2/46, 2/49, 2/50, 2/51, 2/6, 2/62, 2/7, 2/9, 20/12, 20/13, 20/14, 20/15, 20/16, 20/18, 20/4, 20/7, 21/10, 21/11, 21/12, 21/14, 21/2, 21/4, 21/5, 21/6, 21/7, 21/8, 3/13, 3/14, 3/4, 3/5, 3/8, 5/10, 5/102, 5/103, 5/104, 5/107, 5/108, 5/11, 5/14, 5/15, 5/19, 5/20, 5/22, 5/24, 5/26, 5/3, 5/31, 5/33, 5/34, 5/43, 5/47, 5/6, 5/68, 5/69, 5/7, 5/71, 5/72, 5/73, 5/74, 5/75, 5/80, 5/83, 5/84, 5/85, 5/91, 5/93, 5/99, 5/9, 6/1, 6/3, 6/6, 6/7, 6/9, 7/36, 7/37, 7/40a, 9/14, 9/22, 9/23, 9/24, 9/26, 9/28, 9/29, 9/31, 9/34, 9/35, 9/37, 9/39, 9/42	Temporary use to facilitate carrying out of Work No. 6
15/118, 15/122, 15/123, 16/17, 16/19, 16/20, 16/21	Temporary use to facilitate carrying out of Work No. 8
1/31, 10/21, 10/22, 10/23, 10/46, 10/47, 13/3, 19/10, 19/9, 5/84	Temporary use as construction compound, laydown, construction use and access required to facilitate construction of the authorised development
1/32, 10/18, 10/19, 10/20, 10/3, 10/46, 10/47, 10/5, 10/6, 11/39, 11/40, 13/1, 13/8, 13/10, 13/11, 13/2, 13/4, 13/5, 13/6, 13/7, 15/124, 15/125, 15/126, 16/4, 17/1, 17/10, 17/2, 17/3, 17/4, 17/5, 17/6, 17/7, 17/8, 17/9, 19/11, 19/12, 20/3, 21/9, 5/105, 5/98, 5/99, 6/4, 7/29, 7/30, 7/31, 7/32, 7/33, 7/34, 8/13, 9/20, 9/25, 9/43, 9/44, 9/45	Temporary use to facilitate access to and highway improvements in relation to the authorised development

SCHEDULE 11

Article 43

APPEALS TO THE SECRETARY OF STATE

1. In this Schedule, "local authority" means the relevant planning authority, the relevant local highway authority, the relevant traffic authority or a street authority.

2.—(1) The undertaker may appeal to the Secretary of State in the event that a local authority—

(a) refuses an application for any approval under this Order required by—

(i) article 10(3) (power to alter layout etc. of streets);

(ii) article 13(4) (temporary closure of streets and public rights of way);

(iii) article 14 (access to works);

(iv) article 16 (traffic regulation measures);

(v) article 20(4) (authority to survey and investigate the land); or

(b) grants an approval for any approval required by an article or paragraph mentioned in paragraph (a) subject to conditions;

(c) refuses an application for a permit under a permit scheme, or grants such a permits subject to conditions; or

(d) issues a notice further to sections 60 or 61 of the Control of Pollution Act 1974.

(2) The appeal process applicable under sub-paragraph (1) is as follows—

(a) any appeal by the undertaker must be made within 30 working days of the date of the notice of the decision, or the date by which a decision was due to be made, as the case may be;

(b) the undertaker must submit the appeal documentation (comprising the relevant application to the local authority, a copy (where it has been provided to the undertaker) of the local authority's reason for its decision and the undertaker's reasons as to why the appeal should be granted) to the Secretary of State and must on the same day provide copies of the appeal documentation to the local authority;

(c) as soon as practicable after receiving the appeal documentation, the Secretary of State must appoint a person to consider the appeal ("the appointed person") and must notify the appeal parties (the undertaker and the local authority whose decision is subject to the appeal) of the identity of the appointed person, a start date and the address to which all correspondence for their attention should be sent;

(d) the local authority must submit their written representations to the appointed person in respect of the appeal within 10 working days of the start date;

(e) the appeal parties must ensure that copies of their written representations and any other representations as sent to the appointed person are sent to each other on the day on which they are submitted to the appointed person;

(f) the appeal parties must make any counter-submissions to the appointed person within 10 working days of receipt of written representations under paragraph (d); and

(g) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable but in any event no later than 30 working days from the deadline for receipt of written representations under paragraph (f).

(3) The appointment of the person under sub-paragraph (2)(c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) 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 as soon as practicable notify the appeal parties in writing specifying the further information required, the

appeal party from whom the information is sought, and the date by which the information is to be submitted.

(5) Any further information required under sub-paragraph (4) must be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person.

3.—(1) The appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day.

(2) The revised timetable for the appeal must require submission of written representations to the appointed person within 10 working days of the agreed date but must otherwise be in accordance with the process and time limits set out in paragraphs 2(2)(c) to 2(2)(f).

4.—(1) On an appeal under this paragraph, the appointed person may—

(a) allow or dismiss the appeal; or

(b) reverse or vary any part of the decision of the local 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 the appointed person in the first instance.

(2) The appointed person may proceed to a decision of an appeal taking into account such written representations as have been sent within the relevant time limits and in the sole discretion of the appointed person such written representations as have been sent outside the relevant time limits.

(3) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

(4) The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(5) Except where a direction is given under sub-paragraph (6) requiring some or all of the costs of the appointed person to be paid by the local authority, the reasonable costs of the appointed person must be met by the undertaker.

(6) The appointed person may give directions as to the costs of the appeal and as to the parties by whom such costs are to be paid.

(7) 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 Planning Practice Guidance about planning appeals and award costs first published on 3 March 2024 by the Department for Communities and Local Government, as updated from time to time, or any circular or guidance which may from time to time replace it.

SCHEDULE 12

Article 43

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

1. 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 5(2)(b).

Applications made under requirement

2.—(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 3; or

(c) such longer period as may be agreed in writing by the undertaker and the relevant planning authority.

(2) Subject to paragraph 5, 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 and the relevant planning authority does not determine the application within the period set out in sub-paragraph (1)—

(a) and 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

3.—(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

4.—(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 regulations 16(1)(b) and 18A 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 1 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 2 of this Schedule.

Appeals

5.—(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 2(3);

(c) on receipt of a request for further information pursuant to paragraph 3 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**) S.I. 2012/2920 was amended by Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2023/1197.

(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;

(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 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 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 sub-paragraphs (2)(c) to (2)(e) 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 the appointed person 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 Planning Practice Guidance about planning appeals and award costs first published on 3 March 2014, by the Department for Communities and Local Government as updated from time to time or any circular or guidance which may from time to time replace it.

SCHEDULE 13

Article 44

DOCUMENTS AND PLANS TO BE CERTIFIED

Table 9

(1) *Document name*	*(2)* *Document reference*	*(3)* *Revision number*	*(4)* *Date*
access and rights of way plans	2.5	3a	February 2025
Anglo American Shared Area Plan	8.56	0	February 2025
application guide	1.2	15	February 2025
book of reference	3.1	7a	February 2025
change application report	7.3	0	October 2024
change application report - appendices	7.4	0	October 2024
environmental statement	Non-Technical Summary, 6.1 Volume I, 6.2 Volume II, 6.3 Volume III, 6.4	- - - -	As listed in the application guide
framework construction environmental management plan	5.12	7a	February 2025
framework construction traffic management plan	5.16	3	January 2025
framework construction workers travel plan	5.15	1	October 2024
H2 Teesside STDC Agreement Area Plan	8.55	0	February 2025
indicative lighting strategy (construction)	5.12.3	0	March 2024
indicative lighting strategy (operation)	5.8	0	March 2024
indicative surface water drainage plan	2.12	1	October 2024
land plans	2.2	3a	February 2025
Natara site plan	8.44.24.1	0	February 2025
nutrient neutrality assessment	5.13	0	March 2024
outline landscape and biodiversity management plan	5.9	4a	February 2025
outline site waste management plan	5.12.1	0	March 2024
outline water management plan	5.12.2	0	March 2024

SABIC Information plan	8.44.15.2	0	February 2025
Sembcorp Protection Corridor protective provisions supporting plans	8.54	0	February 2025
special category land and crown land plans	2.3	3a	February 2025
temporary traffic regulation measures plan	2.13	3a	February 2025
water framework directive assessment	5.14	0	March 2024
works plans	2.4	4a	February 2025

SCHEDULE 14

Requirement 3

DESIGN PARAMETERS

Table 10

Component	*Length (m)*	*Width / diameter (including platforms, ladders and walkways if present) (m)*	*Height (m) (Above Ordnance Datum (AOD))*
Flare Stack	–	4.0 (flare 1.0 and platform 4.0)	108 (max) 73 (min)
Auxiliary Boiler	35	20	18 (max)
Auxiliary Boiler Stack	–	2.0 diameter	78 (min and max)
Start-Up Fired Heater Stack	–	2.0 diameter	53 (max) 43 (min)
Carbon Dioxide Absorber Column	–	5.5 diameter (top section) 8.5 diameter (bottom section)	59 (max)
Other Production Plant	–	–	36 (max)
Flash Vessels	–	–	73 (max)
Air Separation Unit (ASU)	20	8	60 (max)
New electrical substation at Tod Point	–	–	22 (max)
National Grid Tod Point substation extension (northern bay)	–	–	22 (max)
National Grid Tod Point substation extension (southern bay)	–	–	22 (max)

SCHEDULE 15

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this Schedule, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertakers concerned, or unless any other provisions in Schedules 15 to 43 of this Order apply to the utility undertaker concerned.

2. In this Schedule—

"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 an electricity undertaker, 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 gas undertaker, 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 water undertaker—

(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 subject of an agreement to adopt made under section 51A of the Water Industry Act 1991(**a**); and

(d) in the case of a sewerage undertaker—

(i) any drain or works vested in the utility undertaker under the Water Industry Act 1991; and

(ii) any sewer 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 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;

"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;

"utility undertaker" means—

(e) any licence holder within the meaning of Part 1 of the 1989 Act;

(f) a gas transporter within the meaning of Part 1 of the Gas Act 1986;

(g) water undertaker within the meaning of the Water Industry Act 1991; and

(h) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs and by whom it is maintained.

(**a**) 1991 c.56.

3. This Schedule 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 of the 1991 Act.

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13 (temporary closure of streets and public rights of way), a utility undertaker is at liberty at all times to take all necessary access across any such street and to execute an 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.

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.

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 Schedule, 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 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 46 (arbitration).

(5) The utility undertaker in question must, after 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 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 Schedule.

(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.

7.—(1) Where, in accordance with the provisions of this Schedule, 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 46 (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.

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 (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 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 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.

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 required.

(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 Schedule, that value being calculated after removal.

(3) If in accordance with the provisions 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 article 46 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under 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 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 7 years and 6 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, 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.

11. Nothing in this Schedule 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.

SCHEDULE 16

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

1.—(1) For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator, or unless any other provisions in Schedule 15 or Schedules 17 to 43 of this Order apply to the operator.

(2) In this Schedule—

"the 2003 Act" means the Communications Act 2003(**a**);

"electronic communications apparatus" has the same meaning as in the electronic communications code;

"electronic communications code" has the same meaning as in section 106 (application of the electronic communications code) of the 2003 Act;

"electronic communications code network" means—

(a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and

(b) an electronic communications network which the Secretary of State is providing or proposing to provide;

"electronic communications code operator" means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

"operator" means the operator of an electronic communications code network.

2. The exercise of the powers of article 34 (statutory undertakers) is subject to Part 10 (undertakers' works affecting electronic communications apparatus) of the electronic communications code.

3.—(1) Subject to sub-paragraphs (2) to (4), if as a 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,

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, 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

(**a**) 2003 c.21.

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) Any difference arising between the undertaker and the operator under this Schedule must be referred to and settled by arbitration under article 46 (arbitration).

4. 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.

5. Nothing in this Schedule 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.

SCHEDULE 17

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF THIRD PARTY APPARATUS

1. For the protection of third parties with apparatus, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the third party, or unless any other provisions in this Schedules 15, 16 or 18 to 43 of this Order apply to the apparatus.

2. In this Schedule—

"affected apparatus" means the apparatus within the Order limits or apparatus which has the benefit of rights (including access) over the Order limits vested in the third party, including cables, mains, pipelines, plant and ancillary apparatus;

"alternative apparatus" means alternative apparatus adequate to enable the third party to carry out its operations in a manner not less efficient than previously;

"restricted works" means any works forming any part of the authorised development that will or may affect the affected apparatus or access to them including—

(a) all works within 6 metres of the affected apparatus;

(b) the crossing of the affected apparatus by other utilities; and

(c) the use of explosives with 400 metres of the affected apparatus,

whether carried out by the undertaker or any third party in connection with the authorised development;

"third party" means a company with apparatus that is affected by 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 affected apparatus;

(v) by way of detailed drawings, every alteration proposed to be made to or close to any such affected 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 the third party to assess the works;

(c) where the restricted works will or may be situated on, over, under or within 6 metres measured in any direction of the affected apparatus, or (wherever situated) impose any load directly upon the affected apparatus or involve embankment works within 6 metres of the affected apparatus, the method statement must also include—

(i) the position of the affected apparatus; and

(ii) by way of detailed drawings, every alteration proposed to be made to the affected apparatus; and

(d) any further particulars provided in response to a request under paragraph 3.

Consent of restricted works under this Schedule

3.—(1) Unless a shorter period is otherwise agreed in writing between the undertaker and the third party, not less than 30 days before commencing the execution of any restricted works, the undertaker must submit to the third party the works details for the restricted works and such further particulars as the third party 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 the third party.

(3) Any approval of the third party required under this paragraph 3 must not be unreasonably withheld or delay but may be given subject to such reasonable requirements as the third party may require to be made for—

(a) the continuing safety and operational viability of the affected apparatus; and

(b) the requirement for the third party 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 affected apparatus.

(4) Any approval of the third party required under this paragraph 3 including any reasonable requirements required by the third party 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 the third party) beginning with the date on which the works details were submitted to the third party under sub-paragraph (1) or the date on which any further particulars requested by the third party under sub-paragraph (1) were submitted to the third party (whichever is the later).

(5) The authorised development must be executed only in accordance with the works details approved by the third party under this paragraph 3 including any reasonable requirements notified to the undertaker in accordance with sub-paragraph (3) and the third party shall be entitled to watch and inspect the execution of those works.

(6) Where there has been a reference to an arbitrator in accordance with paragraph 9 and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions in the decision of the arbitrator under paragraph 9.

(7) If the third party 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 affected apparatus and gives written notice to the undertaker of that requirement, this Order applies as if the removal of the affected apparatus had been required by the undertaker under sub-paragraph (1).

(8) 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 the third party) in no case less than 28 days before commencing the execution of any restricted works, new works details, instead of the works details submitted, and having done so the provisions of this paragraph 3 apply to and in respect of the new works details.

Prohibition of acquisition and interference

4. Where the undertaker takes temporary possession of any land or carries out survey works on land in respect of which the third party has an easement, right, operations, assets or other interests (together "the third party's rights")—

(a) where the third party'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; and

(b) where the third party's rights do provide or reasonably require access in, on or under the Order limits,

the third party 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 coordination of their respective works during the period of temporary possession.

Removal of apparatus/access

5.—(1) If, in the exercise of powers conferred by this Order, the undertaker acquires any interest in any land in which any affected apparatus is placed or over which access to any affected apparatus is enjoyed or requires that affected apparatus is relocated or diverted, that affected apparatus must not be removed under this Schedule, and any right of the third party to maintain that affected 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 the third party 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 affected apparatus placed in that land, the undertaker must give to the third party written notices 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 the third party reasonably needs to remove any of its affected apparatus) the undertaker must, subject to sub-paragraph (3), afford to the third party 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 apparats or part of such apparatus is to be constructed, the third party 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 the third party and the undertaker or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

(5) The third party 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 the third party 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 affected 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 the third party that it desires itself to execute any work, or part of any work, in connection with the construction or removal of affected apparatus in any land controlled by the undertaker, that work, instead of being executed by the third party must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the third party.

Facilities and rights for alternative apparatus

6.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to the third party facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for affected 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 the third party or in default of agreement settled by arbitration in accordance with article 46 (arbitration); 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 the third party than the facilities and rights enjoyed by it in respect of the affected 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 the third party as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Expenses

7.—(1) Subject to the following provisions of this paragraph 7, the undertaker must pay to the third party the reasonable and properly incurred costs and expenses (including reasonable staffing costs if work is carried out in-house) incurred by the third party 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 affected apparatus; and

(ii) the review and assessment of works details in accordance with paragraph 3;

(b) the watching of and inspecting the execution of the restricted works; and

(c) imposing reasonable requirements in accordance with paragraph 3(3).

(2) Prior to incurring any costs or expenses associated with the activities in sub-paragraph (1), the third party 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

8.—(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 the affected apparatus, or there is any interruption in any service provided, or in the supply of any goods, by the third party, the undertaker must—

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

(b) make reasonable compensation to the third party for any other expenses, loss, damages, penalty or costs incurred by the third party, 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 of default of the third party, its officers, employees, servants, contractors or agents; or

(b) any indirect or consequential loss or loss of profits by an operator.

(3) The third party 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 third party 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 8 applies.

(5) If requested to do so by the undertaker, the third party 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 8 for claims reasonably incurred by the third party.

Arbitration

9.—(1) The undertaker and the third party 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 the third party under this Schedule must, unless otherwise agreed in writing between the undertaker and the third party, be referred to and settled by arbitration in accordance with article 46 (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).

SCHEDULE 18

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER

Application

1. For the protection of National Grid as referred to in this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid.

Interpretation

2. In this Schedule—

"acceptable credit provider" means a bank or financial institution with a credit rating that is not lower than: (i) "A-" if the rating is assigned by Standard & Poor's Ratings Group or Fitch Ratings; and "A3" if the rating is assigned by Moody's Investors Services Inc.;

"acceptable insurance" means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained for the duration of the construction period of the authorised works; and (b) after the construction period of the authorised works in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an "acceptable credit provider", such insurance shall include (without limitation):

(a) a waiver of subrogation and an indemnity to principal clause in favour of National Grid;

(b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

"acceptable security" means either—

(a) a bank bond or letter of credit from an acceptable credit provider in favour of National Grid to cover the undertaker's liability to National Grid for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid); or

(b) such other evidence provided to NGET's reasonable satisfaction that the undertaker has a tangible net worth of not less than £50,000,000 (fifty million pounds) (or an equivalent financial measure).

"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 whether or not 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 works" has the same meaning as is given to the term "authorised development" in article 2(1) (interpretation) of this Order and includes any associated development authorised

by the Order and for the purposes of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

"commence" and "commencement" has the same meaning as in article 2(1) (interpretation) of this Order except for the purposes of this Schedule only where it shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

"deed of consent" means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Schedule;

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary 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, shall require the undertaker to submit for National Grid'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;

"Incentive Deduction" means any incentive deduction National Grid Electricity Transmission plc receives under its electricity transmission licence which is caused by an event on its transmission system that causes electricity not to be supplied to a demand customer and which arises as a result of the authorised works;

"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; 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;

"NESO" means as defined in the STC;

"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;

"parent company" means a parent company of the undertaker acceptable to and which shall have been approved by National Grid acting reasonably;

"specified works" means any of the authorised works or activities undertaken in association with the authorised works 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 6(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 6(2) or otherwise; and/or

(c) includes any of the activities that are referred to in development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines";

"STC" means the System Operator Transmission Owner Code prepared by the electricity Transmission Owners and NESO as modified from time to time;

"STC Claims" means any claim made under the STC against National Grid Electricity Transmission plc arising out of or in connection with the de-energisation (whereby no electricity can flow to or from the relevant system through the generator or interconnector's equipment) of a generator or interconnector party solely as a result of the de-energisation of plant and apparatus forming part of National Grid Electricity Transmission plc's transmission system which arises as a result of the authorised works;

"Transmission Owner" means as defined in the STC; and

"undertaker" means the undertaker as defined in article 2(1) of this Order.

On Street Apparatus

3. Except for paragraphs 4 (apparatus of National Grid in affected streets), 8 (retained apparatus: protection), 9 (expenses) and 10 (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 affected streets

4.—(1) Where any street is stopped up under article 10 (power to alter layout etc. of streets), article 11 (street works), article 12 (construction and maintenance of new or altered means of access), if National Grid has any apparatus in the street or accessed via that street National Grid has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Grid, or procure the granting to National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the undertaker or National Grid to require the removal of that apparatus under paragraph 6 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 8.

(2) Notwithstanding the temporary closure or diversion of any highway under the powers of article 13 (temporary closure of streets and public rights of way), National Grid is at liberty at all times to take all necessary access across any such closed highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the closure or diversion was in that highway.

Protective works to buildings

5. 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

Acquisition of land

6.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid otherwise than by agreement.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest

of National Grid or affect the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) Save where otherwise agreed in writing between National Grid and the undertaker, the undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid and/or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by National Grid under paragraph 8 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1)..

Removal of apparatus

7.—(1) If, in the exercise of the 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 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 7(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 may, in its sole discretion, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances 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 shall 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 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 Schedule.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions 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 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 may be referred to arbitration in accordance with paragraph 14 (arbitration) of this Schedule and the arbitrator must 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: protection

9.—(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 assets.

(2) In relation to any 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.

(h) a ground monitoring scheme, where required;

(i) how impressed voltages have been taken into account in the detailed design for the specified works;

(j) a dispersion analysis covering all normal and abnormal pipeline operational scenarios in order to demonstrate that the separation distances between the specified works and the apparatus are acceptable and that any risks posed are As Low As Reasonably Practicable ("ALARP");

(k) how all hazardous areas generated by the specified works will be contained within the site security fencing;

(l) a risk analysis covering full bore rupture and puncture releases showing the distances to the individual risk transects of 1 x 105 per year, 1 x 106 per year and 3 x 107 per year for the specified works in order to demonstrate that the risks posed are acceptable and are ALARP;

(m) an analysis of the specified works located in the "Linkline corridor" running parallel to the existing third party above ground pipelines in order to determine the minimum separation distances required and the proposed mitigation measures to prevent escalation of a situation into a major emergency and to confirm the cumulative risk levels along the security fencing located to the south of the apparatus from all the above ground pipelines (existing and proposed) for the various failure scenarios are acceptable and are ALARP; and

(n) evidence of the operations and maintenance philosophy for the specified works, detailing how those works will be commissioned, depressurised, purged and decommissioned.

(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 up to and including 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-paragraphs (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-paragraphs (6) or (8); and

(b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (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-paragraphs (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-paragraphs (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 (or any relevant part thereof) for which protective works are required and National Grid shall 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-paragraphs (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 1 to 3, 6 and 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(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 works for which a plan has been submitted for specified works (or part thereof), a new plan for such works, instead of the plan previously submitted, and having done so the provisions of this paragraph 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 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

10.—(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 within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably anticipated within the following three months or 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 works 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 6(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; and

(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 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 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 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 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 14 to be necessary, then, if such placing involves cost in the construction of works under 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.

(6) Where reasonably anticipated charges, costs or expenses have been paid by the undertaker pursuant to sub-paragraph (1), if the actual charges, costs or expenses incurred by National Grid are less than the amount already paid by the undertaker National Grid will repay the difference to the undertaker as soon as reasonably practicable.

Indemnity

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works 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 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 works) 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 accompanied by an invoice or claim from National Grid 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 and including STC Claims or an Incentive Deduction 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 or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workmanlike manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the act, neglect or default of National Grid, its officers, servants, contractors or agents;

(b) any authorised works and/or any other works authorised by 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 works yet to be executed and not falling within this sub-section (b) will be subject to the full terms of this Schedule including this paragraph; and

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability, compromise or demand must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) 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.

(6) National Grid must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 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 and if reasonably requested to do so by the undertaker National Grid must provide an explanation of how the claim has been minimised, where relevant.

(7) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Grid or in respect of which National Grid has an easement or wayleave for is apparatus or any other interest to carry out any works within 15 metres of National Grid's apparatus until the following conditions are satisfied—

(a) unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same to the undertaker in writing; and

(b) unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with sub-paragraph (7) of this Schedule, nothing in this Schedule shall prevent National Grid from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

12. Save to the extent provided for to the contrary elsewhere in this Schedule or by agreement in writing between National Grid and the undertaker, nothing in 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.

Cooperation

13.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 6(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 8, the undertaker shall use its best endeavours to coordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid shall use its best endeavours to cooperate 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

14. If in consequence of the agreement reached in accordance with paragraph 6(1) or 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

15. Save for differences or disputes arising under paragraphs 6(2), 6(4), 7(1) and 8 any difference or dispute arising between the undertaker and National Grid under this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 46 (arbitration).

Notices

16. Notwithstanding article 45 (service of notices), any plans submitted to National Grid by the undertaker pursuant to paragraph 8 must be submitted using the LSBUD system (https://lsbud.co.uk/) or to such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

SCHEDULE 19

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF NATIONAL GAS TRANSMISSION PLC AS GAS UNDERTAKER

Application

1. For the protection of National Gas as referred to in this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Gas.

Interpretation

2. In this Schedule—

"acceptable credit provider" means a bank or financial institution with a credit rating that is not lower than: (i) "A-" if the rating is assigned by Standard & Poor's Ratings Group; and "A3" if the rating is assigned by Moody's Investors Services Inc;

"acceptable insurance" means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event), such insurance shall be effected and maintained:

(a) during the construction period of the authorised development; and

(b) after the construction period of the authorised development in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitutes specified works,

and arranged with an insurer whose security/credit rating meets the same requirements as an acceptable credit provider, and such policy shall include (but without limitation):

(a) a waiver of subrogation and an indemnity to principal clause in favour of National Gas; and

(b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a sub-limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

"acceptable security" means:

(a) a bank bond or letter of credit from an acceptable credit provider in favour of National Gas to cover the undertaker's liability to National Gas for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Gas); or

(b) evidence provided to National Gas' satisfaction that the undertaker has a tangible net worth of not less than £100,000,000 (one hundred million pounds) (or an equivalent financial measure). "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;

"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(1) (interpretation) of this Order and includes any associated development authorised by the Order and (unless otherwise specified) for the purposes 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(1) (interpretation) of this Order save that for the purposes of this Schedule only shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment within 15 metres measured in any direction 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;

"Network Code" means the network code prepared by National Gas pursuant to Standard Special Condition A11(3) of its Gas Transporter's Licence, which incorporates the Uniform Network Code, as defined in Standard Special Condition A11(6) of National Gas's Gas Transporters Licence, as both documents are amended from time to time;

"Network Code Claims" means any claim made against National Gas by any person or loss suffered by National Gas under the Network Code arising out of or in connection with any failure by National Gas to make gas available for off take at, or a failure to accept gas tendered for delivery from, any entry point to or exit point from the gas national transmission system as a result of the authorised works or any costs and/or expenses incurred by National Gas as a result of or in connection with, it taking action (including purchase or buy back of capacity) for the purpose of managing constraint or potential constraint on the gas national transmission system which may arise as a result of the authorised works;

"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 7(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 7(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 of 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"); and

"undertaker" means the undertaker as defined in article 2(1) of this Order.

On Street Apparatus

3. Except for paragraphs 4 (apparatus of National Gas in streets subject to temporary closure), 9 (retained apparatus), 10 (expenses) and 11 (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 closure

4. Notwithstanding the temporary closure or diversion of any street under the powers of article 13 (temporary closure of streets and public rights of way), National Gas will be at liberty at all times to take all necessary access across any such closed 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

5. 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.

Acquisition of land

6.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not—

(a) appropriate or acquire or take temporary possession of any land or apparatus; or

(b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Gas,

otherwise than by agreement.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised development (or in such other timeframe as may be agreed between National Gas and the undertaker) that is subject to the requirements of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Gas or affect the provisions of any enactment or agreement regulating the relations between National Gas and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Gas reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Gas and the undertaker acting reasonably and which must be no less favourable on the whole to National Gas unless otherwise agreed by National Gas, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised development.

(3) Save where otherwise agreed in writing between National Gas and the undertaker, the undertaker and National Gas agree that where there is any inconsistency or duplication between the provisions set out in this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such

relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Gas and/or other enactments relied upon by National Gas as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by National Gas under paragraph 12 or any other paragraph of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

7.—(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 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 8(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 other than in 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 may, in its sole discretion, 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 do so.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Schedule must be constructed in such a 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 Schedule.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions 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 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 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 15 (arbitration) 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

9.—(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 1 to 3, 7 and 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(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 30 days before commencing the execution of the specified works (or part thereof), 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 (11) 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 10.

Expenses

10.—(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 anticipated within the following three months or 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 7(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; and

(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 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 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 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 15 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under 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 the benefit.

Indemnity

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by 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 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 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 and including Network Code Claims 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 workmanlike 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 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 2008 Act or article 8 (consent to the 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 paragraph (b) will be subject to the full terms of this Schedule including this paragraph; and/or

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(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 must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering its representations.

(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 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 and, if reasonably requested to do so by the undertaker, National Gas must provide an explanation of how the claim has been minimised.

(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.

(7) The undertaker must not commence construction (and must not permit the commencement of such construction) of the authorised works on any land owned by National Gas or in respect of which National Gas has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Gas' apparatus until the following conditions are satisfied—

(a) unless and until National Gas is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised development from the proposed date of commencement of construction of the authorised development) and National Gas has confirmed the same to the undertaker in writing; and

(b) unless and until National Gas is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Gas that it shall maintain such acceptable insurance for the construction period of the authorised development from the proposed date of commencement of construction of the authorised development) and National Gas has confirmed the same in writing to the undertaker.

Enactments and agreements

12. Save to the extent provided for to the contrary elsewhere in this Schedule or by agreement in writing between National Gas and the undertaker, nothing in this Schedule

affects the provision 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.

Cooperation

13.—(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 7(2) or National Gas makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use its best endeavours to coordinate 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 cooperate 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

14. If, in consequence of the agreement reached in accordance with paragraph 6(1) or 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

15. Save for the differences or disputes arising under paragraphs 7(2), 7(4), 8(1) and 9, any difference or dispute arising between the undertaker and National Gas under this Schedule must, unless otherwise agreed in writing between the undertaker and National Gas, be determined by arbitration in accordance with article 46 (arbitration).

Notices

16. Notwithstanding article 45 (service of notices), any plans submitted to National Gas by the undertaker pursuant to paragraph 9 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.

SCHEDULE 20

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF RAILWAY INTERESTS

1. The provisions of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 15 of this Schedule, any other person on whom rights or obligations are conferred by that paragraph.

2.—(1) In 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;

"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 5(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;

"regulatory consents" means any consent or approval required under—

(a) the Railways Act 1993(**a**);

(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;

"specified work" means so much of any of the authorised development as is situated upon, across, under over or within 15 metres of, or may in any way adversely affect, railway

(**a**) 1993 c.43.

property and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 5 (maintenance of authorised development); and

"undertaker" has the same meaning as in article 2 (interpretation) of this Order.

3.—(1) Where under 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) Insofar 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) cooperate 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.

4. 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.

5.—(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 46 (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 ground 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.

6.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 5(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 5;

(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 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.

7. 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.

8. 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 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.

9.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified 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 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 works 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 5, 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 10(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.

10.— 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 5(3) or in constructing any protective works under the provisions of paragraph 5(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.

11.—(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 5(1) 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 5(1)) 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 paragraph (a); and

(c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to 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 5(1) 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; and

(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 6.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(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 10(a), any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 46 (arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Engineering and Technology.

12.—(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 costs of doing so.

13. 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.

14. 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.

15.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in 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;

(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 such 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 procedures 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 of 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 such 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 15

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 15 for claims reasonably incurred by Network Rail.

(3) If the undertaker withholds consent pursuant to sub-paragraph (2)(b) it may have sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand, and the undertaker must give Network Rail notice of it having sole conduct at the same time as refusing consent.

(4) 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.

(5) 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 (1) which relates to the relevant costs of that train operator.

(6) The obligation under sub-paragraph (1) 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 (5).

(7) 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.

16. 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 Schedule (including the amount of the relevant costs mentioned in paragraph 15) 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 Schedule (including any claim relating to those relevant costs).

17. In the assessment of any sums payable to Network Rail under 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 Schedule or increasing the sums so payable.

18. 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.

19. 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.

20. 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 44 (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.

21. In relation to any dispute arising between the undertaker and Network Rail under this Schedule, it must, unless otherwise agreed in writing between the undertaker and Network Rail, be referred to and settled by arbitration in accordance with article 46 (arbitration).

SCHEDULE 21

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

1.—(1) The following provisions apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

(2) In this Schedule—

"Agency" means the Environment Agency or, in paragraph 3, where the undertaker has made a request under paragraph 2(1), the team confirmed by the Environment Agency under paragraph 2(2);

"construction" includes execution, placing, altering, replacing, relaying and removal and excavation and "construct" and "constructed" is construed accordingly;

"drainage work" means any main river and includes any land which provides or is expected to provide flood storage capacity for any main river and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

"emergency" means an occurrence which presents a risk of—

(a) serious flooding;

(b) serious detrimental impact on drainage; or

(c) serious harm to the environment.

"fishery" means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, spawning ground, habitat or food of such fish;

"main river" has the same meaning given in section 113 of the Water Resources Act 1991(**a**);

"non-tidal main river" has the meaning given in paragraph 2(1) of Part 1 of Schedule 25 to the Environmental Permitting (England and Wales) Regulations 2016(**b**);

"plans" includes plans, sections, elevations, drawings, specifications, programmes, proposals, calculations, method statements and descriptions;

"remote defence" means any berm, wall or embankment that is constructed for the purposes of preventing or alleviating flooding from, or in connection with, any main river;

"sea defence" means any bank, wall, embankment (any berm, counterwall or cross-wall connected to any such bank, wall or embankment), barrier, tidal sluice and other defence, whether natural or artificial, against the inundation of land by sea water or tidal water, including natural or artificial high ground which forms part of or makes a contribution to the efficiency of the defences of the Agency's area against flooding, but excludes any sea defence works which are for the time being maintained by a coast protection authority under the provisions of the Coast Protection Act 1949(**c**) or by any local authority or any navigation, harbour or conservancy authority;

"specified work" means so much of any work or operation authorised by this Order as is in, on, under, over or within—

(a) 16 metres of the base of a sea defence which is likely to—

(i) endanger the stability of, cause damage or reduce the effectiveness of that sea defence; or

---

(**a**) 1991 c.57. Section 113 was amended by section 100 of and Schedule 24 to Environment Act 1995 (c.25), section 59 of the Water Act 2014 (c.21) and S.I. 2013/755.
(**b**) S.I. 2016/1154.
(**c**) 1949 c.74.

(ii) interfere with the Agency's access to or along that sea defence or the Agency's ability to undertake works to ensure the efficacy of that sea defence;

(b) 8 metres of the base of a remote defence which is likely to—

(i) endanger the stability of, cause damage or reduce the effectiveness of that remote defence; or

(ii) interfere with the Agency's access to or along that remote defence;

(c) 16 metres of a drainage work involving a tidal main river;

(d) 8 metres of a drainage work involving a non-tidal main river;

(e) any distance of a drainage work and is otherwise likely to—

(i) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;

(ii) affect the flow, purity or quality of water in any main river or other surface waters;

(iii) cause obstruction to the free passage of fish or damage to any fishery;

(iv) affect the conservation, distribution or use of water resources; or

(v) affect the conservation value of the main river and habitats in its immediate vicinity;

or which involves—

(f) an activity that includes dredging, raising or taking of any sand, silt, ballast, clay, gravel or other materials from or off the bed or banks of a drainage work (or causing such materials to be dredged, raised or taken), including hydrodynamic dredging or desilting; and

(g) any quarrying or excavation within 16 metres of a drainage work which is likely to cause damage to or endanger the stability of the banks or structure of that drainage work; and

"tidal main river" has the meaning given in paragraph 2(1) of Part 1 of Schedule 25 to the Environmental Permitting (England and Wales) Regulations 2016.

Submission and approval of plans

2.—(1) Before beginning to construct any specified work, the undertaker may submit a request in writing for the Agency to confirm and provide details about which team within the Agency is to receive and approve plans of the specified work.

(2) The Agency must confirm and provide details of which team within the Agency is to receive and approve plans of the specified work within 14 days of the receipt of the undertaker's request submitted under sub-paragraph (1).

(3) Details to be provided by the Agency under sub-paragraph (2) must include a contact name, postal address and email address for the undertaker to use to submit plans of the specified work pursuant to paragraph 3.

3.—(1) Before beginning to construct any specified work, the undertaker must submit to the Agency for approval plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 13.

(3) Any approval of the Agency required under this paragraph—

(a) must not be unreasonably withheld or delayed;

(b) subject to sub-paragraph (5), is deemed to have been refused if it is neither given nor refused within 2 months of the submission of the plans or such later date as is agreed between the Agency and the undertaker and if further particulars have been requested pursuant to sub-paragraph (1) the period between the making of this request and the provision of further particulars in response to it shall not be taken into account in the calculation of the 2 months for the purposes of this sub-paragraph; and

(c) may be given subject to such reasonable requirements as the Agency may have for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or for nature conservation or the prevention of environmental harm in the discharge of its environmental duties.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

(5) In the case of a refusal, the Agency must at the same time provide reasons for the grounds of that refusal.

Construction of protective works

4. Without limiting paragraph 3, the requirements which the Agency may have under that paragraph include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

(a) to safeguard any drainage work against damage; or

(b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

Timing of works and service of notices

5.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 4 must be constructed—

(a) without unreasonable delay in accordance with the plans approved under this Schedule; and

(b) to the reasonable satisfaction of the Agency,

and the Agency is entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If the Agency reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of any specified work to which the protective works relate.

Works not in accordance with this Schedule

6.—(1) If there is any failure by the undertaker to obtain approval or comply with conditions imposed by the Agency in accordance with these protective provisions and where the Agency acting reasonably considers it necessary to avoid any of the risks specified in sub-paragraph (2) the Agency may serve written notice requiring the undertaker to cease all or part of the specified works as may be specified within the notice within the period specified in the notice (which period must be reasonable in the circumstances), and the undertaker must cease constructing the specified works or part thereof until such time as it has obtained the consent or complied with the condition specified within the notice served.

(2) The risks specified in sub-paragraph (1) are—

(a) risk of flooding;

(b) risk of harm to the environment;

(c) risk of detrimental impact on drainage; and

(d) damage to the fishery.

(3) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Schedule, the Agency may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(4) Subject to sub-paragraph (5) if, within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (3) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(5) In the event of any dispute as to whether sub-paragraph (3) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined in accordance with paragraph 13.

Maintenance of works

7.—(1) Subject to sub-paragraph (5), the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may be notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to sub-paragraph (4) if, within a reasonable period, being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 13.

(5) This paragraph does not apply to—

(a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of the Order from doing so; and

(b) any obstruction of a drainage work expressly authorised in the approval of specified works plans and carried out in accordance with the provisions of this Schedule provided that any obstruction is removed as soon as reasonably practicable.

Remediating impaired drainage work

8. If by reason of the construction of any specified work or of the failure of any such work, the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the impairment or damage and recover any expenditure incurred by the Agency in so doing from the undertaker.

Agency access

9. If by reason of the construction of any specified work or the failure of any such work, the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must notify the Agency immediately and provide suitable alternative means of access that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction occurred and such alternative access must be made available as soon as reasonably practicable after the undertaker becomes aware of such obstruction, except in the case of an emergency in which case the undertaker must provide such alternative means of access on demand.

Free passage of fish

10.—(1) The undertaker must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

(a) the construction of any specified work; or

(b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage within the period specified in the notice.

(3) If, the undertaker fails to take such steps as are described in the notice served under sub-paragraph (2), the Agency may take those steps and any expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) In any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker any expenditure incurred in so doing provided that notice specifying those steps is served on the undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

Indemnity

11. The undertaker indemnifies the Agency in respect of all costs, charges and expenses which the Agency may reasonably incur—

(a) in the examination or approval of plans under this Schedule;

(b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Schedule; and

(c) in carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

12.—(1) The undertaker is responsible for and indemnifies the Agency against all costs and losses, liabilities, claims and demands not otherwise provided for in this Schedule which may be reasonably incurred or suffered by the Agency by reason of, or arising out of—

(a) the construction, operation or maintenance of any specified works comprised within the authorised development or the failure of any such works comprised within them; or

(b) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction, operation or maintenance of the authorised development or dealing with any failure of the authorised development.

(2) For the avoidance of doubt, in sub-paragraph (1)—

(a) "costs" includes—

(i) expenses and charges;

(ii) staff costs and overheads; and

(iii) legal costs;

(b) "losses" includes physical damage;

(c) "claims" and "demands" includes as applicable—

(i) costs (within the meaning of paragraph (a) incurred in connection with any claim or demand; and

(ii) any interest element of sums claimed or demanded; and

(d) "liabilities" includes—

(i) contractual liabilities;

(ii) tortious liabilities (including liabilities for negligence or nuisance);

(iii) liabilities to pay statutory compensation or for breach of statutory duty; and

(iv) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).

(3) The Agency must give to the undertaker reasonable notice of any such claim or demand and must not settle or compromise a claim without the agreement of the undertaker and that agreement must not be unreasonably withheld or delayed.

(4) If the undertaker withholds consent pursuant to sub-paragraph (3) it may have sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand, and the undertaker must give the Agency notice of it having sole conduct at the same time as refusing consent.

(5) The Agency must at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or loss.

(6) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, must not relieve the undertaker from any liability under the provisions of this Schedule.

(7) Nothing in this paragraph imposes any liability on the undertaker with respect to any costs, charges, expenses, damages, claims, demands or losses to the extent that they are attributable to the neglect or default of the Agency, its officers, servants, contractors or agents.

Disputes

13. Any dispute arising between the undertaker and the Agency under this Schedule must, if the parties agree, be determined by arbitration under article 46 (arbitration), but failing that agreement be determined by the Secretary of State for Environment, Food and Rural Affairs or its successor and the Secretary of State for Energy Security and Net Zero or its successor acting jointly on a reference to them by the undertaker or the Agency, after notice in writing by one to the other.

SCHEDULE 22

Article 41

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).

SCHEDULE 23

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF INEOS NITRILES (UK) LIMITED

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

2. In this Schedule—

"INEOS" means INEOS Nitriles (UK) Limited (company number 06238238), whose registered office is at Biz Hub, Belasis Business Centre Coxwold Way, Belasis Business Park, Billingham, TS23 4EA and any successor in title or function to the INEOS operations;

"INEOS operations" means the operations or property within Order limits vested in INEOS, 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(**a**);

"parties" means the undertaker and INEOS, and "party" shall be construed accordingly;

"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;

(d) schedules of work and risk assessments for the proposed work; and

(e) any further particulars provided in response to a request under paragraph 3.

Consent under this Schedule

3. Before commencing any part of the authorised development which may have an effect on the operation or maintenance of the INEOS operations or access to them, access to any land owned by INEOS that is adjacent to the Order limits, 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.

4. No works comprising of any part of the authorised development which would have an effect on the operation or maintenance of the INEOS operations or access to them, access to any land owned by INEOS that is adjacent to the Order limits, 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 3 have been approved by INEOS.

5.—(1) Any approval of INEOS required under paragraph 4 must not be unreasonably withheld or delayed but may be—

(a) reasonably refused if it materially constrains INEOS' vehicular accessways to the River Tees more than the existing access points as at the date of the Order; or

(b) given subject to such reasonable requirements as INEOS may require to be made for—

(i) the continuing safety, or operational activity of the INEOS operations (for the avoidance of doubt where the reasonable requirements relate to such matters, a

(**a**) 1962 c.58. Section 65 was amended by paragraph 8 of Schedule 1 to Gas (Third Party Access and Accounts) Regulations 2000/1937, paragraph 6 of Schedule 2 to Energy Act 2011 (c. 16) and paragraph 5 of Schedule 1 to Storage of Carbon Dioxide (Access to Infrastructure) Regulations 2011/2305.

reasoned explanation will be provided by INEOS to substantiate the need for these requirements);

(ii) the continuing safe operation of infrastructure not belonging to INEOS but within or adjacent to the INEOS operations, including reasonable 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

(iii) the requirement for INEOS to have—

(aa) reasonable emergency access with or without vehicles to the INEOS operations at all times;

(bb) reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation of the INEOS operations; and

(cc) reasonable access with or without vehicles to the River Tees at all times.

(2) Any approval of INEOS required under paragraph 3 including any reasonable requirements required by INEOS under sub-paragraph (1), must be made in writing within a period of 21 days (unless a shorter period is otherwise agreed in writing between the undertaker and INEOS) beginning with the date on which the works details were submitted to INEOS under paragraph 3 or the date on which any further particulars requested by INEOS under paragraph 3 were submitted to INEOS (whichever is the later).

(3) The authorised development must be carried out in accordance with the works details approved under paragraph 4 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 9 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 9.

(5) 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 INEOS) in no case less than 28 days before commencing the execution of any restricted works, new works details, instead of the works details submitted, and having done so the provisions of paragraphs 3 to 5 apply to and in respect of the new works details.

Compliance with requirements, etc. applying to the INEOS operations

6. 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 reasonable 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

7.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of the works referred to in paragraph 3, 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—

(a) 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; or

(b) any indirect or consequential loss or loss of profits by INEOS.

(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 compromises 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 7 applies.

(5) 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).

(6) The undertaker shall only be liable under this paragraph 7 for claims reasonably incurred by INEOS.

Costs

8.—(1) Subject to the following provisions of this paragraph 8, the undertaker must pay to INEOS the reasonable and properly incurred costs and expenses (including reasonable staffing costs if work is carried out in-house) incurred by INEOS 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 affected apparatus; and

(ii) the review and assessment of works details in accordance with paragraph 3;

(b) the watching of and inspecting the execution of the works approved under paragraph 4; and

(c) imposing reasonable requirements in accordance with paragraph 5.

(2) Prior to incurring any costs or expenses associated with the activities in sub-paragraph (1), INEOS 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.

Dispute resolution

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

SCHEDULE 24

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF NAVIGATOR TERMINALS SEAL SANDS LIMITED

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

2. In this Schedule—

"Navigator Terminals" means Navigator Terminals Seal Sands Limited (company number 00829104), whose registered office is Oliver Road, Grays, RM20 3ED and Navigator Terminals North Tees Limited (company number 09889506), whose registered office is Oliver Road, Grays, RM20 3ED and any successor in title or function to the Navigator Terminals operations;

"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(**a**); and

"works details" means—

(a) plans and sections;

(b) details of the proposed method of working and timing of execution of works (including, but not limited to, the details for managing any contamination and contaminated land relevant to the proposed work and arrangements for remediating the said contamination);

(c) details of vehicle access routes for construction and operational traffic;

(d) schedules of work and risk assessments for the proposed work; and

(e) any further particulars provided in response to a request under paragraph 3.

Consent under this Schedule

3. 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, or access to any land owned by Navigator Terminals that is adjacent to the Order limits, 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.

4. 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, or access to any land owned by Navigator Terminals that is adjacent to the Order limits, are to be commenced until the works details in respect of those works submitted under paragraph 3 have been approved by Navigator Terminals.

5. Any approval of Navigator Terminals required under paragraph 4 must not be unreasonably withheld or delayed and a determination shall be provided within 28 days from the day when the last such works details (including any additional details reasonably required within the 28 day period following submission of works details as referred to in paragraph 3

(**a**) 1962 c.58. Section 65 was amended by paragraph 8 of Schedule 1 to Gas (Third Party Access and Accounts) Regulations 2000/1937, paragraph 6 of Schedule 2 to Energy Act 2011 (c.16) and paragraph 5 of Schedule 1 to Storage of Carbon Dioxide (Access to Infrastructure) Regulations 2011/2305.

above) are provided pursuant to paragraph 3 but may be given subject to such reasonable requirements as Navigator Terminals may require to be made for—

(a) avoiding any material impact on the Navigator Terminals operations (for the avoidance of doubt where the reasonable requirements relate to such matters, a reasoned explanation will be provided by Navigator Terminals to substantiate the need for these requirements); 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.

6.—(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 4 and any requirements imposed on the approval under paragraph 8 and all other statutory and other requirements or regulations.

(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 authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 8.

Costs

7.—(1) Subject to the following provisions of this paragraph 7, the undertaker must pay to Navigator Terminals the reasonable and properly incurred costs and expenses (including reasonable staffing costs if work is carried out in-house) incurred by Navigator Terminals 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 affected apparatus; and

(ii) the review and assessment of works details in accordance with paragraph 3;

(b) the watching of and inspecting the execution of the works approved under paragraph 4; and

(c) imposing reasonable requirements in accordance with paragraph 5.

(2) Prior to incurring any costs or expenses associated with the activities in sub-paragraph (1) Navigator Terminals 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

8.—(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 the Navigator Terminals operations, 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 reasonably incurred by Navigator Terminals in making good such damage or restoring the supply; and

(b) make reasonable 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 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 any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 8 applies.

(5) If requested to do so by the undertaker, Navigator Terminals 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 8 for claims reasonably incurred by Navigator Terminals.

Arbitration

9. Any difference or dispute arising between the undertaker and Navigator Terminals under 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 46 (arbitration).

SCHEDULE 25

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF AIR PRODUCTS PLC

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

2. In this Schedule—

"Air Products" means Air Products Public Limited Company (company number 00103881), Air Products (BR) Limited (company number 02532156) and Air Products Renewable Energy Limited (company number 08443239) whose registered offices are at Hersham Place Technology Park, Molesey Road, Walton on Thames, Surrey, KT12 4RZ and any successor in title to the apparatus;

"alternative apparatus" means such altered and relocated pipeline(s) adequate to enable Air Products to carry out its operations;

"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

3. This Schedule 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.

4. Regardless of the temporary closure, prohibition, restriction, alteration or diversion of use of streets under the powers conferred by article 13 (temporary closure of streets and public rights of way), 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 closure, prohibition, or restriction, alteration, diversion or use was in that street.

Removal of apparatus

5.—(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 either Air Products' apparatus is relocated or diverted, that apparatus must not be removed under this Schedule, 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, tested and is in operation, and access to it has been provided, to the reasonable satisfaction of Air Products as appropriate 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 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 46 (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 46 (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 Schedule.

(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.

Co-operation

6. The undertaker and Air Products will use reasonable endeavours to resolve any potential conflicts or impacts of the authorised development upon the apparatus and/or the alternative apparatus whilst maintaining use of any apparatus (except as agreed by the undertaker and Air Products for the commissioning and decommissioning of the apparatus) by or for the benefit of Air Products.

Facilities and rights for alternative apparatus

7.—(1) Where, in accordance with the provisions of this Schedule, 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 46.

(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

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 5(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 5(1) to 5(7) apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(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) insofar 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 Air Products the reasonable expenses incurred by it in, or in connection with, the inspection, removal, alteration, reinstatement, testing or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution or pursuance of any such works as are referred to in paragraph 5(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 Schedule, and which is not reused as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions 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 article 46 to be necessary,

then, if such placing involves cost in the construction of works under this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity of 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 5(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.

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works authorised by 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 Air Products, or there is any interruption in the use of such apparatus or property including 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—

(a) 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; or

(b) any indirect or consequential loss or loss of profits by Air Products.

(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 10 applies.

(5) 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).

(6) The undertaker shall only be liable under this paragraph 10 for claims reasonably incurred by Air Products.

Application of Schedule to certain apparatus

11. This Schedule and Schedule 39 cannot both apply to the same apparatus, and to the extent that both Schedules do or may apply, only Schedule 39 applies to that apparatus and to any matter arising in relation to the interaction of that apparatus and the authorised development.

Enactments and agreements

12. Nothing in this Schedule 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.

SCHEDULE 26

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF CF FERTILISERS UK LIMITED

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

2. In 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 office is at Head Office Building, Ince, Chester, Cheshire, CH2 4LB and any successor in title to the CF Fertilisers site;

"CF Fertilisers Operations" means the assets and operations within the Order limits vested in CF Fertilisers;

"CF Fertilisers site" means any of the Order land in which CF Fertilisers owns the freehold interest;

"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;

"restricted works" means any works forming any part of the authorised development that will or may affect the apparatus or access to them including—

(a) all works within 6 metres of the apparatus;

(b) the crossing of the apparatus by other utilities; and

(c) the use of explosives within 400 metres of the apparatus,

whether carried out by the undertaker or any third party in connection with the authorised development;

"works details" means—

(a) plans and sections;

(b) details of the proposed method of working and timing of execution of works;

(c) details of the vehicle access routes for construction and operational traffic; and

(d) any further particulars provided in response to a request under paragraph 7.

Precedence of the 1991 Act in respect of apparatus in streets

3. This Schedule 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 (Streets) of the 1991 Act.

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13 (temporary closure of streets and public rights of way), 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

5.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any operational apparatus is placed or over which access to any operational apparatus is enjoyed or requires that operational apparatus is relocated or diverted, that operational apparatus must not be removed under this Schedule, and any right of CF Fertilisers to maintain that operational 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 operational 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 operational 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 alterative 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 CF Fertilisers and the undertaker or in default of agreement settled by arbitration in accordance with article 46 (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 46 (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 Schedule.

(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

6.—(1) Where, in accordance with the provisions of this Schedule, 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 46; 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.

Consent of restricted works under this Schedule

7.—(1) Not less than 28 days before starting the execution of any restricted works the removal of which has not been required by the undertaker under paragraph 5(1), the undertaker must submit to CF Fertilisers the works details for the restricted 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 restricted works 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 delay but may be given subject to such reasonable requirements as CF Fertilisers may require to be made for the alternation 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 11 and the arbitrator give 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 11.

(6) If CF Fertilisers in accordance with sub-paragraph (3) and in consequence of the restricted works proposed by the undertaker, reasonably requires the removal of any operational apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) to (7) apply as if the removal of the operational apparatus had been required by the undertaker under paragraph 5(1).

(7) Nothing in this paragraph precludes the undertaker from submitting at any time, but in no case less than 28 days before commencing the execution of any restricted 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) insofar as is reasonably practicable in the circumstances.

Notices

8. Any notices to be served on the undertaker or CF Fertilisers must be served in writing on the registered office address and on the General Counsel at CF Fertilisers, Ince, Chester, Cheshire, CH2 4LB.

Expenses and costs

9.—(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 removal, inspection, alteration or protection of any operational 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 5(1).

(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 Schedule, that value being calculated and agreed after removal.

(3) If in accordance with the provisions 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 article 46 (arbitration) to be necessary,

then, if such placing involves cost in the construction of works under this Schedule exceeding which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, of 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.

(4) The provisions of 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.

(5) 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 5(1); 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.

(6) 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.

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works referred to in paragraph 7 to this Schedule any damage is caused to CF Fertilisers' Operations, 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—

(a) 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; or

(b) any indirect or consequential loss or loss of profits by CF Fertilisers.

(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.

(4) 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 10 applies.

(5) 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).

(6) The undertaker shall only be liable under this paragraph 10 for claims reasonably incurred by CF Fertilisers.

Arbitration

11. Any difference or dispute arising between the undertaker and CF Fertilisers under 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 46 (arbitration).

SCHEDULE 27

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF NORTHERN POWERGRID (NORTHEAST) PLC

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

2. In this Schedule—

"alternative apparatus" means alternative and/or replacement 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 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 give access 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;

"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; and

"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 or Northern Powergrid's undertaking within the Order limits.

3. 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.

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13 (temporary closure of streets and public rights of way), 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.

5.—(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 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 which shall include rights to retain and subsequently maintain the apparatus being replaced or diverted for the lifetime of that alternative apparatus, 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 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 16.

(5) Northern Powergrid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with paragraph 16, 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 Schedule.

6.—(1) Where, in accordance with the provisions 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 16.

(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.

7.—(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 5(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 28 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 1 to 6 apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(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 35 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 reasonable practicable subsequently and must comply with sub-paragraph (2) insofar as is reasonable practicable in the circumstances.

8.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northern Powergrid the reasonable and proper 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 5(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 5(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 Schedule, that value being calculated after removal and for the avoidance of doubt, if the apparatus removed under the provisions of this Schedule has nil value, no sum will be deducted from the amount payable under this sub-paragraph (1).

(3) If in accordance with the provisions 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 16 to be necessary, then, if such placing involves cost in the construction or works under 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 save where it is not possible on account of project time limits and/or supply issues to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker, provided that the apparatus is the lowest cost alternative available that fulfils the requirements.

(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 that 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 5(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.

9.—(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 5(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 and 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—

(a) 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; or

(b) any indirect or consequential loss or loss of profits by Northern Powergrid.

(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 9 applies.

(5) 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).

(6) The undertaker shall only be liable under this paragraph 9 for claims reasonably incurred by Northern Powergrid.

10. Nothing in 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.

11. Without prejudice to the generality of the protective provisions in this 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 Schedule without limitation—

(a) in assessing and preparing a design for its apparatus to address and accommodate the proposals of the undertaker under paragraph 8;

(b) costs incurred in fulfilling its obligations in paragraph 5(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.

12. Northern Powergrid and the undertaker must use their reasonable endeavours to agree the amount of any estimates submitted by Northern Powergrid under paragraph 11 within 15 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 parties are unable to agree the amount of an estimate, it will be dealt with in accordance with paragraph 16.

13. 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 11 for the benefit of its statutory undertaking.

14. 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.

15.—(1) 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.

(2) 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.

(3) The undertaker is not responsible for meeting costs or expenses in excess of an agreed estimate other than where agreed under paragraph 14 above or determined in accordance with paragraph 16.

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

17. 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.

SCHEDULE 28

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF ANGLO AMERICAN

1. For the protection of Anglo American the following provisions have effect, unless otherwise agreed in writing between the Parties.

2. The following definitions apply in this Schedule—

“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;

“Anglo American Specified Works” means so much of the Woodsmith Project as is within the Shared Area;

“EA Permit 1” means the environmental permit for the landfill site at Bran Sands given permit number EPR/FB3601 GS (formerly Waste Management Licence EAWML60092);

“EA Permit 2” means the Discharge Permit EPR/NB3498VD;

“expert” means a person appointed pursuant to paragraph 14(b);

“H2T Apparatus” means the pipeline, cables, structures to be owned, occupied or maintained by the undertaker within the Shared Area;

“NWL Facility” means the Northumbrian Water Limited Bran Sands Wastewater Treatment Plant;

“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 comprising the area of land within the Order Limits that overlaps with Anglo American interests pursuant to the Property Documents or otherwise within the limits of deviation of the York Potash Order;

“Shared Area Plan” means the plan which is certified as the H2 Teesside Anglo American Shared Area Plan by the Secretary of State under article 44 (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 and any amended or replacement order approved as part of element (4) of the Woodsmith Project, including York Potash Harbour Facilities (Amendment) Order 2022.

Consent to works in the shared area

3.—(1) Where the consent or agreement of Anglo American is required under the provisions 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) the identity of the contractors carrying out the works 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 required 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 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 Anglo American pursuant to 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 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 (where the conditions proposed or any refusal relate to such matters, a reasoned explanation or other form of evidence will be provided by Anglo American to provide an understanding of the matters raised); and/or

(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 1 or the EA Permit 2 or render compliance with the obligations under, or conditions attached to, the EA Permit 1 or the EA Permit 2—

(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 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 in 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 Anglo American has unreasonably withheld its authorisation or agreement under paragraph 5(1), 6(1) and/or 6(2); or

(b) the undertaker considers that Anglo American has given its authorisation under paragraph 5(1), 6(1) and/or 6(2) subject to unreasonable conditions,

the undertaker may refer the matter to dispute resolution under paragraph 14.

(8) Any notice under sub-paragraph (1) and any request for approval or consent under the provisions of this Schedule must be sent to Anglo American by recorded delivery and addressed to—

(a) Estates Manager, Woodsmith Mine, Sneaton, Whitby, YO22 5BF; and

(b) Company Secretary, Anglo American, 17 Charterhouse Street, London, EC1N 6RA.

(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 (1), 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

4. 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, operation and maintenance of the Woodsmith Project is maintained for Anglo American and its 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 Anglo American obtained pursuant to, and in accordance with, the provisions of paragraph 3.

(2) Where under paragraph 3(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 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 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 3 shall apply to the new Plans.

(4) Where there has been a reference to an expert in accordance with paragraph 14(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 14.

(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 paragraph 3 and this paragraph 5 insofar 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 5, 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

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 Woodsmith Project 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 closure of streets and public rights of way);

(e) article 14 (access to works);

(f) article 16 (traffic regulation matters);

(g) article 17 (discharge of water);

(h) article 18 (felling or lopping of trees and removal of hedgerows); and

(i) article 19 (protective works 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 or airspace only);

(p) article 31 (rights under or over streets);

(q) article 32 (temporary use of land for carrying out the authorised development);

(r) article 33 (temporary use of land for maintaining the authorised development); and

(s) article 34 (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.

Constructability principles

7.—(1) The undertaker in respect of the Specified Works (unless otherwise agreed, or in an emergency relating to potential death or serious injury, or where it would render the Specified Works, H2T Apparatus, Anglo American Specified Works or Anglo American Apparatus unsafe, or put the undertaker in breach of its statutory duties) must in respect of all Shared Areas——

(a) 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;

(b) ensure that works carried out to, or placing of H2T 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;

(c) 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—

(i) 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 (a) 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 7;

(ii) provide a copy to Anglo American any relevant construction quality assurance plan, construction management and execution plan and construction environmental management plan approved under Requirement 15(3) and plans approved under Requirement 15(7) which relate to construction activities in the Shared Area;

(iii) 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

(iv) obtain the agreement of Anglo American to the location of any construction compounds where such areas are not those referred to in table 5-2 "construction programme and management" of chapter 5 of the environmental statement;

(d) update the monthly construction programme approved under paragraph (c)(i) monthly and supply a copy of the updated programme to Anglo American every month;

(e) at all times construct the Specified Works in compliance with the relevant agreed construction programme and construction traffic and access management plan;

(f) 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 Disease and Dangerous Occurrences Regulations applicable from time to time within 24 hours of the duty to report arising;

(g) report to Anglo American of any environmental incidents which occur as a consequence of or are found in association with the carrying out of the Specified Works including the identification of contamination or hazards to construction;

(h) 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;

(i) 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

(j) obtain the prior written consent of Anglo American for the use of any recycled aggregate material within the Shared Area.

(2) Unless otherwise agreed, the undertaker must not do anything within the Shared Areas 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 the event that Anglo American notifies the undertaker in writing that Anglo American will not construct any part of the Anglo American Specified Works ("Anglo American Abandoned Works"), the undertaker can construct, operate and maintain the Specified Works

without regard to and without complying with paragraphs 7(1) to 7(3) insofar as those paragraphs apply to the Anglo American Abandoned Works.

(5) In considering a request for any consent under the provisions 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 paragraph 7(1)(c)(i) (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 8.

Interface Design Process

8.—(1) Prior to the seeking of any consent under 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 acceptance 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 Anglo American.

(5) In considering any request for consent or approval under 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

9. 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 all monitoring boreholes, leachate chambers nor the integrity of landfill that are the subject of the EA Permit 1 or the EA Permit 2, so as not to conflict with the ability of Anglo American to comply with the EA Permit 1 or the EA Permit 2; and

(b) so as not to conflict with the ability of Anglo American to construct all works authorised by the York Potash Order, and to preserve the optionality of Anglo American to proceed with the construction of 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 the Shared Area until such time as Anglo American notify the undertaker in writing.

Maintenance and Operational Principles

10. 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) 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 1 and the EA Permit 2;

(b) 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 1 and the EA Permit 2; and

(c) the operation and maintenance of any overland conveyor located within those Shared Areas is not impaired.

Miscellaneous provisions

11.—(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 Schedule.

(2) The undertaker must pay to Anglo American the reasonable expenses incurred by Anglo American 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 Anglo American Specified Works.

Indemnity

12.—(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 breach of the EA Permit 1 or the EA Permit 2, or the operations of Anglo American, or in the supply of any goods, by Anglo American, 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) indemnify and keep indemnified Anglo American against liability which Anglo American incurs by reason of any breach by the undertaker or its authorised personnel.

(2) 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.

(3) 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.

(4) 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).

(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 Anglo American has not used its reasonable endeavours to mitigate and/or minimise that claim in accordance with sub-paragraph (4).

(6) 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 14 does not relieve the undertaker from any liability under this paragraph.

Dispute Resolution

13. Article 46 (arbitration) does not apply to the provisions of this Schedule.

14. Any difference in relation to the provision in this Schedule must be referred to—

(a) a meeting of Chris Daykin, BP Hydrogen & Carbon Capture and Use or the Vice President for hydrogen and carbon capture, usage and storage in the United Kingdom 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.

15. The fees of the expert appointed pursuant to paragraph 14(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.

16. Where appointed pursuant to paragraph 14(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 that 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.

17. 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 in 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.

18. 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 29

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF SOUTH TEES GROUP

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

2.—(1) In this Schedule—

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

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

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

"apparatus" means apparatus (including cables, mains, pipelines, plant and ancillary apparatus) within the Order limits and which is apparatus belonging to or maintained by a STG entity;

"diversion condition" means that in relation to the relevant diversion work—

(a) in relation to a proposed work which is required for the construction of the authorised development, that it in the reasonable opinion of the undertaker enables the authorised development to be constructed and commissioned;

(b) in relation to a proposed work which is required for the maintenance or operation of the authorised development, that in the reasonable opinion of the undertaker, it enables the authorised development to be constructed (where relevant), maintained, operated and (where relevant) decommissioned;

(c) its cost is reasonable having regard to the nature and scale of the relevant proposed work;

(d) planning permission or development consent is not required, or has been granted, or in the reasonable opinion of the undertaker can be obtained in accordance with the undertaker's programme for the construction of the authorised development;

(e) such other consents, licences or authorisations as are required for the diversion work have been obtained, or in the reasonable opinion of the undertaker can be obtained in accordance with the undertaker's programme for the construction of the authorised development;

(f) the STG entity can grant adequate interest in land or a licence to the undertaker to use, maintain and operate the diversion work for its intended purpose as part of the authorised development and if relevant to carry out the diversion work;

(g) the diversion work—

(i) is already constructed and available for use by the undertaker; or

(ii) where a diversion work is to be carried out, whether by the STG entity or the undertaker, it can be carried out and completed in accordance with and without detriment to the undertaker's programme for the construction of the authorised development;

(h) the diversion work complies with the technical specifications agreed or determined by arbitration pursuant to paragraph 17; and

(i) in relation only to the AIL access route works that the diversion work complies with the red main criteria;

"diversion notice" means a notice from the STG entity to the undertaker under paragraph 18;

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

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

(a) adequate interest in land to allow the undertaker to use and where relevant maintain and operate the diversion work for its intended purpose as part of or in connection with the authorised development; and

(b) where relevant, that the undertaker can carry out the diversion work or that the STG entity must carry out the diversion work, in either case in accordance with the undertaker's programme for the construction of the authorised development;

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

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

(b) article 23 (power to override easements and other rights);

(c) article 25 (compulsory acquisition of rights etc.)

(d) article 26 (private rights);

(e) article 28 (acquisition of subsoil and airspace only);

(f) article 32 (temporary use of land for carrying out the authorised development);

(g) article 33 (temporary use of land for maintaining the authorised development); and

(h) article 34 (statutory undertakers),

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

"information notice" means a notice issued by the undertaker under paragraph 20(c) that additional information is reasonably required before it can decide whether to agree to a diversion work;

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

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

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

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

"red main criteria" means that—

(a) the diversion work must be along a route that connects to plot 13/2 at the same location as the existing road or an alternative location as agreed between the STG entity and the undertaker;

(b) the diversion work must connect into the construction areas required for the construction of the authorised development at a location required by the undertaker acting reasonably;

(c) the diversion work must accommodate cargo of 80 metres in length, with an axle width of 15 metres, with 4 metres of overhang each side, and with a total width of 23 metres;

(d) the diversion work must allow a minimum centre line turning radius of 25 metres and a minimum outer turning radius (to the limit of the vehicle/load) of 55 metres;

(e) the longitudinal slope of the diversion work must not exceed 5% with a maximum of 3% for gradient;

(f) 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 100kN/m2 and sufficient protection provided if it crosses underground facilities;

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

"South Tees Group" means STDC, STDL, SRPL and Teesworks;

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

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

(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 33(2) or otherwise; or

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 33(2) or otherwise.

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

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

"STDC area" means the administrative area of STDC;

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

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

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

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

"works details" means—

(a) plans and sections;

(b) details of the proposed design;

(c) details of the proposed method of working

(d) details of the programme and timing of execution of the works;

(e) details of vehicle access routes for construction and operational traffic; and

(f) any further particulars provided in response to a request under paragraph 3; and

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

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

(a) it is longer in distance than the relevant proposed work it is replacing; or

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

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

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

(d) 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

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

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

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

6. The authorised development must be carried out in accordance with the works details approved under paragraph 3 and any requirements or conditions imposed on the approval under paragraph 5 or where there has been a reference to an arbitrator in accordance with paragraph 37 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.

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

Co-operation

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

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

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

(a) the construction of the authorised development may be undertaken on the STG site concurrently with demolition or site preparation works undertaken by the STG entity;

(b) the construction of the respective authorised developments may be undertaken on the STG site concurrently; or

(c) the construction, operation or maintenance of one of the respective authorised developments would have an effect on the construction, operation or maintenance of the other respective authorised development or access to it.

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

(a) co-operate with each other with a view to ensuring—

(i) the co-ordination of construction programming and the carrying out of the respective authorised developments;

(ii) that access for the purposes of constructing the respective authorised developments is maintained for the undertaker, the STG entity and their respective employees, contractors and sub-contractors; and

(iii) that operation, maintenance and access to the respective authorised developments is maintained for the undertaker and the STG entity; and

(b) use reasonable endeavours to avoid any conflict arising from the carrying out of the respective authorised developments.

Expenses

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

(a) the authorisation of works details in accordance with paragraphs 3 to 6;

(b) the process in relation to proposed works and diversion works set out in paragraphs 13 to 27;

(c) where the relevant diversion work is provided by the STG entity and solely for the use of the undertaker in connection with the authorised development, the construction of a diversion work provided instead of the relevant proposed work;

(d) where the relevant diversion work is provided for the use of the undertaker in connection with the authorised development and for use in connection with or as part of the wider STG site, a proportion of the cost of construction of a diversion work provided instead of the H2T (temporary and permanent works) site access route works or the water connection works, such proportion to be agreed between the undertaker and the STG entity acting reasonably or to be determined by arbitration pursuant to paragraph 37; and

(e) the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in accordance with paragraphs 33 and 34.

(2) Prior to incurring any expenses associated with the activities outlined in this paragraph 11, the STG entity must give prior written notice to the undertaker of the activity or activities to be undertaken and an estimate of the costs to be incurred.

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

Indemnity

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

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

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

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

(a) any damage or interruption to the extent that it is attributable to the act, neglect or default of the STG entity, its officers, employees, servants, contractors or agents; and

(b) any indirect or consequential loss or loss of profits by the STG entity.

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

(4) The STG entity must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 12 applies.

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

(6) The undertaker shall only be liable under this paragraph 12 for claims reasonably incurred by the STG entity.

Provision for diversion work

13. The undertaker must—

(a) as soon as reasonably practicable following the grant of the DCO consent, and prior to commencement of the authorised development—

(i) provide to the STG entity details of its proposed work programme; and

(ii) provide such further particulars relating to the proposed works as the STG entity may on occasion reasonably request, and must provide the details reasonably available to the undertaker that have been requested by the STG entity, other than information that the undertaker reasonably considers is confidential, within a period of 30 days of a request by the STG entity or such longer period as the STG entity and the undertaker may agree; and

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

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

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

(a) the date of issue of the work notice under paragraph 13(b); or

(b) the date of issue of the most recent work notice under paragraph 14,

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

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

17.—(1) Within 28 days of receiving the technical specifications provided pursuant to paragraph 16, the STG entity must consider the technical specifications and during that period

the parties must use reasonable endeavours to agree the technical specifications that are applicable to the diversion work that is the subject of the proposed diversion notice, and the STG entity must notify the undertaker before the end of that period as to whether it agrees the technical specifications.

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

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

(a) after the 28 day period specified in paragraph 16, in the event that the undertaker does not provide the STG entity with the reasonable technical specifications pursuant to paragraph 16; or

(b) after the technical specifications are agreed or determined by arbitration pursuant to paragraph 17.

19. 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.

20. If a diversion notice is issued to the undertaker before the expiry of the period under paragraph 15, the undertaker must notify the STG entity no later than 30 days after the date of receipt of the diversion notice confirming whether the undertaker—

(a) agrees to the diversion work;

(b) does not agree to the diversion work; or

(c) requires additional information to consider whether it agrees to the diversion work (an "information notice").

21. In making the decision under paragraph 20 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.

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

23. Where the undertaker notifies the STG entity under paragraph 20(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.

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

25. If the STG entity submits further information to the undertaker within 30 days of receipt of the information notice, the undertaker must consider the further information and paragraph 20 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 20(c); or

(b) in any case 150 days from the date of the undertaker's work notice under paragraph 13(b) or if relevant 150 days from the date of any revised work notice issued by the undertaker under paragraph 14.

26. If the undertaker issues notice to the STG entity under paragraph 20(b) confirming that it does not agree to the diversion notice, the STG entity may submit a further diversion notice

to the undertaker to address the undertaker's reasons for refusal under paragraph 20, 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 20(b); or

(b) in any case 150 days from the date of the undertaker's work notice under paragraph 13(b) or if relevant 150 days from the date of any further work notice issued by the undertaker under paragraph 14.

27. If the undertaker issues a notice under paragraph 20(a) the STG entity and the undertaker must use reasonable endeavours to enter into a diversion works agreement within 30 days of the notice on such terms as may be agreed between them, and where a planning permission is still to be obtained for the diversion work, the STG entity must use reasonable endeavours to obtain the planning permission in order that the diversion work can be carried out without delay to the undertaker's programme for the construction of the authorised development.

28.—(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 27 (or such longer period as may be agreed between the parties prior to the expiry of that 30 day period) the STG entity or the undertaker may within 15 days of the end of that period refer the matter to arbitration under paragraph 37.

(2) If a diversion works agreement is not entered into within the 30 day period set out in paragraph 27 (or such longer period as may be agreed between the parties prior to the expiry of that 30 day period) because any planning permission required for the diversion work has still not been obtained, and in the reasonable opinion of the undertaker the planning permission is not likely to be obtained in order to allow the diversion work to be carried out without material delay to the undertaker's programme, the undertaker may issue a notice to the STG entity confirming that it is not entering into the diversion works agreement.

(3) A notice issued by the undertaker under sub-paragraph (2) shall have the same effect as a notice issued by the undertaker under paragraph 26.

29. If a reference is made to arbitration under paragraph 37 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.

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

31. If—

(a) a diversion works agreement is entered into within the 30 day period set out in paragraph 27; or

(b) a reference to arbitration is made in accordance with paragraph 37 and a diversion works agreement is entered into within the 15 day period in paragraph 30,

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

32.—(1) If—

(a) no diversion notice is issued by the STG entity to the undertaker before the expiry of the period under paragraph 15;

(b) a diversion notice is issued by the STG entity to the undertaker, the undertaker issues a notice not agreeing to the diversion work under paragraph 20(b), and no further diversion notice is issued by the STG entity to the undertaker prior to the dates set out in paragraph 26;

(c) a diversion notice is issued by the STG entity to the undertaker, the undertaker issues an information notice, and no further information is provided by the STG entity to the undertaker prior to the dates set out in paragraph 25;

(d) paragraph 27 applies and the STG entity and the undertaker do not enter into a diversion works agreement within the 30 day period set out in that paragraph and no reference to arbitration is made prior to the expiry of the period in paragraph 28;

(e) the arbitrator determines under paragraph 37 that the terms of the diversion works agreement cannot reasonably be in accordance with the diversion condition; or

(f) paragraph 30 applies and the STG entity has not executed and unconditionally released for completion a diversion works agreement within the 10 day period set out in that paragraph,

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

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

Removal of apparatus owned or maintained by a STG entity

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

(2) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the STG entity advance written notice of that requirement, together with plan and section for the work proposed, including the proposed position of the alternative apparatus to be provided or constructed, and in that case (or if in consequence of the exercise of any of the powers conferred by this Order the STG entity reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to the STG entity to its reasonable satisfaction (taking into account paragraph 34(1) below) the necessary facilities and rights—

(a) for the construction of alternative apparatus in other land of, or land secured by the undertaker; and

(b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, the STG entity must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for the STG entity to seek compulsory purchase powers.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Schedule must be constructed in such manner and in such line or situation as may be agreed between the STG entity and the undertaker or settled by arbitration in accordance with paragraph 37.

(5) The STG entity must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with paragraph 37 (arbitration) and the grant to the STG entity of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative

apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Schedule.

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

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

(3) If the amount of compensation cannot be agreed, the matter may be referred to arbitration in accordance with paragraph 37 (arbitration) of this Schedule and the arbitrator must make such provision for the payment of appropriate compensation by the undertaker to the STG entity as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Protection of apparatus owned or maintained by a STG entity

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

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and

(f) any intended maintenance regimes.

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

(a) securing its apparatus against interference or risk of damage, and to ensure its continuing safety and operational viability; and

(b) providing or securing for the STG entity proper and convenient means of access to any apparatus.

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

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

within 30 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

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

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

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

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

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

(a) in an emergency without notice; and

(b) in non-emergency circumstances where reasonably necessary, having first given the undertaker at least 28 days prior written notice in order to allow the parties to liaise over timing and coordination of their respective works during the period of temporary possession.

Arbitration

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

Interpretation

38.—(1) Any reference to the STG entity in this Schedule means the freehold owner of the relevant part of the STG site.

(2) The relevant STG entity which is the freehold owner referred to in sub-paragraph (1) must consult with all other STG entities that have an interest in the relevant part of the STG site in relation to any obligations, approvals or other functions which the freeholder has pursuant to this Schedule.

Miscellaneous

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

SCHEDULE 30

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF NORTHUMBRIAN WATER LIMITED

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

2. In this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable NWL to fulfil its statutory functions in no less efficient a manner than previously;

"apparatus" means the following items belonging to or maintained by NWL within the Order limits—

(a) in the case of NWL'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 NWL 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 NWL's sewerage undertaking—

(i) any sewer, drain or disposal works vested in NWL under the Water Industry Act 1991(**a**); 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;

"NWL" 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.

(**a**) 1991 c.56.

Protection strips

3. 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 NWL, 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.

Protection of NWL Apparatus

4. Without prejudice to the generality of the foregoing, 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 (England and Wales) Regulations 2016(**a**) 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 NWL and NWL has given the necessary consent or approval under the relevant provision, such agreement not to be unreasonably withheld or delayed and must be given within 28 days from the date the plan of works proposed has been submitted; and

(c) 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 NWL for—

(i) the continuing safety and operational viability of the apparatus (for the avoidance of doubt where the reasonable requirements relate to such matters, a reasoned explanation will be provided by NWL to substantiate the need for these requirements); and

(ii) the requirement for NWL to secure reasonable access to the apparatus.

5. 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 NWL 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 apparatus.

6. 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 NWL to maintain or use the apparatus no less effectively than was possible before such obstruction.

7. The undertaker, in the case of powers conferred by the Order for the protective work to buildings, must exercise those powers so as not to obstruct or render less convenient the access to any apparatus belonging to NWL without the written consent of NWL.

Unmapped sewers / other apparatus

8.—(1) Where the undertaker identifies any apparatus which may belong to or be maintainable by NWL but which does not appear on any statutory map kept for the purpose

(**a**) S.I. 2016/1154.

by NWL, it shall inform NWL of the existence and location of the apparatus as soon as reasonably practicable.

(2) 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 NWL and afforded the same protection as other NWL assets.

Indemnity

9. —(1) Subject to sub-paragraphs (2) and (3), if for any direct reason or in direct consequence of the construction of any of the works by or at the direction of the undertaker referred to in paragraphs 3 to 7 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 NWL, or there is any interruption in any service provided, or in the supply of any goods, by NWL, the undertaker must—

(a) bear and pay the cost reasonably incurred by NWL in making good any damage or restoring the supply; and

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

(2) NWL 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 9 applies. If requested to do so by the undertaker, NWL 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 9 for claims reasonably incurred by NWL.

(3) Any dispute arising between the undertaker and NWL under this Schedule must be referred to and settled by arbitration under article 46 (arbitration).

(4) The fact that any act or thing may have been done by NWL on behalf of the undertaker or in accordance with a plan approved by NWL or in accordance with any requirement of NWL or under its supervision does not, subject to sub-paragraph (5) excuse the undertaker from liability under the provisions of sub-paragraph (1) unless NWL fails to carry out and execute the works properly with due care and attention and in a skilful and professional manner or in a manner that does not accord with the approved plan.

(5) 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 unlawful or unreasonable act, neglect or default of NWL, its officers, employees, servants, contractors or agents.

(6) NWL 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.

Duty to cooperate

10. Where in consequence of the proposed construction of any of the authorised development, the undertaker or NWL requires the removal of apparatus or NWL 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 NWL's undertaking and NWL must use all reasonable endeavours to co-operate with the undertaker for that purpose.

11. Nothing in this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and NWL in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

12. Prior to carrying out any works within the Order limits (as defined in the Order) NWL 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.

SCHEDULE 31

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF THE BREAGH PIPELINE OWNERS

1. 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.

2. In 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(**a**);

"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 E&P (UK) Limited (company number 04376184), whose registered address is at Anchor House, 15-19 Britten Street, London, SW3 3TY 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 3.

Consent under this Schedule

3. 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.

(**a**) 1962 c.58. Section 65 was amended by paragraph 8 of Schedule 1 to Gas (Third Party Access and Accounts) Regulations 2000/1937, paragraph 6 of Schedule 2 to Energy Act 2011 (c.16) and paragraph 5 of Schedule 1 to Storage of Carbon Dioxide (Access to Infrastructure) Regulations 2011/2305.

4. 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 3 have been approved by the Breagh Pipeline Owners.

5.—(1) Any approval of the Breagh Pipeline Owners required under paragraph 4 must not be unreasonably withheld or delayed and must be given within 28 days from the date the works details are submitted under paragraph 3, 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 (for the avoidance of doubt where the reasonable requirements relate to such matters, a reasoned explanation will be provided by the Breagh Pipeline Owners to substantiate the need for these requirements); 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 Breagh Pipeline Operations.

(3) The authorised development must be carried out in accordance with the works details approved under paragraph 4 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 8 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 8.

Compliance with requirements, etc. applying to the Breagh Pipeline and the Breagh Pipeline Operations

6. 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

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 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, 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 7 applies.

(5) 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).

(6) The undertaker shall only be liable under this paragraph 7 for claims reasonably incurred by the Breagh Pipeline Owners.

Arbitration

8. Any difference or dispute arising between the undertaker and the Breagh Pipeline Owners under 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 46 (arbitration).

SCHEDULE 32

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF CATS NORTH SEA LIMITED

Application

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

Interpretation

2. —(1) In 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 acting in its capacity as operator of the CATS system for and on behalf of the CATS Owners and any successor in title or function to the CATS pipelines;

"CATS Owners" means any company that from time to time owns an interest in the CATS system and, as at the date upon which this Order is made, comprise the following—

(a) CATS;

(b) Kellas CATS Limited (company number 08021886), whose registered address is Suite 17th Floor, 50 Broadway, London, United Kingdom, SW1H 0BL;

(c) Eni UK Limited (company number 00862823), whose registered address is Eni House, 10 Ebury Bridge Road, London, SW1W 8PZ; and

(d) Chrysaor Petroleum Company U.K. Limited (company number 00792712), whose registered address is 151 Buckingham Palace Road, London, England, SW1W 9SZ;

"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 ConocoPhillips 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;

"CATS system" means the facilities commonly known as the Central Area Transmission System gas pipeline and processing plant, as commonly abbreviated and known as the CATS pipeline and CATS processing plant, as the same may exist from time to time including, without limitation, the CATS pipeline;

"function" includes a power or duty;

"ground mitigation scheme" means a scheme setting out the reasonably necessary measures (if any) which are proposed to mitigate a ground subsidence event; "ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus or infrastructure 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, shall require the undertaker to submit for CATS' 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;

"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 and assess the works to be executed;

"protective works" means the underpinning, strengthening and any other works the purpose of which is to prevent damage to or interference with the CATS pipelines that may be caused by the carrying out, maintenance or use of the authorised development.

"specified works" means any of the authorised works or activities undertaken in association with the authorised works which—

(a) will or may be situated within 50 metres in any direction of the CATS system, or

(b) in the case of explosives for blasting, are within 400 metres of any part of the CATS system.

(2) Where this Schedule provides—

(a) that the acknowledgement, approval, agreement, consent or authorisation of CATS or the undertaker is required; or

(b) that any thing must be done to CATS' reasonable satisfaction,

that acknowledgement, approval, agreement, consent, authorisation or intimation of satisfaction shall not be unreasonably withheld or delayed.

(3) When carrying out any function under this Schedule, CATS (and any arbitrator appointed for the purposes of paragraph 14) must at all times have regard to the interests of safety and the efficient and economic execution, construction and operation of the authorised development.

Consent under this Schedule in respect of specified works

3.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to CATS a plan in respect of those works.

(2) The plan to be submitted to CATS 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 and 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 proposed ground monitoring scheme; and

(g) any intended maintenance regimes.

(3) The undertaker must not commence any specified works until the plan submitted under subparagraph (1)—

(a) has been approved by CATS under sub-paragraph (4)(a);

(b) is deemed to have been approved pursuant to sub-paragraph (8) or (9); or

(c) has been approved by an arbitrator following a reference under sub-paragraph (10).

(4) Following submission of a plan under sub-paragraph (1), CATS must within 56 days of the date of receipt thereof notify the undertaker in writing—

(a) that its approval has been granted in respect of all or any part of that plan; or

(b) that its approval has been refused in respect of all or any part of that plan, and the full reasons for its disapproval.

(5) Any approval of CATS given under sub-paragraph (4)(a) may be given subject to such reasonable conditions for any purpose mentioned in sub-paragraph (6) as CATS may notify to the undertaker in writing at the same time as CATS' decision under sub-paragraph (4)(a), with that notice setting out CATS' full reasons for those conditions.

(6) Conditions may only be imposed by CATS pursuant to sub-paragraph (5) to effect such modifications to the plan as may be reasonably necessary for the purpose of—

(a) securing the CATS pipelines against interference or risk of damage;

(b) providing or securing proper and convenient means of access to the CATS pipelines;

(c) the provision of any protective works by the undertaker (whether of a temporary or permanent nature).

(7) Specified works must only be executed in accordance with—

(a) the plan approved or deemed to be approved under sub-paragraph (3); and

(b) unless sub-paragraph (11) applies, any conditions imposed under sub-paragraph (5).

(8) If CATS does not provide any response to the undertaker within the period specified in subparagraph (4) then the plan submitted under sub-paragraph (1) is deemed to be approved on the day next following the last day of that period.

(9) If CATS provides a response under sub-paragraph (4)(b) in respect of part only of the plan submitted under sub-paragraph (1) then the remainder of the submitted plan is deemed to be approved on the day next following the date of the notification under sub-paragraph (4)(b).

(10) If CATS gives notice to the undertaker—

(a) under sub-paragraph (4)(b); or

(b) grants its approval subject to one or more conditions under sub-paragraph (5) to which the undertaker objects,

then the matter will be treated as a dispute to be resolved between the parties and may (if the undertaker so elects) be referred to an arbitrator for determination in accordance with paragraph 14.

(11) Where—

(a) the imposition of a condition has been referred to an arbitrator under sub-paragraph (10); and

(b) the arbitrator determines that the condition in question should not be imposed,

the undertaker is not obliged to comply with that condition.

(12) The undertaker is not required to comply with sub-paragraph (1) prior to the commencement of a specified work which forms part of any emergency works, but in that case it must as soon as is reasonably practicable in the circumstances—

(a) give to CATS notice that it is carrying out works pursuant to this sub-paragraph; and

(b) submit a plan of any specified works carried out as part of those emergency works for approval under this paragraph 4.

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

Approval of revised or replacement plan

4.—(1) Nothing in paragraph 3 precludes the undertaker from submitting at any time or from time to time a revised or replacement plan, instead of any plan previously approved or deemed to have been approved for the purposes of that paragraph.

(2) Subject to sub-paragraph (3), the provisions of paragraph 3 will apply to and in respect of any revised or replacement plan so submitted.

(3) If the specified works to which the plan relates have already been commenced in accordance with a plan previously approved or deemed to be approved under paragraph 3—

(a) the requirement in paragraph 3(1) for the plan to submitted prior to the commencement of the works in question does not apply; and

(b) the revised or replacement plan must instead be submitted as soon as reasonably possible.

Implementation of protective works

5.—(1) This paragraph applies where a condition is imposed for the purpose set out in paragraph 3(6)(c).

(2) The protective works which are the subject of that condition must be completed to CATS' reasonable satisfaction prior to the commencement of the specified works to which they relate.

(3) Where protective works have been completed in accordance with sub-paragraph (2), the undertaker may request that CATS provide an intimation that they have been done to CATS' satisfaction for the purposes of that sub-paragraph.

(4) Following a request under sub-paragraph (3), CATS must within 7 days of the date of receipt thereof give an intimation to the undertaker in writing that the protective works in question—

(a) have been completed to CATS' satisfaction; or

(b) have not been completed to CATS' satisfaction and the reasons for this.

(5) If CATS does not notify the undertaker of its decision within the period specified in subparagraph (4) then the protective works are deemed to have been completed to CATS' satisfaction for the purposes of this paragraph.

(6) If CATS gives notice to the undertaker under sub-paragraph (4)(b) then the matter will be treated as a dispute to be resolved between the parties and may (if the undertaker so elects) be referred to an arbitrator for determination in accordance with paragraph 14..

Compliance with the CATS requirements

6. In undertaking any specified works, the undertaker must comply with such conditions, requirements or regulations as are set out in the CATS requirements.

7. Where formal consent is required under the CATS requirements for works within the wayleave of the CATS pipelines, an approval given or deemed to be given under paragraph 3 constitutes formal consent for the purposes of the CATS requirements.

Monitoring for ground subsidence

8.—(1) This paragraph applies where the plan approved or deemed to be approved under paragraph 3 includes a ground monitoring scheme.

(2) The undertaker shall implement and comply with that ground monitoring scheme.

(3) If a ground subsidence event occurs, the undertaker must as soon as reasonably practicable—

(a) notify CATS; and

(b) submit a ground mitigation scheme for CATS' approval.

(4) Following submission of a ground mitigation scheme under sub-paragraph (3), CATS must within 28 days of the date of receipt thereof notify the undertaker in writing—

(a) that its approval has been granted in respect of all or any part of that scheme; or

(b) that its approval has been refused in respect of all or any part of that scheme, and the full reasons for its disapproval.

(5) If CATS does not provide any response to the undertaker within the period specified in subparagraph (4) then the ground mitigation scheme submitted under sub-paragraph (3) is deemed to be approved on the day next following the last day of that period.

(6) If CATS provides a response under sub-paragraph (4)(b) in respect of part only of the ground mitigation scheme submitted under sub-paragraph (3) then the remainder of the submitted scheme is deemed to be approved on the day next following the date of the notification under subparagraph (4)(b). 6

(7) If CATS gives notice to the undertaker under sub-paragraph (4)(b) then the matter will be treated as a dispute to be resolved between the parties and may (if the undertaker so elects) be referred to an arbitrator for determination in accordance with paragraph 14.

(8) The undertaker must proceed to implement any ground mitigation scheme—

(a) approved by CATS under sub-paragraph (4)(a);

(b) deemed to be approved under sub-paragraph (5) or (6); or

(c) approved by an arbitrator following a reference under sub-paragraph (7).

Monitoring for damage to pipelines

9.— (1) When undertaking any specified works, 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 in accordance with sub-paragraph (3).

(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) Where sub-paragraph (3)(b) applies, the undertaker may request that CATS provide an intimation that the repairs in question have been done to CATS' satisfaction for the purposes of that sub-paragraph.

(6) Following a request under sub-paragraph (5), CATS must within 7 days of the date of receipt thereof give an intimation to the undertaker in writing that the repairs in question—

(a) have been completed to CATS' satisfaction; or

(b) have not been completed to CATS' satisfaction and the reasons for this.

(7) If CATS does not notify the undertaker of its decision within the period specified in subparagraph (6) then the repairs are deemed to have been completed to CATS' satisfaction for the purposes of this paragraph.

(8) If CATS gives notice to the undertaker under sub-paragraph (6)(b) then the matter will be treated as a dispute to be resolved between the parties and may (if the undertaker so elects) be referred to an arbitrator for determination in accordance with paragraph 14.

(9) Following the completion of any specified works, if damage is found to have occurred to any of the CATS pipelines as a result of the relevant works, sub-paragraphs (2) to (8) of this paragraph apply to that damage.

(10) 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 (subject to CATS complying with the requirements of paragraph 12) to recover the reasonable cost of doing so from the undertaker.

(11) CATS is entitled to appoint an independent engineer to watch and inspect the execution of the specified works, and to provide safety advice in accordance with the CATS requirements.

10.—(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 a 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,

save as may be required in order to stop, reduce or mitigate that leakage or escape.

Access

11.—(1) If the access to any of the CATS pipelines is materially obstructed as a result of the carrying out of the authorised development, the undertaker must provide such alternative means of access as will enable CATS to maintain or use the CATS pipelines no less effectively than was possible before such obstruction.

(2) Where the undertaker cannot grant to CATS alternative rights and means of access to the CATS pipelines by virtue of not being in possession of the requisite land rights, the undertaker shall use reasonable endeavours to assist CATS in securing the requisite rights and means of access.

Costs and expenses

12.—(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 reasonably required in consequence of the execution of any specified works, including without limitation—

(a) the grant of any acknowledgement, approval, agreement, consent, authorisation or intimation of satisfaction in accordance with paragraphs 3 to 10;

(b) the engagement of an engineer for the purposes of paragraph 9(11);

(c) any reasonable costs incurred by CATS in engaging and retaining such external experts, consultants and contractors as may be reasonably necessary for the discharge of CATS' functions under this Schedule; 7

(d) the carrying out of protective works, plus either the cost of maintaining and renewing any permanent protective works or, if the undertaker so elects, a capitalised sum to cover the cost of maintaining and renewing any permanent protective works; and

(e) the survey, inspection and monitoring of any land, apparatus or infrastructure associated with the CATS pipelines or the installation or removal of any temporary works.

(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) Subject to sub-paragraphs (4) and (5), if by reason or in consequence of the construction of any of the specified works 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 within a reasonable time 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.

(4) Nothing in this paragraph 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 CATS, its officers, employees, servants, contractors or agents; or

(b) any indirect or consequential loss or loss of profits by CATS.

(5) CATS must give the undertaker reasonable notice of any such fees, costs, charges, expenses, loss, claim, demand or penalty 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.

(6) CATS must use its reasonable endeavours to mitigate in whole or in part and to minimise any fees, costs, charges, expenses, loss, claim, demand or penalty to which this paragraph applies.

(7) If requested to do so by the undertaker, CATS must provide an explanation of how the fees, costs, charges, expenses, loss, claim, demand or penalty in question has been minimised or details to substantiate any sum claimed pursuant to this paragraph.

(8) The undertaker shall only be liable under this paragraph for sums reasonably incurred by CATS.

Insurance

13.—(1) Prior to commencing construction of any part of the authorised development on the insured land, the undertaker must request CATS' approval in respect of the policy of acceptable insurance which the undertaker proposes to effect.

(2) Where the undertaker proposes to change the terms of a policy of acceptable insurance approved for the purposes of this paragraph then it must request CATS' approval of the proposed revisions to the acceptable insurance that the undertaker proposes prior to effecting such revisions.

(3) Where a request is submitted to CATS pursuant to sub-paragraph (1) or (2) then CATS must give notice as to the undertaker as to whether its approval of the proposed policy of acceptable insurance is granted or refused within the period of 7 days commencing on the day next following the date upon which the request was submitted.

(4) If CATS does not give notice under sub-paragraph (3) within that period then the proposed policy of acceptable insurance is deemed to be approved.

(5) If CATS gives notice under sub-paragraph (3) that its approval is refused then—

(a) that notice must also include—

(i) CATS full reasons for such refusal; and

(ii) any reasonable alterations to the proposed policy of acceptable insurance which CATS considers would overcome those reasons;

(b) the question of whether the policy of acceptable insurance proposed by the undertaker should be approved for the purposes of this paragraph may be referred by the undertaker to an arbitrator for determination under paragraph 14.

(6) The undertaker (or any contractor carrying out works on behalf of the undertaker) must maintain the policy of acceptable insurance approved or deemed to be approved under this paragraph—

(a) during the construction of any specified works on the insured land; and

(b) after the completion of such construction, for the period of any use and maintenance of those works.

(7) In this paragraph

"acceptable insurance" means a policy of general third party liability insurance effected and maintained by the undertaker with a reputable insurer which includes—

(a) a waiver of subrogation and an indemnity to principal clause in favour of CATS;

(b) a combined property damage and bodily injury limit of indemnity of not less than one hundred million pounds sterling per occurrence or series of occurrences arising out of one event; and

(c) cover in respect of pollution liability for third party property damage and third party bodily damage arising from any pollution or contamination event with a sub-limit of indemnity of not less than—

(i) ten million pounds sterling per occurrence or series of occurrences arising out of one event; and

(ii) twenty million pounds sterling in aggregate;

"insured land" means any land owned by CATS or the CATS owners or in respect of which CATS has an easement or wayleave for apparatus or infrastructure associated with the CATS system.

Arbitration

14. —(1) Any difference or dispute arising between the undertaker and CATS under this Schedule must, unless otherwise agreed in writing between the undertaker and CATS, be referred to and settled by arbitration in accordance with this paragraph.

(2) Article 46 (arbitration) applies to such arbitration subject to the following provisions.

(3) Subject to sub-paragraph (5), the fees of the arbitrator are payable by the parties in such proportions as the arbitrator may determine or, in the absence of such determination, equally.

(4) The arbitrator must—

(a) invite the parties to make a submission in writing and copied to the other party to be received by the arbitrator within 14 days of the arbitrator's appointment;

(b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submissions under paragraph (a);

(c) issue a decision within 21 days of receipt of—

(i) the submissions under sub-paragraph (b); or

(ii) if no submissions are submitted under that paragraph, the submissions under paragraph (a); and

(d) give reasons for the arbitrator's decision.

(5) If the arbitrator does not issue the decision within the time required by sub-paragraph (4)(c) then—

(a) the arbitrator is not entitled to any payment in respect of their fees; and

(b) the matter in question shall immediately be referred to a new arbitrator in which case—

(i) the parties shall immediately upon the new arbitrator's appointment provide the new arbitrator with copies of the written submissions and comments previously provided under sub-paragraphs (4)(a) and (4)(b);

(ii) no further submissions or comments may be requested by or provided to the new arbitrator in addition to those provided pursuant to sub-paragraph (i); and

(iii) the new arbitrator shall then proceed to comply with sub-paragraphs (4)(c) and (4)(d).

SCHEDULE 33

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF SABIC PETROCHEMICALS UK LIMITED

Benefit of protective provisions

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

(2) Except to the extent as may be otherwise agreed in writing between the undertaker and SABIC, where the benefit of this Order is transferred or granted to another person under article 8 (consent to transfer benefit of this Order)—

(a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between SABIC and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to SABIC 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 SABIC Protective Provisions"; and

(b) whether entered into before or after the making of this Order.

Interpretation

2.—(1) In this Schedule—

"access roads" means the access roads within the Order limits—

(a) giving access to pipelines or the protected crossing; or

(b) within or giving access to the Wilton Complex, the North Tees facilities and the Brinefields;

"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 the identified powers, any apparatus in the protected land which would be affected by the exercise of that power;

"alternative apparatus" means new apparatus to be provided by the undertaker to replace existing apparatus which the undertaker intends to remove, such new apparatus to be to a specification and standard which will serve SABIC in a manner which is no less effective or efficient than previously;

"apparatus" means pipelines, cables and drains owned or operated by SABIC 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 cathodic protection, 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**);

"Brinefields" means the land tinted and edged blue on the certified plan;

"certified plan" means the plans showing the Brinefields, the North Tees Facilities, the pipeline corridor, the protected crossing and the Wilton Complex which are certified as the 2 Information Plan by the Secretary of State under article 44 (certification of plans etc) for the purposes of this Schedule;

"construction access plan" means a plan identifying how access will be maintained to apparatus the protected crossing, and to and within the Wilton Complex, the North Tees Facilities and the Brinefields 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 to apparatus including in relation to a pipeline leakage and the weakening of the mechanical strength of a pipeline;

"engineer" means an independent engineer appointed by SABIC for the purposes of this Order;

"identified powers" means the powers conferred by the following provisions of this Order—

(a) article 11 (street works);

(b) article 12 (construction and maintenance of new or altered means of access);

(c) article 13 (temporary closure of streets and public rights of way);

(d) article 14 (access to works);

(e) article 17 (discharge of water);

(f) article 20 (authority to survey and investigate the land);

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

(h) article 23 (power to override easements and other rights);

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

(j) article 26 (private rights);

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

(l) article 31 (rights under or over streets);

(m) article 32 (temporary use of land for carrying out the authorised development); and

---

(**a**) 1962 c.58. Section 65 was amended by paragraph 8 of Schedule 1 to Gas (Third Party Access and Accounts) Regulations 2000/1937, paragraph 6 of Schedule 2 to Energy Act 2011 (c.16) and paragraph 5 to Storage of Carbon Dioxide (Access to Infrastructure) Regulations 2011/2305.

(n) article 33 (temporary use of land for maintaining the authorised development);

"major works" means works by SABIC requiring the closure, diversion or regulation of any roads serving the apparatus, the protected crossing and the Wilton Complex, the North Tees Facilities and the Brinefields;

"North Tees Facilities" means the land tinted and edged mauve on the certified plan;

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

"owner" means in relation to the access roads, any person—

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

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

"pipeline corridor" means the land tinted and edged green on the certified plan;

"pipeline" 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 the 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;

(d) the precise location of any easement widths or rights (where it is reasonably possible to establish this);

"protected crossing" means the tunnel which carries pipelines under the River Tees known as Tunnel 2 which is shown cross-hatched and edged brown on the certified plan;

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

(a) the access roads;

(b) the pipeline corridor;

(c) the protected crossing;

(d) the Wilton Complex;

(e) the North Tees Facilities; and

(f) the Brinefields;

"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—

(a) SABIC UK Petrochemicals Limited (company number 03767075) whose registered office is at Wilton Centre, Wilton, Redcar, Cleveland, TS10 4RF; and

(b) SABIC Tees Holdings Limited (company number 06009440) whose registered office is at Wilton Centre, Wilton, Redcar, Cleveland, TS10 4RF,

and any successor in title to SABIC's rights and interests in the protected land;

"specified person" meansCompany Secretary, SABIC UK Petrochemicals Limited, Wilton Centre, Redcar, Cleveland, TS10 4RF or such other person or address within the United Kingdom as they may notify to the undertaker in writing;

"temporary crossing point" means a point where construction traffic will cross over a pipeline and, unless the pipeline is under a carriageway of adequate standard of construction, any proposed reinforcement of that crossing;

"Wilton Complex" means the land tinted and edged pink on the certified plan;

"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 any proposed temporary crossing points;

(c) details of how the undertaker proposes to indicate the location of the easement widths taken from the actual location of the pipelines shown on the pipeline survey during construction of the authorised development, including any fencing or signage;

(d) details of methods and locations of any piling proposed to be undertaken under paragraph 11;

(e) details of methods of excavation and any zones of influence the undertaker has calculated under paragraph 12;

(f) details of methods and locations of any compaction of backfill proposed to be undertaken under paragraph 13;

(g) details of the location of any pipelines affected by the oversailing provisions in paragraph 14, including details of the proposed clearance;

(h) 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;

(i) details of the undertaker and their principal contractors' management of change procedures;

(j) 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;

(k) details of the electrical design of the authorised works in sufficient detail to allow an independent specialist to assess whether AC interference from the authorised development may cause damage to the pipeline;

(l) 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;

(m) 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;

(n) details of the emergency response plan as prepared in consultation with local emergency services and the pipeline operators;

(o) details of the assessment and monitoring work to be undertaken both prior to the construction of the authorised development and during the operation of the authorised development to ascertain any change or damage to the pipeline cathodic protection system; and

(p) any further particulars provided in accordance with paragraph 4(2).

(2) Where this Schedule provides that the acknowledgement, approval, agreement, consent or authorisation of SABIC or the specified persons is required for any thing (or that any thing must be done to SABIC's reasonable satisfaction—

(a) that acknowledgement, approval, agreement, consent or authorisation (or intimation that the matter in question has been done to SABIC's reasonable satisfaction) shall not be unreasonably withheld or delayed; and

(b) the grant or issue of such acknowledgement, approval, agreement, consent or authorisation (or intimation) by any one or more of the entities which constitute SABIC or the persons who constitute the specified persons as defined in sub-paragraph

(1) (as the case may be) shall constitute approval, agreement, consent or authorisation on behalf of all of them.

Pipeline survey

3.—(1) Before commencing any part of the authorised development in the pipeline corridor or which may affect the 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 and carried out in accordance with all relevant national standards and codes.

(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 the protected crossing

4.—(1) Before commencing any part of a relevant work the undertaker must submit to SABIC the works details in respect of any affected asset.

(2) The undertaker must as soon as reasonably practicable provide such further particulars as SABIC may, within 45 days from the receipt of the works details under sub-paragraph (1), reasonably require.

(3) Where the undertaker submits works details under sub-paragraph (1) or further particulars under sub-paragraph (2), the specified persons shall immediately provide the undertaker with a written acknowledgement of receipt in respect of those works details or further particulars (as the case may be).

5. 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 4 have been authorised by SABIC; or

(b) the works details supplied in respect of that relevant work under paragraph 4 have been authorised by an arbitrator under paragraph 7(4); or

(c) authorisation is deemed to have been given in accordance with paragraph 7(1).

6.—(1) Any authorisation by SABIC required under paragraph 5(a) 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 5 and any conditions imposed on the authorisation under paragraph 6(1).

(3) Where there has been a reference to an arbitor in accordance with paragraphs 7(2) and 31 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 7(3).

7.—(1) In the event that—

(a) no response has been received to the submission of the works details under paragraph 4 within 45 days of the undertaker obtaining a written acknowledgement of receipt from a specified person under paragraph 4(3) and no further particulars have been requested under paragraph 4(2); or

(b) authorisation has not been given within 30 days of the undertaker obtaining a written acknowledgement of receipt from a specified person of the further particulars supplied under paragraph 4(2),

approval of the works details is to be deemed to be given and the relevant works may commence.

(2) If the undertaker considers that—

(a) any further particulars requested by SABIC under paragraph 4(2) are not reasonably required;

(b) SABIC has unreasonably withheld its authorisation under paragraph 6(1); or

(c) SABIC has given its authorisation under paragraph 6(1) subject to unreasonable conditions,

the undertaker may refer the matter to an arbitrator for determination under paragraph 31.

(3) Where the matter is referred to arbitration under sub-paragraph (2)(a)—

(a) the arbitrator is to determine whether or not the further particulars must be provided by the undertaker; and

(b) the undertaker is not required to provide them unless directed so to do by the arbitrator.

(4) Where the matter is referred to arbitration under sub-paragraph (2)(b) or (2)(c) 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 paragraphs 6(1)(a) and 6(1)(b).

Notice of works

8. 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

9.—(1) Before carrying out a relevant work the undertaker must—

(a) provide SABIC with baseline data which will be used in the cathodic protection assessment of any existing pipeline; and

(b) carry out a pipeline settlement and stress analysis to demonstrate any potential pipeline movement will not present an integrity risk to the affected asset.

(2) The pipelines must be located by hand digging prior to the use of mechanical excavation provided that any excavation outside of 2 metres of the centreline of a pipeline may be dug by mechanical means.

10. No explosives are to be used within the protected land.

11.—(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 4.

12.—(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 under paragraph 4.

(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 4.

13.—(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 4.

(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 to an arbitrator for determination under paragraph 31.

14.—(1) A minimum clearance of 500 millimetres in respect of above ground apparatus and 600 millimetres in respect of buried apparatus 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 affected assets

15.—(1) When carrying out the relevant work the undertaker must monitor the relevant affected assets 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, any cathodic protection 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 SABIC 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 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.

16.—(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

17.—(1) Subject to sub-paragraph (2), in undertaking any works in relation to the protected land or exercising any rights relating to or affecting SABIC as an owner 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 8; or

(b) determined by the arbitrator following a determination under paragraph 31 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

18.—(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.

19.—(1) In preparing a construction access plan under paragraph 18 the undertaker must—

(a) establish the programme for SABIC's major works in the pipeline corridor, the Wilton Complex, the North Tees Facilities and the Brinefields 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) where it proposes to restrict or extinguish SABIC's access to the protected land, any pipeline, the Wilton Complex, the North Tees Facilities or the Brinefields first provide an alternative or replacement means of access (together with facilities and rights to enable SABIC lawfully to use that access) which is not materially less advantageous to SABIC.

(2) Where a reference is made to an arbitrator under paragraph 31 in relation to any disagreement about a construction access plan, in addition to the criteria set out in paragraph 31(5) the appointed 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 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.

20.—(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 AN arbitoR for determination under paragraph 31, 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.

Mitigation in respect of SABIC apparatus, etc.

21.—(1) The undertaker must not in the exercise of the identified powers acquire, appropriate, extinguish, suspend or override any rights of SABIC in the protected land if the authorised development can reasonably and practicably be carried out without such acquisition, appropriation, extinguishment, suspension or override.

(2) The undertaker must in the exercise of the identified powers at all times act so as to minimise, as far as reasonably practicable, any detrimental effects on SABIC, including any disruption to access and supplies of utilities and other services that are required by them in order to carry out their operations.

22.—(1) SABIC's 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 facilities and rights for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and replacement of the alternative apparatus have been granted to SABIC.

(2) If alternative apparatus is to be provided under sub-paragraph (1)—

(a) the undertaker must give to SABIC written notice, with specification of the proposed alternative apparatus, together with plans and sections showing its situation and location

(b) paragraphs 4 to 20 of this Schedule shall apply as if the details of that alternative apparatus and the carrying out of the works to provide and construct the alternative

apparatus constituted the carrying out of a relevant work, subject to the following amendments—

(i) in paragraph 8 the notice period of "not less than 28 days" will be replaced with a period of "not less than 3 calendar months unless otherwise agreed with SABIC"; and

(ii) in paragraph 6(1) there shall be added immediately before paragraph 6(1)(a) a new paragraph (aa) as follows—

"(aa) without prejudice to paragraph (a), the timing of the works to construct and bring into operation the alternative apparatus so as to reduce so far as reasonably possible the detrimental effects on SABIC's operations;"

(c) the undertaker will have special regard to its obligations under paragraph 21(2).

(3) Any alternative apparatus to be constructed under this Schedule must be constructed in such manner and in such line or situation as may be authorised or deemed to be authorised under paragraph 5.

(4) Where under sub-paragraph (1) facilities and rights must be granted to SABIC those facilities and rights must be on such terms and conditions as may be agreed between the undertaker and SABIC or in default of agreement determined by an arbitrator under paragraph 31, and such terms must be no less favourable as a whole than the terms and conditions which applied to the apparatus to be removed.

(5) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, or 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 SABIC in respect of the apparatus to be removed, the arbitrator must make such provision for the payment of compensation by the undertaker to SABIC as appears to the arbitrator to be reasonable, having regard to all the circumstances of the particular case.

Insurance

23.—(1) Before carrying out any part of the authorised development on the protected land, 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 against the undertaker's liabilities under paragraph 25 in accordance with the terms and level of cover as may be agreed in writing between the undertaker and SABIC or, in the case of dispute, in accordance with the terms and level of cover determined by an arbitrator under paragraph 31, 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 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 or at such level as may otherwise be determined by an arbitrator under paragraph 31.

24. If SABIC has a dispute about the proposed insurance (including the terms or level of cover) to be provided under paragraph 23—

(a) SABIC may refer the matter to an arbitrator for determination under paragraph 31; 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 31 is on-going, following which the undertaker must adjust the insurance policy if necessary to accord with the determination.

Costs

25.—(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 3(3), authorisation of works details submitted by the undertaker under paragraph 4 and the imposition of conditions under paragraph 6;

(b) the engagement of an engineer and their observation of the authorised works affecting the pipelines and the provision of safety advice under paragraph 8;

(c) responding to the consultation on piling under paragraph 11;

(d) considering the effectiveness of any compacting which has taken place under paragraph 13, including considering and evaluating compacting testing results and the details of further compaction works under that paragraph;

(e) the repair and testing of affected assets under paragraph 15;

(f) considering and responding to consultation in relation to the construction access plan under paragraph 18 and providing details of their programme for major works to the undertaker under paragraph 19;

(g) dealing with any request for consent, approval or agreement by the undertaker under paragraph 22; and

(h) considering the adequacy of the terms and level of cover of any insurance policy proposed or put in place by the undertaker under paragraph 23,

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 the following provisions of this paragraph, 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 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—

(a) 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; or

(b) any indirect or consequential loss or loss of profits by SABIC.

(4) SABIC must give the undertaker reasonable notice of any claim or demand under this paragraph 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 Schedule 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 Schedule.

(6) In the assessment of any sums payable to SABIC under 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, 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 Schedule 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 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 this paragraph. 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

26. 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 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.

27. The undertaker must give written notice to SABIC if any application is proposed to be made by the undertaker for the Secretary of State's consent under article 8 (consent to transfer benefit of this Order), and any such notice must be given no later than 28 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.

28. 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 44 (certification of plans etc.) in electronic form.

29. 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.

30. Where SABIC has provided an email address for service in respect of the specified person, sub-paragraph (1)(a) of article 45 (service of notices) will not apply to the service of any notice under this Schedule, which must instead by effected by electronic means.

Arbitration

31.—(1) Article 46 (arbitration) applies to this Schedule subject to the following provisions of this paragraph.

(2) Subject to sub-paragraph (4), the fees of the arbitrator are payable by the parties in such proportions as the arbitrator may determine or, in the absence of such determination, equally.

(3) The arbitrator must—

(a) invite the parties to make a submission in writing and copied to the other party to be received by the arbitrator within 21 days of the arbitrator's appointment;

(b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submissions under paragraph (a);

(c) issue a decision within 42 days of receipt of—

(i) the submissions under paragraph (b); or

(ii) if no submissions are submitted under that paragraph, the submissions under paragraph (a); and

(d) give reasons for the arbitrator's decision.

(4) If the arbitrator does not issue the decision within the time required by sub-paragraph (3)(c) then—

(a) the arbitrator is not entitled to any payment in respect of their fees; and

(b) the matter in question shall immediately be referred to a new arbitrator in which case—

(i) the parties shall immediately upon the new arbitrator's appointment provide the new arbitrator with copies of the written submissions and comments previously provided under sub-paragraphs (3)(a) and (3)(b);

(ii) no further submissions or comments may be requested by or provided to the new arbitrator in addition to those provided pursuant to sub-paragraph (i); and

(iii) the new arbitrator shall then proceed to comply with sub-paragraphs (3)(c) and (3)(d).

(5) An arbitrator appointed for the purposes of this Schedule must consider where relevant—

(a) the development outcome sought by the undertaker;

(b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;

(c) the nature of the power sought to be exercised by the undertaker;

(d) the effect that the consent in question would have on SABIC's operations and the operations of the UK ethylene production and supply industry;

(e) the likely duration and financial and economic consequences of any cessation of or interruption of ethylene production and supply including the costs associated with the restoration of production;

(f) the ability of SABIC to undertake its operations or development in a timely and cost-effective manner, including any statutory or regulatory duties, requirements or obligations;

(g) whether this Order provides any alternative powers by which the undertaker could reasonably achieve the development outcome sought in a manner that would reduce or eliminate adverse effects on SABIC and the UK ethylene production and supply industry;

(h) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party; and

(i) any other important and relevant considerations.

SCHEDULE 34

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF PD TEESPORT LIMITED

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

2. In this Schedule—

“Emergency Access Road” means any part of the emergency access road at Seal Sands located off the A178 Tees Road to the north of Greatham Creek affected by this Order including land comprising land plots 9/1, 10/17, 10/29, 10/30, 10/31, 10/32 and 33;

“PD Teesport” means PD Teesport Limited (company number 02636007) and any successor in title or function to the PD Teesport operations;

“PD Teesport operations” means the port operations or property (including all freehold, leasehold, easements, wayleaves, licences and other rights) vested in PD Teesport Limited (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 Seal Sands Road;

“Redcar Bulk Terminal Access” means any part of the access to Recar Bulk Terminal affected by this Order including land comprising land plots 13/1, 13/4, 13/5, 13/6, 13/7, 13/10 and 13/17;

“Seal Sands Road” means any part of Seal Sands Road within the Order limits;

“Tees Dock Roundabout Roads” means any part of both public and private parts of Tees Dock road, Tees Dock Roundabout and a private road running from the Tees Dock roundabout between the BOC Middlesborough site and the railway line affected by this Order including land comprising land plots 16/1, 16/2, 16/3, 16/5;

"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 7.

Regulation of powers

3. 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.

4. Any approval of PD Teesport required under paragraph 3 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 (for the avoidance of doubt where the reasonable requirements relate to such matters, a reasoned explanation or other form of evidence will be provided by PD Teesport to substantiate the need for these requirements);

(b) ensuring that there is no commercial loss to PD Teesport (for the avoidance of doubt where the reasonable requirements relate to such matters, a reasoned explanation or other form of evidence will be provided by PD Teesport to substantiate the need for these requirements); 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.

Consent under this Schedule

5. Before commencing any part of the authorised development which may have an effect on the operation or maintenance or be located in proximity to 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.

6. No works comprising any part of the authorised development which may have an effect on the operation or maintenance or be located in proximity to the PD Teesport operations or access to them are to be commenced until the works details in respect of those works submitted under paragraph 5 have been approved by PD Teesport, such approval to be provided no later than 21 days from the later of the details of the proposed works being provided or the provision of the last such further particulars as may have been requested by PD Teesport in respect of the works.

7. Any approval of PD Teesport required under paragraph 6 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 (for the avoidance of doubt where the reasonable requirements relate to such matters, a reasoned explanation or other form of evidence will be provided by PD Teesport to substantiate the need for these requirements); and

(b) the requirement for PD Teesport to have uninterrupted and unimpeded access (including river access) to PD Teesport operations at all times.

8. The authorised development must be carried out in accordance with the works details approved under paragraph 6 and any requirements imposed on the approval under paragraph 7.

9. Where there has been a reference to an expert in accordance with paragraph 14 and the expert 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 expert under paragraph 14.

10. The undertaker will pay the reasonable costs of PD Teesport incurred in dealing with any approvals, review of documentation, supervision, auditing, safety assessments, engineering advice, lawyers' and other professional fees associated with compliance with any matters set out in these protective provisions within 14 days of a statement of such costs being provided in writing to the undertaker. Regulation of powers in relation to accesses.

11. The undertaker must not exercise the powers granted under this Order so as to obstruct or hinder access or egress for any person across the following areas:

(a) Seal Sands Road;

(b) Tees Dock Roundabout Roads;

(c) The Emergency Access Road; and

(d) Redcar Bulk Terminal Access.

Indemnity

12.—(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 5, 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.

(4) 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 12 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 12 for claims reasonably incurred by PD Teesport.

Dispute Resolution

13.—(1) Any difference in relation to the provisions in this part of this schedule must be referred to:-

(a) A meeting between a senior representative of PD Teesport and a senior representative of the undertaker 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 PD Teesport 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.

(2) 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.

(3) 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 paragraph (a) above;

(c) issue a decision within 42 days of receipt of the submissions submitted pursuant to paragraph (a) above; and (d) give reasons for the decision.

(4) The expert must consider:-

(a) whether under the Order, the Undertaker's outcomes could be achieved in any alternative manner without PD Teesport's operations or own works being materially compromised; and

(b) any other important and relevant considerations.

(5) Any determination by the expert is final and binding except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to the courts of England and Wales.

SCHEDULE 35

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF REDCAR BULK TERMINAL LIMITED

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

2. In this Schedule—

"apparatus" means any mains, pipes, cables or other apparatus within the Order limits to provide gas, water, waste, electricity and/or electronic communications to the RBT site and /or land within the vicinity of the RBT site which is relied on or used for 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, NZT and RBT's leaseholders, sub-tenants and licensees to access the RBT operations and RBT site in a manner no less efficiently than previously by means of RBT's existing road and rail accesses;

"alternative apparatus" means appropriate alternative apparatus which enables gas, water, waste, electricity and electronic communications supply which is relied on or used for the RBT operations to be provided in a manner no less efficiently than previously by existing apparatus;

"NZT" means the Net Zero Teesside project currently operated by Net Zero Teesside Power Limited and Net Zero North Sea Storage Limited, acting pursuant to the NZT Order;

"NZT Order" means The Net Zero Teesside Order 2024;

"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, its leaseholders, sub-tenants and licensees carried out upon or partly upon the RBT site, including RBT's obligations to third parties such as (but not limited to) NZT;

"the RBT site" means land and property within the Order limits, vested in RBT;

"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) which must 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 requirement for any offloading procedures; and

(f) any further particulars provided in response to a request under paragraph 4.

Interference with apparatus and access

3.—(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 closure of streets and public rights of way), 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) The undertaker shall not interfere with any road or rail accesses which RBT benefits from until the undertaker has consulted in writing with RBT on full details of adequate management measures (including details of access routes for vehicles to undertake) which must be put in place to ensure that road and rail traffic is still able to access the RBT operations and the RBT site.

(6) 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 Schedule

4.—(1) 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; or

(c) any part of the authorised development which may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 3 or otherwise (excluding any proposed works or activities which have been approved under other protective provisions included in the Order or in accordance with a related agreement),

the undertaker must submit to RBT the works details and plans for the proposed works or activities and such further particulars as RBT may, not less than 21 days from the day on which the works details are submitted under this paragraph, reasonably require.

(2) Where the proposed works or activities have been approved under other protective provisions included in the Order or in accordance with a related agreement, the undertaker must provide a copy of the approved works details and plans for the proposed works or activities to RBT prior to those works commencing.

5. 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 4 have been approved by RBT.

6. Any approval of RBT required under paragraph 5 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as RBT may require to be made including for—

(a) the continuing safety and operational viability of the RBT operations;

(b) the avoidance of commercial losses to the RBT operations;

(c) the requirement for RBT, NZT and RBT's leaseholders, sub-tenants and licensees to have reasonable access to the RBT site at all times; and

(d) the preservation of RBT's ability to comply with contractual and legal obligations given, imposed or otherwise existing prior to the date of this Order including obligations under or in connection with the NZT Order.

7. Without limiting paragraph 6, it is not reasonable for RBT to give approval pursuant to paragraph 6 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 save to the extent required by obligations entered into or existing prior to the date of the Order.

8.—(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 5 and any requirements imposed on the approval under paragraph 6.

(2) Where there has been a reference to an arbitrator in accordance with paragraph 14 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 14.

Co-operation

9. 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 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, NZT and RBT's leaseholders, sub-tenants and licensees 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).

10. 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 4 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

11.—(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 4 or by the use of the RBT site by the undertaker (including as a result of any offloading procedures) any damage is caused to the RBT site (including the wharf, roadways, any buildings, plant or machinery on the RBT site) or to the RBT operations, or there is any interruption or disruption 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 such service or making good any interruption or disruption 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 disruption 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 third party claim or demand that has been made against it in respect of the matters in sub-paragraphs (1)(a) and (1)(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 provided that if withholding such consent, the undertaker shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(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 11 applies where it is within RBT's reasonable ability to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of RBT's control.

(5) If reasonably 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).

Transfer of benefit of Order

12. Within 28 days after the date of any transfer or grant under article 8 (consent to transfer benefit of Order), the undertaker who made the transfer or grant must serve notice on RBT containing the name and address of the transferee or lessee, the extent of the transfer or grant and, in the case of a grant, the period for which it is granted and the extent of benefits and rights granted.

Notices

13. Regardless of article 45 (service of notices) a notice required to be served on RBT under this Schedule must be served also on RBT marked for the attention of Peter Rowson, Managing Director, Redcar Bulk Terminal, Lackenby Main Office, Lackenby, Middlesbrough, TS6 7RP and copied to Simon Melhuish-Hancock, UK General Counsel, SSI at Redcar Bulk Terminal, Lackenby Main Office, Lackenby, Middlesbrough, TS6 7RP in the manner provided by article 45 (service of notices).

Arbitration

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

SCHEDULE 36

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF TEESSIDE GAS & LIQUIDS PROCESSING, TEESSIDE GAS PROCESSING PLANT LIMITED & NORTHERN GAS PROCESSING LIMITED

1. 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.

2. In this Schedule—

"alternative access agreement" means a contractually binding agreement providing the undertaker with an alternative access to plots 9/6, 9/7, 9/8, 9/9 and 9/10, utilising land outside of plots 9/3 and 9/2;

"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 of 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 6 to 11 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 Schedule;

"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(**a**);

"NSMP property" means all property owned and/or enjoyed by an NSMP entity with 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 work 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, contractor, 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 Nos. 2A, 2C or 10 of the authorised development or access in connection with those works numbers, on plots 9/2, 9/3, 9/4, 9/5, 9/48, 9/49, 9/50, 10/48 or 11/137, and access in connection with works on plots 9/6, 9/7, 9/8, 9/9 and 9/10;

"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 9/3, 9/4, 9/5 and 9/48 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 plots 9/2, 9/3, 9/4, 9/5 and 9/48 and access in connection with works on plots 9/6, 9/7, 9/8, 9/9 and 9/10 and Seal Sands Road (including but not limited to plans 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

(**a**) 1962 c. 58. Section 65 was amended by paragraph 8 of Schedule 1 to Gas (Third Party Access and Accounts) Regulations 2000/1937, paragraph 6 of Schedule 2 to Energy Act 2011 (c.16) and paragraph 5 of Schedule 1 to Storage of Carbon Dioxide (Access to Infrastructure) Regulations 2011/2305.

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.

3. 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 6 to 11 below.

4.—(1) 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 12 to 16 below and prior to the changes being implemented.

(2) 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.

(3) 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.

5. 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

6. This Part A sets out the approval process to be followed in respect of the consultation and agreement of the design package.

7. The undertaker shall submit the design package to the NSMP entity for consultation, review and approval.

8.—(1) 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 20 business days of receipt by the NSMP entity of the design package.

(2) As part of that consultation the parties agree to adhere to the following—

(a) the NSMP entity must, within 20 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 20 business days of the undertaker providing any further information pursuant to paragraph (a)(iii) above or providing material reasons why any changes requested by the NSMP entity (as part of its response pursuant to paragraph (a)(ii) or (a)(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 cannot be reached before the relevant period pursuant to paragraph (a) or (b) above (or such alternative timescales as are agreed between the parties), the matter will be treated as a dispute to be resolved in accordance with paragraph 28 of this Schedule unless otherwise agreed by the parties.

9. In the event the NSMP entity does not provide any response to the undertaker in accordance with the timescale set out in paragraph 8(2)(a) or 8(2)(b) the NSMP entity shall be deemed to have given their approval to the design package.

10. 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.

11. 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 Schedule shall apply as though references to "design package" were to "traffic management plan".

Part B – Change Approval Process

12. 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.

13. The undertaker shall submit any such change require 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.

14.—(1) 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.

(2) 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 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 paragraph (a)(iii) above, or providing material reasons why any changes requested by the NSMP entity (as part of its response pursuant to paragraph (a)(ii) or (a)(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 paragraph (a) or (b) above (or such alternative timescales as are agreed between the parties) the matter will be treated as a dispute to be resolved in accordance with paragraph 28 of this Schedule.

15. In the event the NSMP entity does not provide a response to the undertaker in accordance with the timescales set out in paragraph 14(2)(a) or 14(2)(b) above, the NSMP entity shall be deemed to have given their approval to the change request.

16. 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

17. Any approval of the NSMP entity required under Part A or Part B of this Schedule must not (subject to paragraphs 18 and 19 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 18 to 21 of this Schedule; and

(b) with respect to relevant works package B, the approval principles set out at paragraphs 22 and 23 of this Schedule.

Approval Principles: Relevant Works Package A

18.—(1) 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.

(2) 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 9/2, 9/3 and 9/4.

19. Subject to paragraph 20 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 9/2. 9/3 and 9/4 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 5/46, 9/1, 9/2, 9/3, 9/4 and 9/5 as strictly required for construction of Work No. 2A within plot 9/5; or

(ii) over plots 5/46, 9/1, 9/2 and 9/3 as strictly required for the implementation of Work Nos. 2A, 2B and 10A.1 on plots 9/6, 9/7, 9/8, 9/9 and 9/10,

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 9/5 for materials required for the construction of Work No. 2A within plot 9/5; or

(e) which requires the stopping up of Seal Sands Road or the private road (parts of which runs through plots 9/2, 9/3 and 9/4) either temporarily or permanently.

20. It will be unreasonable for the NSMP entity to withhold approval under paragraphs 19(a) and 19(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.

21. 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

22. 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.

23. The undertaker and the NSMP entity must, in carrying out their obligations in relation to the approval of the design package for the 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 22.

Compliance with requirements, etc. applying to the NSMP operations

24. 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.

25. 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.

26. 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

27.—(1) Subject to sub-paragraphs (2) and (3), if by any reason or in consequence of the construction of any of the works referred to in paragraph 3 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 applies.

Arbitration

28. Any difference or despite arising between the undertaker and the NSMP entity under 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 46 (arbitration).

Access to plots 9/6, 9/7, 9/8, 9/9 or 9/10

29. The undertaker must not use plots 9/4, 9/5 or 9/48 to access plots 9/6, 9/7, 9/8, 9/9 or 9/10.

30. The undertaker must not use plots 9/2, 9/3 or 9/48 to access plots 9/6, 9/7, 9/8, 9/9 or 9/10 if an alternate access agreement has been concluded.

31. Where an alternative access agreement has been concluded, reference to plots 9/6, 9/7, 9/8, 9/9 or 9/10 in the definitions of “relevant works package A” and “traffic management plan” is taken to be deleted.

SCHEDULE 37

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF NORTHERN GAS NETWORKS LIMITED

Application

1. For this 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

2. In 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 apparatus.

3. Except for paragraphs 4 (apparatus of statutory undertaker in stopped up streets), 7 (retained apparatus: protection), 8 (expenses) and 9 (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

4. Notwithstanding the temporary closure or diversion of any street under the powers conferred by article 13 (temporary closure of streets and public rights of way), 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.

Removal or diversion of apparatus

5.—(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 Schedule 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 46 (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 46 (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 8 (expenses) and 9 (indemnity) of this Schedule apply to removal or diversions works under this paragraph 5, 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

6.—(1) Where, in accordance with the provisions of this Schedule, 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 46 (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 at greater cost.

(3) If the amount of compensation cannot be agreed, the matter must be settled by arbitration in accordance with article 46 (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

7.—(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 5(2) or otherwise or by Northern Gas Networks under paragraph 5(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 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-paragraph (1) or (2) apply until Northern Gas Networks has given written approval of the plan so submitted.

(4) Any approval of Northern Gas Networks 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 producing or securing proper and convenient means of access to any apparatus.

(6) Works executed under this Order to which this paragraph 7 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

8.—(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 Schedule, including without limitation—

(a) any costs reasonably incurred or compensation properly paid by Northern Gas Networks in connection with the acquisition of rights or the exercise of statutory powers for such apparatus, including without limitation in the event that Northern Gas Networks elects to use compulsory purchase powers to acquire any necessary rights under paragraph 5(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 inconsequence 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 Schedule 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 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 closed 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 to 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 Schedule.

(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 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

9.—(1) Subject to sub-paragraphs (2), (3) and (4), and without detracting from paragraph 8 above, if by reason or in consequence of the construction of any works referred to and approved under this Schedule, 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 the due care and attention and in a skilful and workmanlike 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 9 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

10. Nothing in this Schedule 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

11. Where in consequence of the proposed construction of any of the works under this Schedule, the undertaker or Northern Gas Networks requires the removal of apparatus in accordance with the provisions of this Schedule, 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

12. 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

13. Any difference or dispute arising between the undertaker and Northern Gas Networks under this Schedule must, unless otherwise agreed in writing between the undertaker and Northern Gas Networks, be determined by arbitration in accordance with the article 46 (arbitration).

Works falling outside of development authorised by the Order

14.—(1) 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.

(2) 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 permissions, permitted development rights or statutory powers (including those of compulsory acquisition) available to it).

Cathodic protection testing

15. 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.

SCHEDULE 38

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF LIGHTHOUSE GREEN FUELS LIMITED

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

2. In this Schedule—

"Lighthouse Green Fuels" means Lighthouse Green Fuels Limited (company number 10773515) whose registered office is at 1 to 6 Lombard Street, London, England, EC3V 9AA and any successor in title or function to the apparatus;

"alternative apparatus" means such alternative or relocated mains, pipes, cables or other apparatus adequate to enable Lighthouse Green Fuels to carry out its operations;

"apparatus" means any mains, pipes, cables or other apparatus serving, belonging to, or maintained by Lighthouse Green Fuels excluding any such mains, pipes, cable or other apparatus constructed in connection with the Tees Valley Project;

"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

"Tees Valley Project" means the proposed waste-to-sustainable aviation fuel facility with onsite generating station capacity of up to 150 MW on the land comprised in and registered under title numbers CE218940 and CE213339.

Precedence of the 1991 Act in respect of apparatus in streets

3. This Schedule does not apply to apparatus in respect of which the relations between the undertaker and Lighthouse Green Fuels are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

4. Regardless of the temporary closure, prohibition, restriction, alteration or diversion of use of streets under the powers conferred by article 13 (temporary closure of streets and public rights of way), Lighthouse Green Fuels are 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 closure, prohibition, or restriction, alteration, diversion or use was in that street.

Removal of apparatus

5.—(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 either Lighthouse Green Fuels' apparatus is relocated or diverted, that apparatus must not be removed under this Schedule, and any right of Lighthouse Green Fuels to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed, tested and is in operation, and access to it has been provided, to the reasonable satisfaction of Lighthouse Green Fuels as appropriate 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 Lighthouse Green Fuels 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, Lighthouse Green Fuels reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-

paragraph (3), afford to Lighthouse Green Fuels 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, Lighthouse Green Fuels 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 Lighthouse Green Fuels and the undertaker or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

(5) Lighthouse Green Fuels 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 Lighthouse Green Fuels of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to Lighthouse Green Fuels 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 Lighthouse Green Fuels, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Lighthouse Green Fuels.

(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.

Co-operation

6. The undertaker and Lighthouse Green Fuels will use reasonable endeavours to resolve any potential conflicts or impacts of the authorised development upon the apparatus and/or the alternative apparatus whilst maintaining use of any apparatus (except as agreed by the undertaker and Lighthouse Green Fuels for the commissioning and decommissioning of the apparatus) by or for the benefit of Lighthouse Green Fuels.

Facilities and rights for alternative apparatus

7.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to Lighthouse Green Fuels 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 Lighthouse Green Fuels or in default of agreement settled by arbitration in accordance with article 46 (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 Lighthouse Green Fuels 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 Lighthouse Green Fuels 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 5(2), the undertaker must submit to Lighthouse Green Fuels 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 Lighthouse Green Fuels for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Lighthouse Green Fuels is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Lighthouse Green Fuels 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 Lighthouse Green Fuels 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 5(1) to 5(7) apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(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 Lighthouse Green Fuels 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) insofar 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 Lighthouse Green Fuels the reasonable expenses incurred by it in, or in connection with, the inspection, removal, alteration, reinstatement, testing or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution or pursuance of any such works as are referred to in paragraph 5(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 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 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 article 46 to be necessary,

then, if such placing involves cost in the construction of works under 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 Lighthouse Green Fuels 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 5(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 Lighthouse Green Fuels 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 Lighthouse Green Fuels 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 authorised by 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 Lighthouse Green Fuels, or there is any interruption in the use of such apparatus or property including any service provided, or in the supply of any goods, by Lighthouse Green Fuels, the undertaker must—

(a) bear and pay the reasonable costs incurred by Lighthouse Green Fuels in restoring such use, making good such damage or restoring the supply; and

(b) make reasonable compensation to Lighthouse Green Fuels for any other expenses, loss, damages, penalty or costs incurred by Lighthouse Green Fuels, 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 Lighthouse Green Fuels, its officers, employees, servants, contractors or agents; or

(b) any indirect or consequential loss or loss of profits by Lighthouse Green Fuels.

(3) Lighthouse Green Fuels 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) Lighthouse Green Fuels 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 9 applies.

(5) If requested to do so by the undertaker, Lighthouse Green Fuels 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 9 for claims reasonably incurred by Lighthouse Green Fuels.

Enactments and agreements

11. Nothing in this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Lighthouse Green Fuels in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Application of Schedule to certain apparatus

12. This Schedule and Schedule 26 cannot both apply to the same apparatus, and to the extent that both Schedules do or may apply, only this Schedule applies to that apparatus and to any matter arising in relation to the interaction of that apparatus and the authorised development.

Access to Huntsman Drive

13. Lighthouse Green Fuel's access along Huntsman Drive will not be prevented as a result of the construction or operation of the authorised development unless in the event of an emergency.

Interaction with the Tees Valley Project

14.—(1) The undertaker must use reasonable endeavours to avoid any conflict arising between the carrying out, maintenance and operation of the authorised development and the Tees Valley Project.

(2) For the purposes of sub-paragraph (1)—

(a) "conflict" does not include any overlap in the land to be occupied or developed by the undertaker and the Tees Valley Project or any overlap in the Order limits and application of compulsory powers under this Order and any order granted for the Tees Valley Project, or any difference between anything required by a requirement of any order granted after the date of the making of this Order for the construction and operation of the Tees Valley Project and the provisions of this Order;

(b) "reasonable endeavours" means—

(i) undertaking consultation with Lighthouse Green Fuels on detailed design and programming of works for the authorised development so that the plans as submitted for approval under the requirements do not unreasonably impeded or interfere with the construction and operation of the Tees Valley Project;

(ii) having regard to the anticipated programme of works for the Tees Valley Project and any reasonable requirements of Lighthouse Green Fuels;

(iii) providing a point of contact for continuing liaison and coordination throughout the construction and operation of the authorised development;

(iv) before submitting any documents or plans to be approved pursuant to a requirement in the Order, providing those documents or plans to Lighthouse Green Fuels that it reasonably requires for information purposes and take reasonable account of any comments made by Lighthouse Green Fuels on those documents or plans, provided that such comments are received by the undertaker within 28 days of Lighthouse Green Fuels receiving the documents or plans; and

(v) complying with sub-paragraph (3),

but does not include the undertaker being required to seek any amendment to or variation of this Order or delay programme critical works once the authorised development has commenced.

(3) The undertaker must cooperate with Lighthouse Green Fuels so as to reasonably ensure the coordination of construction programming, land assembly, and the carrying out of works in connection with the authorised development and the Tees Valley Project.

SCHEDULE 39

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF VENATOR MATERIALS UK LIMITED

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

Definitions

2. In this Schedule—

"Venator" means Venator Materials UK Limited (company number 00832447) whose registered office is at Titanium House, Hanzard Drive, Wynyard Park, Stockton on Tees, TS22 5FD and any successor in title or function to the Venator operations;

"Venator operations" means the operations and assets within the Order land vested in Venator and any group company within the meaning of section 1261 of the Companies Act 2006 including, but not limited to, the freehold interest in the Venator Greatham Works; and

"works details" means—

(a) plans and sections, including the routing of any proposed pipeline;

(b) details of the proposed method of working and timing of execution of works; and

(c) any further particulars provided in response to a request under paragraph 3(1).

Consent under this Schedule

3.—(1) Before commencing any part of the authorised development which would have an effect on the operation or maintenance of the Venator operations or access to them, the undertaker must submit to Venator the works details for the proposed work and such further particulars as Venator may reasonably require for the approval by Venator.

(2) No works comprising any part of the authorised development which would have an effect on the operation or maintenance of the Venator operations or access to them are to be commenced until the works details in respect of those works submitted under sub-paragraph (1) have been approved by Venator.

(3) Any approval of Venator required under sub-paragraph (2) must not be unreasonably withheld or delayed and shall be provided within 28 days from the day the works details are provided pursuant to sub-paragraph (2) but may be given subject to such reasonable requirements as Venator may require to be made for—

(a) the continuing safety and operational viability of the Venator operations; or

(b) the requirement for Venator 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 Venator operations.

(4) 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 sub-paragraph (2) and any requirements imposed on the approval under sub-paragraph (3) and all other statutory and other requirements or regulations.

(5) Where there has been a reference to an arbitrator in accordance with paragraph 5 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 5.

Indemnity

4.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the authorised development or the works referred to in paragraph 3(2), any damage is caused to the Venator operations, or there is any interruption in any service provided, or in the supply of any goods, by Venator, the undertaker must—

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

(b) make reasonable compensation to Venator for any other expenses, loss, damages, penalty or costs incurred by Venator, 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—

(a) the act, neglect or default of Venator, its officers, employees, servants, contractors or agents; or

(b) any indirect or consequential loss or loss of profits by Venator.

(3) Venator 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) Venator 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 4 applies.

(5) If requested to do so by the undertaker, Venator 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 Venator.

Arbitration

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

SCHEDULE 40

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—

"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; 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 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 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, 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.

Boreholes

4. 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

5. 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

6.—(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

7. 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

8. 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.

SCHEDULE 41

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF THE SEMBCORP PROTECTION CORRIDOR

Extent of this Schedule

1.—(1) The provisions of this Schedule 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) Articles 43(5) and 43(6) (procedure in relation to certain approvals) do not apply to any consent, agreement or approval required or contemplated by any of the provisions of this Schedule.

Interpretation of this Schedule

2. In 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;

(iii) with apparatus in, on or under the Sembcorp Protection Corridor;

(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 (company number 04636301), whose registered office is at Sembcorp UK Headquarters, Wilton International, Middlesbrough, Cleveland, TS90 8WS and any successors in title or function to the Sembcorp operations in, under or over the Sembcorp Protection Corridor;

"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 for the purposes of this Order the area 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 44 (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 Schedules 15 to 45 of this Order;

"Wilton Complex" means the industrial and manufacturing plant shown outlined in blue on the Sembcorp Protection Corridor protective provisions supporting plans;

"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 6.

Separate approvals by third party owners or operators

3.—(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 Schedule relates, this does not remove any obligation on the undertaker to seek consent from Sembcorp pursuant to this Schedule 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 Schedule, 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

4.—(1) If, in the 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 Schedule 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 15.

(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 15, 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(**a**), 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 Schedule 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 the 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

5.—(1) Where, in accordance with this Schedule, 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 15, such terms to be no less favourable as a whole than the terms and conditions which applied to the apparatus to be removed.

(**a**) S.I. 1996/825.

(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 Schedule in connection with Sembcorp operations

6. 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.

7. The works referred to in paragraph 6 must not be commenced until the works details in respect of those works submitted under that paragraph have been approved by Sembcorp.

8. Any approval of Sembcorp required under paragraph 7 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 (for the avoidance of doubt where the reasonable requirements relate to such matters, a reasoned explanation will be provided by Sembcorp to substantiate the need for these requirements); and

(b) the requirement for Sembcorp to have reasonable access to the Sembcorp operations at all times.

9.—(1) The authorised development must be carried out in accordance with the works details approved under paragraph 7 and any requirements imposed on the approval under paragraph 8.

(2) Where there has been a reference to an arbitrator in accordance with paragraph 15 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 15.

Insurance

10.—(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 15.

Expenses

11.—(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 Schedule 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 Schedule;

(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 requirement referred to in paragraph 7 and 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 Schedule, that value being calculated after removal.

(5) If in accordance with 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 an arbitrator under paragraph 15 to be necessary, then, if such placing involves cost in the construction of works under 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 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 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

12.—(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 4 (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 12 applies where it is within the reasonable ability and control to do so.

(5) 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).

(6) The undertaker shall only be liable under this paragraph 12 for claims reasonably incurred by the owner or operator in question or by Sembcorp (as the case may be).

Participation in community groups

13.—(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 coordinated 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 coordinated by Sembcorp with local residents.

(3) The undertaker must cooperate 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 the start and completion of commissioning

14.—(1) Notice of the intended start of commissioning of the authorised development must be given to Sembcorp no later than 14 days prior to the date that commissioning is started.

(2) Notice of the intended date of final commissioning of each of Work Nos. 2A, 6A.1, 6B.1, 8 and 10A.1 must be given to Sembcorp no later than 14 days prior to the date of final commissioning.

Arbitration

15. Any difference or dispute arising between the undertaker and an owner or operator or Sembcorp (as the case may be) under 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 46 (arbitration).

Additional agreement

16. 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 February 2025 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 Schedule.

SCHEDULE 42

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF NET ZERO TEESSIDE POWER LIMITED

Interpretation

1. For the protection of NZT, the following provisions have effect, unless otherwise agreed in writing between the Parties.

2. The following definitions apply in this Schedule—

"acceptable insurance" means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than a sum to be notified to the undertaker by NZT and agreed in writing between the parties. Evidence of that insurance must be provided to NZT on request. Such insurance shall be maintained:

(a) during the construction period of the authorised works; and

(b) after the construction period of the authorised works in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the requirements as agreed by the undertaker and NZT, such insurance shall include (without limitation):

(i) a waiver of subrogation and an indemnity to principal clause in favour of NZT

(ii) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than a sum to be notified to the undertaker by NZT and agreed in writing between the parties;

"H2T Apparatus" means the pipeline, cables, structures which are or are to be owned, occupied or maintained by the undertaker within the Shared Area for the purposes of the authorised development;

"NZT Apparatus" means the pipeline, cables, structures to be owned, occupied or maintained by NZT within the Shared Area;

"NZT Order" means The Net Zero Teesside Order 2024;

"NZT Project" means the construction, operation or maintenance of Project A as is defined by the NZT Order;

"NZT Project Site" means—

(a) land on which any NZT Apparatus is situated; and

(b) land on which NZT Apparatus is anticipated to be situated which is necessary for the construction, use or maintenance of the NZT Project (insofar as the same has been notified by NZT in writing to the undertaker);

"NZT Specified Works" means so much for the NZT Project as is within the Shared Area;

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

"Parties" means NZT and the undertaker;

"Plans" includes so far as is reasonably relevant: 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 by the undertaker of any land for purposes of the Shared Area Works;

"Secretary of State" means the Secretary of State for Energy Security and Net Zero or any successor in function;

"Shared Area" means land included within both the NZT Project Site and the authorised development; and

"Shared Area Works" means any part of the authorised development taking place within the Shared Area.

Consent to works in the shared area

3.—(1) Subject to sub-paragraph (8), the undertaker must not except with the prior written agreement of NZT under this paragraph carry out any Shared Area Works or any part of it.

(2) Prior to the commencement of any Shared Area Works, or any part of it, the undertaker must submit to NZT Plans of the relevant Shared Area Works (or part of it) and such further particulars available to it as NZT may request within 21 days of receipt of the Plans reasonably requested.

(3) 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. as set out in Schedule 1 (authorised development) any powers under the Order 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 under the Order to be used or works to be carried out; and

(e) the named point of contact for the undertaker for discussion in relation to the information supplied and the consenting process.

(4) Nothing in this paragraph 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 Shared Area Works, new Plans in respect of that Shared Area Works in substitution of the Plans previously submitted, and the provisions of this paragraph shall apply to the new Plans.

(5) Any Shared Area Works must not be constructed except in accordance with such Plans as are approved in writing by NZT.

(6) Any approval of NZT required under this Schedule –

(a) must not be unreasonably withheld or delayed;

(b) in the case of a refusal must be accompanied by a statement of grounds or refusal; and

(c) may be given subject to such reasonable requirements as NZT may have in connection with the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the NZT Project or otherwise for the protection of the NZT Apparatus,

provided always that in relation to a refusal under sub-paragraph (b) or any requirements requested pursuant to sub-paragraph (c) the undertaker shall be permitted to refer such matters to expert determination in accordance with paragraph 10.

(7) Where conditions are included in any consent granted by NZT pursuant to 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 NZT or by an expert to which such conditions are referred under sub-paragraph (6).

(8) NZT must employ reasonable endeavours to respond to the submission of any Plans as soon as is reasonably practicable but in any event within a period of 56 days from the date of submission of the Plans. If NZT require further particulars, such particulars must be requested by NZT no later than 21 days from the submission of Plans and thereafter NZT must employ reasonable endeavours to respond to the submission as soon as is reasonably practicable and no later than within 56 days from receipt of the further particulars and if by the expiry of the further

56 day period NZT has failed to notify the undertaker of its decision NZT is deemed to have given its consent, approval or agreement without any terms or conditions.

(9) Any notice under sub-paragraph (1) and any request for approval or consent under the provisions of this Schedule must be sent to NZT by recorded delivery and addressed to the Owners Representative.

Interaction with the NZT Project

4.—(1) Without limiting any other provision of this Schedule, the undertaker must use reasonable endeavours to avoid any conflict arising between the carrying out of the authorised development and the NZT Project. For the purposes of this paragraph, "reasonable endeavours" means –

(a) undertaking consultation on the detailed design and programming of the Shared Area Works and all works associated with or ancillary to the Shared Area Works to ensure that the design and programme for the Shared Area Works does not unreasonably impede or interfere with the NZT Project;

(b) having regard to the proposed programme of works for the NZT Project as may be made available to the undertaker by NZT and facilitating a co-ordinated approach to the programme, land assembly, and the carrying out of the Shared Area Works and the NZT Project;

(c) providing a point of contact for continuing liaison and co-ordination throughout the construction and operation of the authorised development; and

(d) keeping NZT informed on the programme of works for the authorised development.

(2) Prior to the seeking of any consent under this Schedule, the undertaker must invite NZT to participate in a design and constructability review for that part of the Shared Area Works 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.

Regulation of Shared Area Works

5.—(1) Where under paragraph 3(6) NZT 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 NZT.

(2) The undertaker must give to NZT not less than 28 days' written notice of its intention to commence the construction of any of the Shared Area Works and, not more than 14 days after completion of their construction, must give NZT written notice of the completion and NZT will be entitled by its offer to watch and inspect the construction of such works.

(3) The undertaker is not required to comply with paragraph 3(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 NZT 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 insofar as is reasonably practicable in the circumstances.

(4) The undertaker must at all reasonable times during construction of the Shared Area Works allow NZT and its officers, employees, servants, contractors and agents access to the Shared Area Works and all reasonable facilities for inspection of the Shared Area Works.

(5) 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 NZT requiring the undertaker to do so, remove the temporary works in, on, under, over, or within the Shared Area.

(6) If the undertaker fails to remove the temporary works within a reasonable period of receipt of a notice pursuant to sub-paragraph (9), NZT may remove the temporary works and may recover the reasonable costs of doing so from the undertaker.

(7) If in consequence of the exercise of the powers conferred by the Order or the carrying out of the Shared Area 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 NZT to construct, maintain or operate he NZT Project no less effectively than was possible before the obstruction.

(8) To ensure its compliance with this paragraph 5, the undertaker must before carrying out any of the Shared Area Works request up-to-date written confirmation from NZT of the location of any part of the NZT Specified Works.

(9) If any part of the Shared Area Works is constructed otherwise than in accordance with paragraph 3(5) above NZT may by notice in writing identify the extent to which the Shared Area Works do not comply with the approved details and request the undertaker at the undertaker's own expense carry out remedial works so as to comply with the requirements of paragraph 3(5) of this Schedule or such alternative works as may be agreed with NZT or as otherwise may be agreed between the parties.

(10) Subject to sub-paragraph (11), if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (9) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, NZT may execute the works specified in the notice and any reasonable expenditure incurred by NZT in so doing will be recoverable from the undertaker.

(11) In the event of any dispute as to whether sub-paragraph (10) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, NZT will not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (10) until the dispute has been finally determined in accordance with paragraph 10.

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 NZT.

(2) The undertaker must not exercise the powers under any of the articles of the Order below, over land for the purposes of the Shared Area Works or in respect of the Shared Area Works otherwise than with the prior written consent of NZT.

(3) The articles referred to in sub-paragraph (2) above are—

(a) article 4 (development consent etc. granted by the Order);

(b) article 5 (maintenance of authorised development);

(c) article 11 (street works);

(d) article 12 (construction and maintenance of new or altered means of access);

(e) article 13 (temporary closure of streets and public rights of way);

(f) article 14 (access to works);

(g) article 17 (discharge of water);

(h) article 19 (protective works to buildings);

(i) article 20 (authority to survey and investigate land);

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

(k) article 23 (power to override easements and other rights);

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

(m) article 32 (temporary use of land for carrying out the authorised development); and

(n) article 33 (temporary use of land for maintaining the authorised development).

(4) In the event that NZT 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 NZT in any plots shown on the land plans or in the NZT Project Site, 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 H2T Apparatus, the Shared Area 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 Shared Area 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 NZT;

(b) ensure that works carried out to, or placing of H2T Apparatus beneath, roads along which construction or maintenance access is required by NZT 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 Shared Area Works in any part of any Shared Area—

(i) where requested in writing by NZT within 21 days of receipt of the Plans submitted pursuant to paragraph 3(2), submit a construction programme and a construction traffic and access management plan in respect of that area to NZT for approval (noting that a single construction traffic and access management plan may be completed for one or more parts of the Shared Area Works and may be subject to review if agreed between the Parties); and

(ii) where applicable and where requested in writing by NZT within 21 days of receipt of the Plans submitted pursuant to paragraph 3(2), confirm to NZT 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 Shared Area Works in compliance with the relevant approved construction traffic and access management plan;

(e) notify NZT of any incidences which occur as a result of, or in connection with, the Shared Area 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;

(f) where requested in writing by NZT within 21 days of receipt of post-completion notice pursuant to paragraph 5(2), provide comprehensive, as built, drawings of the Shared Area Works (including, for the avoidance of doubt, buried pipelines) within three months of the completion of each of the Shared Area Works;

(2) In considering a request for any consent under the provisions of this Schedule, NZT must not request an additional construction traffic and access management plan if such a plan has already been approved pursuant to subparagraph (1)(c) (as relevant in respect of a traffic and access management plan).

Expenses

8.—(1) Save where otherwise agreed in writing between NZT and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to NZT within 30 days of receipt of an itemised invoice or claim from NZT all charges, costs and expenses

reasonably anticipated within the following three months or reasonably and properly incurred by NZT 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 works including without limitation—

(a) 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;

(b) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(c) the approval of Plans;

(d) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(e) 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 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 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 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 dispute resolution in accordance with paragraph 10 to be necessary, then, if such placing involves cost in the construction of works under 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 NZT by virtue of subparagraph (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 NZT 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 NZT 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.

(6) Where reasonably anticipated charges, costs or expenses have been paid by the undertaker pursuant to sub-paragraph (1), if the actual charges, costs or expenses incurred by NZT are less than the amount already paid by the undertaker NZT will repay the difference to the undertaker as soon as reasonably practicable.

Indemnity

9.—(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 works 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 him) in the course of carrying out such works, including without limitation works carried out by the undertaker under 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 works) or property of NZT, or there is any interruption in any service provided, or in the supply of any goods, by NZT, or NZT becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand accompanied by an invoice or claim from NZT the cost reasonably and properly incurred by NZT in making good such damage or restoring the supply; and

(b) indemnify NZT for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from NZT, by reason or in consequence of any such damage or interruption or NZT becoming liable to any third party other than arising from any default of NZT.

(2) The fact that any act or thing may have been done by NZT on behalf of the undertaker or in accordance with a Plan approved by NZT or in accordance with any requirement of NZT or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this subparagraph (1) unless NZT 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) shall impose 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 NZT, its officers, servants, contractors or agents;

(b) any authorised works and/or any other works authorised by this Schedule carried out by NZT as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 8 (benefit of the Order) subject to the proviso that once such works become apparatus ("new apparatus") any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Schedule including this paragraph; and/or

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable;

(4) NZT must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) NZT 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.

(6) NZT must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within NZT'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 NZT's control and if reasonably requested to do so by the undertaker NZT must provide an explanation of how the claim has been minimised, where relevant or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1).

Miscellaneous provisions

10. NZT 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.

Dispute resolution

11.—(1) Article 46 (arbitration) of this Order does not apply to provisions of this Schedule.

(2) Any difference in relation to the provisions in this Schedule must be referred to—

(a) a meeting of the Owners Representative 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 NZT and the undertaker or, in the absence of agreement identified by the President of the Law Society, 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) Where appointed pursuant to sub-paragraph (2)(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) 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 NZT and the undertaker;

(b) the ability of NZT 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, NZT'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 Law Society.).

SCHEDULE 43

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF NET ZERO NORTH SEA STORAGE LIMITED

Interpretation

1. For the protection of NEP, the following provisions have effect, unless otherwise agreed in writing between the Parties.

2. The following definitions apply in this Schedule—

"acceptable insurance" means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than a sum to be notified to the undertaker by NEP and agreed in writing between the parties. Evidence of that insurance must be provided to NEP on request. Such insurance shall be maintained—

(a) during the construction period of the authorised works; and

(b) after the construction period of the authorised works in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the requirements as agreed by the undertaker and NEP, such insurance shall include (without limitation):

(i) a waiver of subrogation and an indemnity to principal clause in favour of NEP

(ii) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than a sum to be notified to the undertaker by NEP and agreed in writing between the parties;

"H2T Apparatus" means the pipeline, cables, structures which are or are to be owned, occupied or maintained by the undertaker within the Shared Area for the purposes of the authorised development;

"NEP Apparatus" means the pipeline, cables, structures to be owned, occupied or maintained by NEP within the Shared Area;

"NZT Order" means The Net Zero Teesside Order 2024;

"NEP Project" means the construction, operation or maintenance of Project B as is defined by the NZT Order;

"NEP Project Site" means—

(a) land on which any NEP Apparatus is situated; and

(b) land on which NEP Apparatus is anticipated to be situated which is necessary for the construction, use or maintenance of the NEP Project (insofar as the same has been notified by NEP in writing to the undertaker);

"NEP Specified Works" means so much of the NEP Project as is within the Shared Area;

"NEP" 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;

"Parties" means NEP and the undertaker;

"Plans" includes so far as is reasonably relevant: 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 by the undertaker of any land for purposes of the Shared Area Works;

"Secretary of State" means the Secretary of State for Energy Security and Net Zero or any successor in function;

"Shared Area" means land included within both the NEP Project Site and the authorised development; and

"Shared Area Works" means any part of the authorised development taking place within the Shared Area.

Consent to works in the shared area

3.—(1) Subject to sub-paragraph (8), the undertaker must not except with the prior written agreement of NEP under this paragraph carry out any Shared Area Works or any part of it.

(2) Prior to the commencement of any Shared Area Works, or any part of it, the undertaker must submit to NEP Plans of the relevant Shared Area Works (or part of it) and such further particulars available to it as NEP may request within 21 days of receipt of the Plans reasonably requested.

(3) 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. as set out in Schedule 1 (authorised development) any powers under the Order 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 under the Order to be used or works to be carried out; and

(e) the named point of contact for the undertaker for discussion in relation to the information supplied and the consenting process.

(4) Nothing in this paragraph 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 Shared Area Works, new Plans in respect of that Shared Area Works in substitution of the Plans previously submitted, and the provisions of this paragraph shall apply to the new Plans.

(5) Any Shared Area Works must not be constructed except in accordance with such Plans as are approved in writing by NEP.

(6) Any approval of NEP required under this Schedule –

(a) must not be unreasonably withheld or delayed;

(b) in the case of a refusal must be accompanied by a statement of grounds or refusal; and

(c) may be given subject to such reasonable requirements as NEP may have in connection with the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the NEP Project or otherwise for the protection of the NEP Apparatus,

provided always that in relation to a refusal under sub-paragraph (b) or any requirements requested pursuant to sub-paragraph (c) the undertaker shall be permitted to refer such matters to expert determination in accordance with paragraph 10.

(7) Where conditions are included in any consent granted by NEP pursuant to 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 NEP or by an expert to which such conditions are referred under sub-paragraph (6).

(8) NEP must employ reasonable endeavours to respond to the submission of any Plans as soon as is reasonably practicable but in any event within a period of 56 days from the date of submission of the Plans. If NEP require further particulars, such particulars must be requested by NEP no later than 21 days from the submission of Plans and thereafter NEP must employ reasonable endeavours to respond to the submission as soon as is reasonably practicable and no later than within 56 days from receipt of the further particulars and if by the expiry of the further

56 day period NEP has failed to notify the undertaker of its decision NEP is deemed to have given its consent, approval or agreement without any terms or conditions.

(9) Any notice under sub-paragraph (1) and any request for approval or consent under the provisions of this Schedule must be sent to NEP by recorded delivery and addressed to the Managing Director.

Interaction with the NEP Project

4.—(1) Without limiting any other provision of this Schedule, the undertaker must use reasonable endeavours to avoid any conflict arising between the carrying out of the authorised development and the NEP Project. For the purposes of this paragraph, "reasonable endeavours" means –

(a) undertaking consultation on the detailed design and programming of the Shared Area Works and all works associated with or ancillary to the Shared Area Works to ensure that the design and programme for the Shared Area Works does not unreasonably impede or interfere with the NEP Project;

(b) having regard to the proposed programme of works for the NEP Project as may be made available to the undertaker by NEP and facilitating a co-ordinated approach to the programme, land assembly, and the carrying out of the Shared Area Works and the NEP Project;

(c) providing a point of contact for continuing liaison and co-ordination throughout the construction and operation of the authorised development; and

(d) keeping NEP informed on the programme of works for the authorised development.

(2) Prior to the seeking of any consent under this Schedule, the undertaker must invite NEP to participate in a design and constructability review for that part of the Shared Area Works 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.

Regulation of Shared Area Works

5.—(1) Where under paragraph 3(6) NEP 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 NEP.

(2) The undertaker must give to NEP not less than 28 days' written notice of its intention to commence the construction of any of the Shared Area Works and, not more than 14 days after completion of their construction, must give NEP written notice of the completion and NEP will be entitled by its offer to watch and inspect the construction of such works.

(3) The undertaker is not required to comply with paragraph 3(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 NEP 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 insofar as is reasonably practicable in the circumstances.

(4) The undertaker must at all reasonable times during construction of the Shared Area Works allow NEP and its officers, employees, servants, contractors and agents access to the Shared Area Works and all reasonable facilities for inspection of the Shared Area Works.

(5) 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 NEP requiring the undertaker to do so, remove the temporary works in, on, under, over, or within the Shared Area.

(6) If the undertaker fails to remove the temporary works within a reasonable period of receipt of a notice pursuant to sub-paragraph (9), NEP may remove the temporary works and may recover the reasonable costs of doing so from the undertaker.

(7) If in consequence of the exercise of the powers conferred by the Order or the carrying out of the Shared Area Works the access to any of the NEP Specified Works is materially obstructed, the undertaker must provide such alternative means of access to the NEP Specified Works as will enable NEP to construct, maintain or operate he NEP Project no less effectively than was possible before the obstruction.

(8) To ensure its compliance with this paragraph 5, the undertaker must before carrying out any of the Shared Area Works request up-to-date written confirmation from NEP of the location of any part of the NEP Specified Works.

(9) If any part of the Shared Area Works is constructed otherwise than in accordance with paragraph 3(5) above NEP may by notice in writing identify the extent to which the Shared Area Works do not comply with the approved details and request the undertaker at the undertaker's own expense carry out remedial works so as to comply with the requirements of paragraph 3(5) of this Schedule or such alternative works as may be agreed with NEP or as otherwise may be agreed between the parties.

(10) Subject to sub-paragraph (11), if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (9) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, NEP may execute the works specified in the notice and any reasonable expenditure incurred by NEP in so doing will be recoverable from the undertaker.

(11) In the event of any dispute as to whether sub-paragraph (10) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, NEP will not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (10) until the dispute has been finally determined in accordance with paragraph 10.

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 NEP Specified Works without the prior written consent of NEP.

(2) The undertaker must not exercise the powers under any of the articles of the Order below, over land for the purposes of the Shared Area Works or in respect of the Shared Area Works otherwise than with the prior written consent of NEP.

(3) The articles referred to in sub-paragraph (2) above are—

(a) article 4 (development consent etc. granted by the Order);

(b) article 5 (maintenance of authorised development);

(c) article 11 (street works);

(d) article 12 (construction and maintenance of new or altered means of access);

(e) article 13 (temporary closure of streets and public rights of way);

(f) article 14 (access to works);

(g) article 17 (discharge of water);

(h) article 19 (protective works to buildings);

(i) article 20 (authority to survey and investigate land);

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

(k) article 23 (power to override easements and other rights);

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

(m) article 32 (temporary use of land for carrying out the authorised development); and

(n) article 33 (temporary use of land for maintaining the authorised development).

(4) In the event that NEP 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 NEP in any plots shown on the land plans or in the NEP Project Site, 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 H2T Apparatus, the Shared Area Works, the NEP Specified Works or NEP 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 Shared Area Works in such a way that will not prevent or interfere with the continued construction of the NEP Specified Works, or the maintenance or operation of the NEP Apparatus unless the action leading to such prevention or interference has the prior written consent of NEP;

(b) ensure that works carried out to, or placing of H2T Apparatus beneath, roads along which construction or maintenance access is required by NEP in respect of any NEP Apparatus will be of adequate specification to bear the loads;

(c) prior to the carrying out of any of the Shared Area Works in any part of any Shared Area—

(i) where requested in writing by NEP within 21 days of receipt of the Plans submitted pursuant to paragraph 3(2), submit a construction programme and a construction traffic and access management plan in respect of that area to NEP for approval (noting that a single construction traffic and access management plan may be completed for one or more parts of the Shared Area Works and may be subject to review if agreed between the Parties); and

(ii) where applicable and where requested in writing by NEP within 21 days of receipt of the Plans submitted pursuant to paragraph 3(2), confirm to NEP 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 Shared Area Works in compliance with the relevant approved construction traffic and access management plan;

(e) notify NEP of any incidences which occur as a result of, or in connection with, the Shared Area 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;

(f) where requested in writing by NEP within 21 days of receipt of post-completion notice pursuant to paragraph 5(2), provide comprehensive, as built, drawings of the Shared Area Works (including, for the avoidance of doubt, buried pipelines) within three months of the completion of each of the Shared Area Works;

(2) In considering a request for any consent under the provisions of this Schedule, NEP must not request an additional construction traffic and access management plan if such a plan has already been approved pursuant to subparagraph (1)(c) (as relevant in respect of a traffic and access management plan).

Expenses

8.—(1) Save where otherwise agreed in writing between NEP and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to NEP within 30 days of receipt of an itemised invoice or claim from NEP all charges, costs and expenses

reasonably anticipated within the following three months or reasonably and properly incurred by NEP 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 works including without limitation—

(a) 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;

(b) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(c) the approval of Plans;

(d) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(e) 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 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 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 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 dispute resolution in accordance with paragraph 10 to be necessary, then, if such placing involves cost in the construction of works under 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 NEP by virtue of subparagraph (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 NEP 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 NEP 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.

(6) Where reasonably anticipated charges, costs or expenses have been paid by the undertaker pursuant to sub-paragraph (1), if the actual charges, costs or expenses incurred by NEP are less than the amount already paid by the undertaker NEP will repay the difference to the undertaker as soon as reasonably practicable.

Indemnity

9.—(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 works 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 him) in the course of carrying out such works, including without limitation works carried out by the undertaker under 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 works) or property of NEP, or there is any interruption in any service provided, or in the supply of any goods, by NEP, or NEP becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand accompanied by an invoice or claim from NEP the cost reasonably and properly incurred by NEP in making good such damage or restoring the supply; and

(b) indemnify NEP for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from NEP, by reason or in consequence of any such damage or interruption or NEP becoming liable to any third party other than arising from any default of NEP.

(2) The fact that any act or thing may have been done by NEP on behalf of the undertaker or in accordance with a Plan approved by NEP or in accordance with any requirement of NEP or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this subparagraph (1) unless NEP 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) shall impose 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 NEP, its officers, servants, contractors or agents;

(b) any authorised works and/or any other works authorised by this Schedule carried out by NEP as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 8 (benefit of the Order) subject to the proviso that once such works become apparatus ("new apparatus") any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Schedule including this paragraph; and/or

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable;

(4) NEP must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) NEP 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.

(6) NEP must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within NEP'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 NEP's control and if reasonably requested to do so by the undertaker NEP must provide an explanation of how the claim has been minimised, where relevant or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1).

Miscellaneous provisions

10. NEP 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.

Dispute resolution

11.—(1) Article 46 (arbitration) of this Order does not apply to provisions of this Schedule.

(2) Any difference in relation to the provisions in this Schedule must be referred to—

(a) a meeting of the Managing Director 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 NEP and the undertaker or, in the absence of agreement identified by the President of the Law Society, 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) Where appointed pursuant to sub-paragraph (2)(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) 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 NEP and the undertaker;

(b) the ability of NEP 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, NEP's or the undertaker's outcomes could be achieved in any alternative manner without the NEP 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 Law Society.).

SCHEDULE 44

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF NATARA GLOBAL LIMITED

1.This Schedule has effect for the protection of Natara unless otherwise agreed in writing between the undertaker and Natara.

2. In this Schedule—

"black land" means the land edged and cross-hatched black on the Natara site plan;

"blue land" means the land tinted blue on the Natara site plan;

"construction management and logistics plan" means a plan prepared by or on behalf of the undertaker which sets out in relation to the Natara land—

(a) the construction programme, including—

(i) the profile activity across the day;

(ii) the periods when the yellow land will be in use; and

(iii) the proposed arrangements for delivery, erection, transfer and removal of any crane;

(b) details of construction traffic entering the Natara land including—

(i) vehicle types and numbers;

(ii) any pedestrian movements on the Natara land including frequency and numbers;

(iii) means of access to and egress from the yellow land, including any temporary means of access or footbridges to be provided by the undertaker;

(iv) access routes through the Natara land; and

(v) the times and periods during which access to the Natara land is required;

(c) details of any construction plant, machinery, equipment, materials or other items which will be brought onto the Natara land, including—

(i) where they will be located within the yellow land;

(ii) the periods during which they will be on the Natara land;

(iii) the method of operation;

(iv) the proposed arrangements for delivery, erection, operation, transfer and removal of any crane;

(v) the proposed method of operation of such crane, including any proposed oversailing of the Natara land; and

(vi) a risk assessment in respect of the matters specified in sub-paragraphs (c)(iv) and (c)(v);

(d) the proposed timing, scope and methodology of any pre-construction surveys of the Natara land, including—

(i) a survey of condition;

(ii) environmental surveys;

(iii) geotechnical surveys;

(iv) surveys of existing infrastructure; and

(v) other investigations for the purpose of assessing ground conditions on the Natara land;

(e) any site preparation or clearance measures proposed on the Natara land, including—

(i) vegetation removal;

(ii) temporary protection of the surface of any street;

(iii) measures for the protection of Natara's buildings, plant and equipment;

(iv) any temporary removal of street furniture, fencing or other obstructions;

(v) any alteration of the position of services and utilities, whether temporary or permanent; and

(vi) how the undertaker's working areas will be demarcated, including any fencing or markings proposed;

(f) proposed external lighting, including any temporary lighting arrangements or alterations;

(g) proposed health and safety management arrangements, including in respect of—

(i) personnel management;

(ii) the content and timing of any site safety briefings applicable to the Natara land;

(iii) the use of personal protective equipment;

(iv) the safe and efficient operation of the undertaker's plant, machinery and equipment;

(v) the location and specification of any safety or security fencing during construction;

(vi) the handling of any hazardous or inflammable materials or substances; and (vii) site security;

(h) proposals for the storage and disposal of waste arising as a result of the authorised development;

(i) the provision of alternative access routes or other arrangements as are reasonably necessary to ensure that Natara's access to the Natara land during the construction and operation of the authorised development is not materially prejudiced;

"Natara" means Natara Global Limited (company registration number 14641931) whose registered office address is located at Zinc Works Road, North Gare, Seaton Carew, Hartlepool, TS25 2DT;

"Natara land" means plots 2/12, 2/13, 2/14, 2/15, 2/16, 2/23 and 2/24;

"Natara site plan" means the plan which is certified as the Natara site plan by the Secretary of State under article 44 (certification of plans etc) for the purposes of this Order;

"waiting" has the same meaning as in section 2(2)(c) of the 1984 Act; and

"yellow land" means the land tinted yellow on the Natara site plan.

General duties of Natara and the undertaker

3.—(1) Where this Schedule provides—

(a) that the acknowledgement, approval, agreement, consent or authorisation of Natara or the undertaker is required; or

(b) that any thing must be done to Natara's reasonable satisfaction, that acknowledgement, approval, agreement, consent, authorisation or intimation that the matter in question has been done to Natara's satisfaction shall not be unreasonably withheld or delayed.

(2) The undertaker must in carrying out the authorised development at all times act so as to minimise, as far as reasonably practicable, any detrimental effects on Natara, including any disruption to access, supplies and other services that are required by Natara in order to carry out its operations.

(3) The undertaker and Natara shall use their reasonable endeavours to secure the amicable resolution of any difference, dispute or matter deemed to be in dispute arising between them out of or in connection with this Order in accordance with provisions of paragraph 10.

Review of draft construction management and logistics plan

4.—(1) At least 12 weeks prior to taking entry to or possession of the Natara land, the undertaker must submit a draft construction management and logistics plan to Natara for review.

(2) Following the submission of the draft construction management and logistics plan under subparagraph (1), the undertaker and Natara shall use reasonable endeavours to hold a joint site meeting on the Natara land within the period of six weeks commencing on the day next after the date of submission under sub-paragraph (1).

(3) Any joint site meeting held for the purposes of sub-paragraph (2) may be attended by representatives of both Natara and the undertaker, together with such professional and technical advisors as each of them may require.

(4) The prohibition in paragraph 5(2) does not apply to any joint site meeting held for the purposes of sub-paragraph (2).

(5) The undertaker must—

(a) have due and proper regard to any comments or representations made by Natara in respect of the draft construction management and logistics plan submitted under subparagraph (1), including any—

(i) written representations; or

(ii) oral comments provided at any joint site meeting held for the purposes of subparagraph (2); and

(b) take such comments and representations into account in preparing any construction management and logistics plan submitted under paragraph 5(1).

Approval of construction management and logistics plan

5.—(1) At least 6 weeks prior to taking entry to or possession of the Natara land, the undertaker must submit a construction management and logistics plan to Natara for its approval.

(2) No entry to or possession of the Natara land may be taken for the purposes of the authorised development until a construction management and logistics plan submitted under sub-paragraph (1)—

(a) has been approved by Natara under sub-paragraph (3)(a);

(b) is deemed to have been approved under sub-paragraph (4); or

(c) has been approved by an arbitrator following a reference under sub-paragraph (5).

(3) Following submission of a construction management and logistics plan under sub-paragraph (1), Natara must within 28 days of the date of receipt thereof notify the undertaker in writing—

(a) of its approval of all or any part of that construction management and logistics plan; or

(b) of its disapproval of all or any part of that construction management and logistics plan and the reasons for its disapproval.

(4) If Natara does not notify the undertaker of its decision within the period specified in subparagraph (3) then the construction management and logistics plan submitted under sub-paragraph (1) is deemed to be approved on the day next following the last day of that period.

(5) If Natara provides a response under sub-paragraph (3)(b) in respect of part only of that construction management and logistics plan then Natara shall be deemed to have approved the remainder of that construction management and logistics plan on the day next following the date of the notification under sub-paragraph (3)(b).

(6) If Natara gives notice to the undertaker under sub-paragraph (3)(b) then the matter will be treated as a dispute to be resolved between the parties and may (if the undertaker so elects) be referred for determination in accordance with paragraph 10.

(7) The authorised development must be executed only in accordance with the construction management and logistics plan—

(a) approved by Natara under sub-paragraph (3);

(b) deemed to be approved under sub-paragraph (4) or (5); or

(c) approved following a reference to an arbitrator in accordance with sub-paragraph (6).

Restrictions on certain activities

6. During the construction and operation of the authorised development—

(a) no part of the Natara land is to be used by the undertaker—

(i) for the waiting of vehicles; or

(ii) for the storage of materials;

(b) where the undertaker exercises the powers in articles 32 and 33 of this Order in relation to the Natara land, those powers—

(i) may only be exercised in respect of the blue land and the yellow land; and

(ii) must not be exercised in respect of any other part of the Natara land;

(c) any vehicles brought onto the Natara land by the undertaker must not stop on any part of the blue land except—

(i) in an emergency;

(ii) in accordance with a construction management and logistics plan approved under paragraph 5; or

(iii) to comply with any reasonable direction given by Natara.

7. Where the undertaker submits a draft construction management and logistics plan under paragraph 4 or a construction management and logistics plan under paragraph 5, that plan must ensure that—

(a) no more than two cranes are present on Natara land simultaneously;

(b) any crane brought onto the yellow land in accordance with the plan— (i) is located and operated only within the black land; and (ii) does not oversail any land owned or occupied by Natara other than the blue land or the yellow land;

(c) the blue land is only used for the purpose of accessing the yellow land;

(d) access is not take over the blue land where a reasonably practicable alternative means of access is available, including any temporary access or footbridge provided by the undertaker; and

(e) there is no reduction in the number of car parking spaces available on the Natara land below the number set out in the report submitted under paragraph 8(3).

Reinstatement of the Natara land

8.—(1) This paragraph applies where a construction management and logistics plan approved or deemed to be approved under paragraph 5. contains a requirement for the undertaker to carry out a pre-construction survey of condition.

(2) Where this paragraph applies, the undertaker must carry out the pre-construction survey of condition in accordance with the approved timing, scope and methodology.

(3) A report containing the findings of the pre-construction survey of condition completed in accordance with sub-paragraph (2) must be prepared by the undertaker and submitted to Natara before commencing any activities comprising part of the authorised development on the Natara land.

(4) Upon completion of those parts of the authorised development in respect of which entry to and possession of the Natara land was taken, the undertaker must—

(a) carry out a post-construction survey of condition in accordance with the same scope and methodology as the pre-construction survey of condition; and

(b) prepare a report containing—

(i) the findings of that post-construction survey of condition so as to enable a like-forlike comparison to be made to the findings of the pre-construction survey of condition; and

(ii) particulars of any works which are required in order to reinstate the Natara land to the condition set out in the report submitted under sub-paragraph (3), together with a programme and methodology for their implementation.

(5) The undertaker must submit a copy of the report prepared under sub-paragraph (4)(b) to Natara for its approval.

(6) Following submission of a report under sub-paragraph (5), Natara must within 14 days of the date of receipt thereof notify the undertaker in writing—

(a) of its approval of all or any part of that report; or

(b) of its disapproval of all or any part of that report and the reasons for its disapproval.

(7) If Natara does not notify the undertaker of its decision within the period specified in subparagraph (6) then the report submitted under sub-paragraph (5) is deemed to be approved on the day next following the last day of that period.

(8) If Natara provides a response under sub-paragraph (6)(b) in respect of part only of that report then Natara shall be deemed to have approved the remainder of that report on the day next following the date of the notification under sub-paragraph (6)(b).

(9) If Natara gives notice to the undertaker under sub-paragraph (6)(b) then the matter will be treated as a dispute to be resolved between the parties and may (if the undertaker so elects) be referred for determination in accordance with paragraph 10.

(10) The undertaker must implement any works to which sub-paragraph (4)(b)(ii) applies in accordance with the particulars set out in the report—

(a) approved by Natara under sub-paragraph (6);

(b) deemed to be approved under sub-paragraph (7) or (8); or (c) approved following a reference to an arbitrator in accordance with sub-paragraph (9).

Costs and compensation

9.—(1) Subject to sub-paragraphs (2) and (6) to (8), the undertaker must pay to Natara the reasonable and properly incurred costs and expenses (including reasonable staffing costs if work is carried out in-house) incurred by Natara in, or in connection with, the discharge of any function by Natara under this Schedule, including in respect of—

(a) the review of a draft construction management and logistics plan submitted under paragraph 4(1);

(b) attendance at any joint site meeting held for the purposes of paragraph 4(2);

(c) the provision of comments or representations to the undertaker in terms of paragraph 4(5);

(d) the review and approval of a construction management and logistics plan submitted under paragraph 5(1); and

(e) the review and approval of a report submitted under paragraph 8(5).

(2) Prior to incurring any costs or expenses associated with the activities in sub-paragraph (1), Natara 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.

(3) Subject to sub-paragraphs (4) to (8), if by reason or in consequence of the construction of the authorised development, any damage is caused to Natara, or there is any interruption in any service provided, or in the supply of any goods, by Natara, the undertaker must—

(a) at Natara's election either—

(i) bear and pay the cost reasonably incurred by Natara in making good such damage or restoring the supply; or

(ii) make good such damage to Natara's reasonable satisfaction; and

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

(4) Nothing in sub-paragraph (3) 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 of default of Natara, its officers, employees, servants, contractors or agents; or

(b) any indirect or consequential loss or loss of profits by Natara.

(5) Natara 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.

(6) If the undertaker takes sole conduct pursuant to sub-paragraph (5) then it must have due and proper regard to any comments or representations made by Natara in respect of the settlement, compromise or proceedings in question.

(7) Natara must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which this paragraph applies.

(8) If requested to do so by the undertaker, Natara must provide an explanation of how the claim or costs have been minimised or details to substantiate any cost or compensation claimed pursuant to this paragraph.

(9) The undertaker shall only be liable under this paragraph for claims or costs reasonably incurred by Natara.

(10) Where the undertaker has made good damage following an election by Natara under subparagraph (3)(a), the undertaker may request that Natara provide an intimation that the matter in question has been done to Natara's satisfaction for the purposes of sub-paragraph (3)(a)(ii).

(11) Following a request under sub-paragraph (10), Natara must within 7 days of the date of receipt thereof give an intimation to the undertaker in writing that the matter in question—

(a) has been done to Natara's satisfaction; or

(b) has not been done to Natara's satisfaction and the reasons for this.

(12) If Natara does not notify the undertaker of its decision within the period specified in subparagraph (11) then the matter in question is deemed to have been done to Natara's satisfaction.

(13) If Natara gives notice to the undertaker under sub-paragraph (11)(b) then the matter will be treated as a dispute to be resolved between the parties and may (if the undertaker so elects) be referred for determination in accordance with paragraph 10.

Dispute resolution

10.—(1) Any difference, dispute or matter deemed to be in dispute arising between the undertaker and Natara (including as to the amount of any payment pursuant to paragraph 9) must, unless otherwise agreed between the undertaker and Natara, be referred and determined in accordance with this paragraph.

(2) Subject to the provisions of this Schedule, including sub-paragraphs (3) to (14) of this paragraph, the difference, dispute or matter referred shall be determined only in accordance with the Scheme.

(3) The Scheme shall apply as if—

(a) this Schedule constituted a "construction contract"; and

(b) the undertaker and Natara were the parties to that contract.

(4) For the purposes of paragraph 2(1)(b) of the Scheme, the Law Society of Scotland shall be the specified nominating body.

(5) Any party to which the notice of adjudication is given under paragraph 1 of the Scheme shall provide to the referring party a notice in response within five days setting out—

(a) a proposed remedy for the difference, dispute or matter referred;

(b) a date for a meeting to be held within five days of the date of the notice of response; or

(c) a summary document for the dispute including any relevant correspondence or documents.

(6) If a notice is given pursuant to sub-paragraph (5)(a) and the referring party agrees to the proposed remedy then the difference, dispute or matter referred shall be determined on that basis and the parties shall implement that remedy.

(7) If a notice is given pursuant to sub-paragraph (5)(b)—

(a) copies of that notice and the notice of adjudication shall immediately be provided to a director or manager within each party who has the authority on behalf of that party to resolve the difference, dispute or matter referred;

(b) the persons to whom the documents are provided pursuant to sub-paragraph (a) shall use reasonable endeavours to meet within five days of the date on which the notice under subparagraph (5)(b) was given; and

(c) if the persons to whom the documents are provided pursuant to sub-paragraph (a) agree a remedy within the five day period specified in sub-paragraph (b) (whether or not a meeting is actually held) then the difference, dispute or matter referred shall be determined on that basis and the parties shall implement that remedy.

(8) Where sub-paragraph (7) applies—

(a) the meeting referred to in sub-paragraph 7(b) may (where relevant) take the form of a joint site meeting on the Natara land; and

(b) the words "seven days" in paragraph 7(1) of the Scheme shall be deemed to read "fourteen days".

(9) If a notice is given pursuant to sub-paragraph (5)(c) then a copy of that notice shall be provided to the adjudicator at the same time as the referral notice is provided to him under paragraph 7(1) of the Scheme.

(10) For the purposes of paragraphs 9(4), 11(1) and 25 of the Scheme—

(a) the adjudicator may determine how the payment is to be apportioned in which case the undertaker and Natara—

(i) are severally liable for only the sums apportioned to them in that determination; and

(ii) are not jointly and severally liable for any sum which remains outstanding following the making of any such determination;

(b) where the adjudicator makes no such determination, the undertaker and Natara shall be severally liable for one half each of the payment in question.

(11) In paragraph 22 of the Scheme, for the words "If requested by one of the parties to the dispute", substitute "At the same time as delivering copies of his decision pursuant to paragraph 19(3)".

(12) Subject to sub-paragraph (13)—

(a) for the purposes of paragraph 23(2) of the Scheme the undertaker and Natara shall accept the decision of the adjudicator delivered under paragraph 19(3) of the Scheme as finally determining the difference, dispute or matter referred; and

(b) the jurisdiction of the adjudicator, the scope of the adjudication, the decision of the adjudicator and any action taken by the adjudicator shall not be challenged or questioned by the undertaker or Natara in any proceedings whatsoever.

(13) If the undertaker or Natara is aggrieved by the decision of the adjudicator then they may, at any time within the appropriate period, appeal against the decision to His Majesty in Council in which case—

(a) permission to appeal is not required; and

(b) the Judicial Committee Act 1833(a) shall apply in relation to the adjudicator as it applies in relation to such courts as are mentioned in section 3 of that Act.

(14) In sub-paragraph (13), the "appropriate period" means the period of twenty-eight days starting on the day next following the date upon which copies of the decision are delivered pursuant to paragraph 19(3) of the Scheme.

(15) The decision of the adjudicator may be enforced by way of a TCC claim within the meaning of and brought under Part 60 of the Civil Procedure Rules 1998(b).

(16) In this paragraph, references to the "Scheme" are references to Part I of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998(c).

(17) Article 46 (arbitration) of this Order does not apply to any difference or dispute to which this paragraph applies.

SCHEDULE 45

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF BOC APPERATUS OPERATOR

Application

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

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

Interpretation

2.—(1) In this Schedule—

"alternative apparatus" means alternative apparatus adequate to serve the operator 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; and

"operator" means BOC Limited (company number 00337663), whose registered office is at Forge, 43 Church Street West, Woking, Surrey, England, GU21 6HT or any successor as a gas or water transporter within the meaning of Part 1 of the 1986 Act insofar as relates to apparatus of the operator that lies within the Order limits as at the date upon which this Order is made.

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

(3) Any consent, approval or agreement of the operator under this Schedule must not be unreasonably withheld or delayed.

Removal of apparatus

3.—(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 of the operator is placed, the apparatus must not be removed, and any right of the operator 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 the operator.

(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 of the operator placed in the land, it must give to the operator 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 operator 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) The operator must, after the alternative apparatus to be provided or constructed has been agreed or determined by an arbitrator under paragraph 10, and after the grant to the operator of

any such facilities and rights as 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(a), 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 Schedule.

(4) Notwithstanding sub-paragraph (3), if the undertaker givens notice to the operator 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 operator, must be executed by the undertaker without unnecessary delay to an appropriate standard and in a safe manner.

(5) If works are executed by the undertaker in accordance with sub-paragraph (4), the operator must be notified of the timing of the works and afforded facilities to watch, monitor and inspect the execution of the works.

(6) 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 any apparatus of the operator without the written consent of the operator.

Alternative apparatus

4.—(1) Where, in accordance with this Schedule, the undertaker affords to the operator 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 the operator or, in default of agreement, determined by arbitration under paragraph 10, 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 the operator in respect of the apparatus to be removed, the arbitrator must make such provision for the payment of compensation by the undertaker to the operator as appears to the arbitrator to be reasonable, having regard to all the circumstances of the particular case.

Insurance

5.—(1) Before carrying out any works forming part of the authorised development on, in or over any land within which apparatus of the operator is located, the undertaker (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 between the undertaker and the operator, and evidence of that insurance must be provided to the operator on request.

---

a (a) S.I. 1996/825

(2) Not less than 30 days before carrying out any works forming part of the authorised development on, in or over any land within which apparatus of the operator is located or before proposing to change the terms of the insurance policy, the undertaker must notify the operator 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 land in which apparatus of the operator is located during the operation of the authorised development at such levels as may be agreed between the undertaker and the operator.

(4) Any dispute between the undertaker and the operator regarding the terms, cover or insured level of the insurance policy shall be resolved by arbitration in accordance with paragraph 10.

Expenses

6.—(1) Subject to the provisions of this paragraph, the undertaker must pay to the operator the reasonable expenses incurred by the operator under this Schedule 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 Schedule;

(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; and

(f) 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 operator that it has incurred such expenses.

(2) Where reasonable and practicable, the operator 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 operator 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 Schedule, that value being calculated after removal.

(5) If in accordance with 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 an arbitrator under paragraph 10 to be necessary, then, if such placing involves cost in the construction of works under 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 the operator 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 pipe or 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 the operator by virtue of sub-paragraph (1) must, if it confers a financial benefit on it by deferment of the time for renewal of the apparatus in the ordinary course of that operator's business practice, be reduced by the amount that represents that benefit.

Indemnity

7.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of the authorised development (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 apparatus of the operator, or there is any interruption in any service provided, or in the supply of any goods, to or by the operator, or the operator becomes liable to pay any amount to any third party, the undertaker must—

(a) bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the service, supply and/or operations; and

(b) make reasonable compensation to the operator 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 any third party owner or operator) 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— (a) 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); or (b) any indirect or consequential loss or loss of profits of any person.

(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 any proceedings necessary to resist the claim or demand.

(4) The person to who 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 7 applies where it is within its reasonable ability and control so to do.

(5) 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).

(6) The undertaker shall only be liable under this paragraph 7 for claims reasonably incurred by the person in question

Notice of start of commissioning

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

Deemed consent

9.—(1) Any consent, approval or agreement of the operator under this Schedule must not be unreasonably withheld or delayed.

(2) With prejudice to the generality of sub-paragraph (1) and subject to the following provisions of this paragraph, where the undertaker makes any request for consent, approval or agreement of the operator under this Schedule, the operator must within 45 days of the date of receipt of that request give notice to the undertaker as to whether its consent, approval or agreement is—

(a) granted, in whole or in part; or

(b) refused, in whole or in part.

(3) Any consent, approval or agreement of the operator under this Schedule may be given subject to such reasonable requirements as the operator may notify to the undertaker in writing for the continuing safe operation of the operator's apparatus. Any such requirements must be set out in full in the notice of the operator's decision under sub-paragraph (2)(a) and that notice must set out the operator's full reasons for those requirements.

(4) If the operator does not give notice of its decision in response to the undertaker's request within the period specified in sub-paragraph (2) then the operator shall be deemed to have granted its consent, approval or agreement in respect of that request on the day next following the last day of that period.

(5) If the operator gives notice under sub-paragraph (2)(b) in respect of party only of the undertaker's request then the operator shall be deemed to have granted its consent, approval or agreement in respect of the remainder of that request on the day next following the date of the notice under sub-paragraph (2)(b).

(6) If the operator gives notice to the undertaker under sub-paragraph (2)(b) or (3) then the matter will be treated as a dispute to be resolved between the parties and may (if the undertaker so elects) be referred to an arbitrator in accordance with paragraph 10.

(7) Where a dispute is referred to an arbitrator in accordance with sub-paragraph (6), the arbitrator may grant or refuse consent, approval or agreement in respect of the request, save that the arbitrator may not—

(a) refuse consent, approval or agreement in respect of any part of the request to which a notice given by the operator pursuant to sub-paragraph (2)(a) applies;

(b) refuse consent, approval or agreement in respect of any part of the request to which subparagraph (5) applies; or

(c) grant consent, approval or agreement subject to any requirement other than one which was set out in a notice given by the operator pursuant to sub-paragraph (3).

(8) The authorised development must be executed only in accordance with the consent, approval or agreement—

(a) granted or deemed to have been granted by the operator under this paragraph, including any requirements set out in a notice in accordance with sub-paragraph (3) which are not removed following a reference to an arbitrator under sub-paragraph (6); or

(b) granted following a reference to an arbitrator in accordance with sub-paragraph (6).

Arbitration

10. Any difference or dispute arising between the undertaker and the operator under this Schedule (including as to the amount of any sum which may be payable by the undertaker pursuant to paragraph 6 or 7) must, unless otherwise agreed between the undertaker and the operator, be referred to and settled by arbitration in accordance with article 46 (arbitration).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises H2 Teesside Limited to construct, operate and maintain a hydrogen production facility and pipeline network. 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 book of reference mentioned in this Order and certified in accordance with article 44 (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.

APPENDIX E: ALTERNATIVE DCO (Including Cowpen Bewley Arm)

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

202* No.

INFRASTRUCTURE PLANNING

The H2Teesside Order 202*

Made - - - - ***

Coming into force - - ***

CONTENTS

PART 5
POWERS OF ACQUISITION

PART 6
MISCELLANEOUS AND GENERAL

SCHEDULES

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.

(**a**) 2008 c.29. Section 37 was amended by section 137(5) of, and Schedule 13 to, the Localism Act 2011 (c.20).
(**b**) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522 S.I. 2013/755, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682, S.I. 2017/524, S.I. 2017/572, S.I. 2018/378, and S.I. 2019/734.

The application was examined by a panel appointed by the Secretary of State pursuant to Chapter 3 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(**a**). The panel having considered the application with the documents that accompanied the application, and the representations made and not withdrawn, has, in accordance with section 74(2)(**b**) 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 appointed panel and having taken into account the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(**c**) and having had regard to the documents and matters referred to in section 104(2)(**d**) (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 replacement special category land has been or will be given in exchange for the cowpen bewley special category land (as defined in article 2 (interpretation) of this Order), and the replacement special category land (as defined in that article) has been or will be vested in the prospective seller and subject to the same rights, trusts and incidents as attach to the cowpen bewley special category land, and that, accordingly sections 131(4)(**e**) and 132(4) of the 2008 Act applies. In accordance with section 132(3)(**f**) of the 2008 Act, the Secretary of State is satisfied, having considered the report and recommendation of the Panel, that the parcels of land comprised in the coatham marsh special category land (as defined in article 2 of this Order) when burdened with a new right created under this Order, will be no less advantageous than they were before the making of this Order to the following person: (a) the persons in whom they are vested; (b) other persons, if any, entitled to rights of common or other rights; and (c) the public.

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

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the H2Teesside Order 202* and comes into force on ****.

Interpretation

2.—(1) In this Order—

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

(**a**) S.I. 2010/103, amended by S.I. 2012/635.
(**b**) Section 74 was amended by the Localism Act 2011 (c.20) section 240(2), Schedule 13 paragraph 29 and Schedule 25, Part 20.
(**c**) S.I. 2017/572.
(**d**) Section 104 was amended by section 58(5) of the Marine and Coastal Access Act 2009 (c.23) and by section 240(2) and Schedule 13 paragraph 49 of the Localism Act 2011 (c.20).
(**e**) Section 131 was amended by section 24(2) of the Growth and Infrastructure Act 2013 (c.27).
(**f**) Section 132 was amended by section 24(3) of the Growth and Infrastructure Act 2013 (c.27).
(**g**) 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).
(**h**) 1961 c.33.

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

"the 1966 Act" means the Tees and Hartlepools Port Authority Act 1966(**b**);

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

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

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

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

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

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

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

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

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

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

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

"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 44 (certification of plans etc.) for the purposes of this Order;

"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 fibreoptic 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 44 for the purpose 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 44 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(**n**) for a carbon dioxide storage site;

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

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

(**a**) 1965 c.56.
(**b**) 1966 c.xxv.
(**c**) S.I. 1975/693.
(**d**) 1980 c.66.
(**e**) 1981 c.66.
(**f**) 1984 c.27.
(**g**) 1986 c.44.
(**h**) 1989 c.29.
(**i**) 1990 c.8.
(**j**) 1991 c.22.
(**k**) S.I. 1994/2064.
(**l**) 2004 c.18.
(**m**) 2008 c.29.
(**n**) 2008 c.32.

"change application report" means the document of that description which is certified as the change application report by the Secretary of State under article 44 for the purposes of this Order;

"change application report – appendices" means the document of that description which is certified as the change application report – appendices by the Secretary of State under article 44 for the purposes of this Order;

"coatham marsh special category land" means the land identified as comprising open space and shown hatched blue on sheets 5 and 6 of the special category land and crown land plans;

"commence" means beginning to carry out a material operation, as defined in section 56(4) of the 1990 Act (which explains when development begins), comprised in or carried out for the purposes of the authorised development and "commencement", "commenced" and cognate expressions are to be construed accordingly;

"commissioning" means the process of testing systems, infrastructure and components of any part of the authorised development (which is installed or in relation to which installation is nearly complete) in order to ensure that that part functions in accordance with the plant design specifications and the undertaker's operational, contractual 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 Schedules 16 to 44 (protective provisions);

"council replacement special category land" means the land shown as plot 4/95 and hatched yellow on the special category land and crown land plans;

"cowpen bewley special category land" means the land identified as comprising open space and shown hatched blue on sheets 1 and 1A of the special category land and crown land plans;

"cowpen bewley special category land (acquisition)" means the land shown as plots 4/5, 4/6, 4/25, 4/28 and 4/29 on the special category land and crown land plans;

"cowpen bewley special category land (rights)" means the land shown as plots 4/4, 4/5, 4/6, 4/25, 4/28, 4/29 and 4/30 on the special category land and crown land plans;

"date of final commissioning" means the date on which commissioning of the authorised development is completed and it commences operation on a commercial basis or where specified in this Order, the date on which a specified Work No. commences operation on a commercial basis;

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

"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;

"emergency" means a situation where, if the relevant action is not taken, there will 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;

"the environmental statement" means the statement certified as the environmental statement by the Secretary of State under article 44 for the purposes of this Order;

"figure 2.15 – important hedgerows to be removed" means the document of that description which is certified as figure 2.15 – important hedgerows to be removed by the Secretary of State under article 44 for the purposes of this Order;

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

(**a**) 2000 c.7.

"flood risk assessment" means the document of that description which is certified as part of the environmental statement by the Secretary of the State under article 44 for the purposes of this Order;

"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 44 for the purposes of this Order;

"framework construction traffic management plan" means the document of that description which is certified as the framework construction traffic management plan by the Secretary of State under article 44 for the purposes of this Order;

"framework construction workers travel plan" means the document of that description which is certified as the framework construction workers travel plan by the Secretary of State under article 44 for the purposes of this Order;

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

"HyGreen Teesside" means a proposed project for a green hydrogen production facility in the administrative boundary of Redcar and Cleveland Borough Council;

"H2 Teesside Limited" means H2 Teesside Limited (company number 14523230) whose registered office is at Chertsey Road, Sunbury on Thames, Middlesex, England, TW16 7BP;

"indicative lighting strategy (construction)" means the document appended at appendix C of the framework construction environmental management plan;

"indicative lighting strategy (operation)" means the document of that description which is certified as the indicative lighting strategy (operation) by the Secretary of State under article 44 for the purposes of this Order;

"indicative surface water drainage plan" means the document of that description which is certified as the indicative surface water drainage plan by the Secretary of State under article 44 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 44 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;

"The Net Zero Teesside Order 2024" means the development consent order as made by the Secretary of State on 16 February 2024(**a**);

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

"NGN" means Northern Gas Networks Limited (company number 05167070) whose registered office is at 1100 Century Way, Thorpe Park Business Park, Colton, Leeds, LS15 8TU;

"NGN replacement special category land" means the land shown as plot 4/94 and hatched yellow on the special category land and crown land plans;

"NSMP entities" means Northern Gas Processing Limited (company number 2866642) of Suite 1, 7th Floor 50 Broadway, London, SW1H 0BL, Teesside Gas and Liquids Processing (company number 02767808) of Suite 1, 7th Floor 50 Broadway, London, SW1H 0BL and Teesside Gas Processing Limited (company number 05740797) of Suite 1, 7th Floor 50 Broadway, London, SW1H 0BL;

(**a**) S.I. 2024/174.

"nutrient neutrality assessment" means the document of that description which is certified as the nutrient neutrality assessment by the Secretary of State under article 44 for the purposes of this Order;

"Order land" means the land shown coloured pink and the land shown coloured blue on the land plans, which is described in the book of reference;

"Order limits" means the limits of land to be acquired permanently or used temporarily as shown on the land plans, and the limits of land within which the authorised development, as shown on the works plans may be carried out;

"outline landscape and biodiversity management plan" means the document of that description which is certified as the outline landscape and biodiversity management plan by the Secretary of State under article 44 for the purposes of this Order;

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

"outline water management plan" means the document appended at appendix B of the framework construction environmental management plan;

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

"permit scheme" means any schemes made under Part 3 of the 2004 Act in force at the date on which this Order is made;

"permitted preliminary works" means works consisting of environmental surveys (including archaeological investigations), geotechnical surveys, surveys and protection of existing infrastructure, and other investigations for the purpose of assessing ground conditions, the preparation of facilities for the use of contractors, the provision of temporary means of enclosure and site security for construction, temporary access roads, paving, diversion of existing services and laying of services (but not including the laying of any of Work Nos. 2, 3, 4, 5, 6, 7 and 8), 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;

"relevant highway authority" means the highway authority responsible for the relevant highway 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;

"replacement special category land" means the land identified as replacement special category land and shown hatched yellow on the special category land and crown land plans;

"replacement special category land access rights" means the rights in plots 4/91, 4/92 and 4/93 for each of the undertaker, STBC and NGN, and all persons authorised on their behalf, to create, improve and maintain an access route and associated fencing and security facilities, and to pass and repass at all times over the same, with or without vehicles, plant, machinery and equipment, for all purposes in connection with access to and egress from the replacement special category land as open space, such rights to benefit the replacement special category land;

"replacement special category land rights" means the right for each of the undertaker and STBC, and all persons authorised on their behalf, to lay out, create, maintain, manage, enhance and use (including allowing public use of) the NGN replacement special category land as open space, such rights to benefit the council replacement special category land;

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

"special category land" means the cowpen bewley special category land and coatham marsh special category land shown hatched blue on the special category land and crown land plans;

(**a**) 1981 c.67. The definition of "owner" was amended by 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 and crown land plans" means the document of that description which is certified as the special category land and crown land plans by the Secretary of State under article 44 for the purposes of this Order;

"Sembcorp" means Sembcorp Utilities (UK) Limited (company number 04636301) whose registered office is at Sembcorp UK Headquarters, Wilton International, Middlesbrough, Cleveland, TS90 8WS;

"STBC" means Stockton-on-Tees Borough Council, whose headquarters are at Municipal Buildings, Church Road, Stockton-on-Tees, TS18 1LD;

"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;

"street" means a street within the meaning of 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 includes any footpath 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;

"temporary traffic regulation measures plan" means the plans which are certified as the temporary traffic regulation measures plan by the Secretary of State under article 44 for the purposes of this Order;

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

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

"undertaker" means, subject to articles 7 (benefit of this Order) and 8 (consent to transfer benefit of this Order), H2 Teesside Limited;

"water framework directive assessment" means the document of that description which is certified as the water framework directive assessment by the Secretary of State under article 44 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 44 for the purposes of this Order; and

"The York Potash Harbour Facilities Order 2016" means the development consent order as made by the Secretary of State on 20 July 2016(**d**).

(2) All distances, directions and lengths referred to in this Order, except for the parameters referred to in Schedule 15 (design parameters), 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.

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

(**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.
(**d**) S.I. 2016/772.

(4) 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 (authorised development) and shown on the works plans.

(5) The expression "includes" is to be construed without limitation.

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

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; and

(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 assessed 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, the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Each numbered work must be 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 solely for the benefit of the undertaker.

Consent to transfer benefit of this Order

8.—(1) Subject to paragraph (2), the undertaker may—

(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) 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) and such related statutory rights as may be so agreed.

(2) The consent of the Secretary of State is required for a transfer or lease pursuant to this article, except where paragraph (6) applies.

(3) Where a transfer or grant has been made in accordance with paragraph (1) references in this Order to the undertaker, except in this paragraph (3), include references to the transferee or the lessee.

(4) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) 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.

(5) Where an agreement has been made in accordance with paragraph (1)—

(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;

(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;

(c) the transferee or lessee is a holding company, associated company or subsidiary of the undertaker; and

(d) the transferee or lessee holds a licence under section 7 of the Energy Act 2023(**a**).

(6) This paragraph applies 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(**b**) or section 7 (licensing of public gas transporters)(**c**) of the 1986 Act;

(**a**) 2023 c.52.

(**b**) 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.

(**c**) 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.

(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 limits; or

(iii) in relation to any works to provide a connection between any part of Work Nos. 6A.1 or 6A.2 and a person to whom a supply of hydrogen is to be provided (and including Work Nos. 6B.1 or 6B.2), that person; 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.

(7) Where the consent of the Secretary of State is not required under paragraph (2), 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).

(8) The notification referred to in paragraph (7) 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 (7), 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.

(9) The date specified under paragraph (8)(b) must not be earlier than the expiry of five working days from the date of the receipt of the notice.

(10) The notice given under paragraph (7) 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.

Application 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, operation or maintenance of any part of numbered works 1, 2, 4, 5, 6A.1, 6B.1, 8, 9 or 10A.1 and works that may be carried out in association with those numbered works—

(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 and Hartlepool Authority or the harbour master to any such works; and

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

(3) The following provisions do not apply in relation to the construction or maintenance of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction, operation or maintenance of any part of the authorised development—

(a) section 23 (prohibition of obstructions, etc. in watercourses) of the Land Drainage Act 1991(**a**);

(b) section 32 (variation of awards) of the Land Drainage Act 1991(**b**);

(c) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991(**c**);

(d) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (byelaw making powers of authority) to the Water Resources Act 1991(**d**); and

(e) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(**e**) in respect of a flood risk activity only.

(4) Regulation 6 of the Hedgerows Regulations 1997(**f**) is modified so as to read for the purposes of this Order only as if there were inserted after paragraph (1)(j) the following—

"or (k) for carrying out development which has been authorised by an order granting development consent pursuant to the Planning Act 2008.".

PART 3

STREETS

Power to alter layout etc. of streets

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

(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) 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;

(**a**) 1991 c.59. Section 23 was amended by paragraph 192 of Schedule 22 to the Environment Act 1995 (c.25), paragraphs 25 and 32 of Schedule 2 to the Flood and Water Management Act 2010 (c.29) and S.I. 2013/755.

(**b**) Section 32 was amended by S.I. 2013/755.

(**c**) Section 66 was amended by paragraphs 25 and 38 of Schedule 2 to the Flood and Water Management Act 2010 and section 86 of the Water Act 2014 (c.21).

(**d**) 1991 c.57. Paragraph 5 was amended by section 100 of the Natural Environment and Rural Communities Act 2006 (c. 16), section 84 of, and paragraph 3 of Schedule 11 to the 2009 Act and S.I. 2013/755. Paragraph 6 was amended by section 105 of, and paragraph 26 of Schedule 15 to the Environment Act 1995, sections 224, 233 and 321 of and paragraphs 20 and 24 of Schedule 16 and Part 5(B) of Schedule 22 to the 2009 Act and S.I. 2013/755. Paragraph 6A was inserted by section 103(3) of the Environment Act 1995.

(**e**) S.I. 2016/1154. Regulation 12 was amended by S.I. 2018/110.

(**f**) S.I. 1997/1160.

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

(c) place and keep apparatus in the street;

(d) maintain, change the position or remove apparatus in or under the street; 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 closure of streets and public rights of way

13.—(1) The undertaker, during and for the purposes of carrying out and maintaining the authorised development, may temporarily close, 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 closure, 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 close, prohibit the use of, restrict the use of or, for the purposes of sub-paragraph (a) or (b) of this paragraph (3), alter or divert—

(a) the streets specified in column (2) of Table 5 in Part 1 of Schedule 6 (those parts of the street to be temporarily closed) to the extent specified in column (3) of that Table 5; and

(b) the public rights of way specified in column (2) of Table 6 in Part 2 of Schedule 6 (those public rights of way to be temporarily closed) to the extent specified in column (3) of that Table 6.

(4) The undertaker must not temporarily close, 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; or

(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.

(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 which has been temporarily closed 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) 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 street 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 measures

16.—(1) Subject to the provisions of this article, the undertaker may at any time, in the interests of safety and for the purposes of, or in connection with the construction of the authorised development, temporarily make provision for traffic regulation measures as specified in columns 3 and 4 of Table 7 of Schedule 7 (traffic regulation measures) including, as relevant, temporarily placing traffic signs and signals and the placing of those traffic signs and signals is deemed to have been permitted by the traffic authority for the purposes of section 65 of the 1984 Act and the Traffic Signs Regulations and General Directions 2016(**a**).

(2) Subject to the provisions of this article and without limitation to the exercise of powers conferred by paragraph (1), the undertaker may make temporary provision for the purposes of the authorised development—

(a) as to the speed at which vehicles may proceed along any road;

(b) permitting, prohibiting or restricting the stopping, parking, waiting, loading or unloading of vehicles on any road;

(**a**) S.I. 2016/362.

(c) as to the prescribed routes for vehicular traffic or the direction of priority of vehicular traffic on any road;

(d) permitting, prohibiting or restricting the use of vehicular traffic or non-vehicular traffic of any road; and

(e) suspending or amending in whole or in part any order made, or having effect as if made, under the 1984 Act.

(3) No speed limit imposed by or under this Order applies to vehicles falling within regulation 3(4) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011(**a**) when in accordance with regulation 3(5) of those regulations.

(4) Before exercising the power conferred by paragraph (2) the undertaker must—

(a) consult with the chief officer of police in whose area the road is situated; and

(b) obtain the written consent of the traffic authority.

(5) The undertaker must not exercise the powers under paragraph (1) or (2) 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).

(6) Any prohibition, restriction or other provision made by the undertaker under article 13 (temporary closure of streets and public rights of way) or paragraph (1) or (2) 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)(**b**) 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.

(7) In this article—

(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) 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

(**a**) S.I. 2011/935.
(**b**) Relevant amendments to section 32 were made by the 1991 Act section 168(1) and Schedule 8, paragraph 39.

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.

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 the undertaker 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.

(4) The undertaker may, for the purposes of constructing, maintaining or operating the authorised development but subject to paragraph (2), remove any hedgerow within the Order limits that is required to be removed.

(**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.

(5) The undertaker may, for the purposes of the authorised development remove the important hedgerows as are within the Order limits and specified in Table 8 of Schedule 8 (important hedgerows to be removed).

(6) In this article, "hedgerow" and "important hedgerow" have the same meaning as in the Hedgerows Regulations 1997(**a**).

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 46 (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,

---

(**a**) S.I. 1997/1160.

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 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.

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

Removal of human remains

21.—(1) In this article "specified land" means any land within the Order limits.

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

(3) Before any such remains are removed from the specified land the undertaker must give notice of the intended removal, describing the specified 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 specified land; and

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

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

(5) At any time within 56 days after the first publication of a notice under paragraph (3) 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.

(6) Where a person has given notice under paragraph (5), 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 (11).

(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) 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.

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

(9) If—

(a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or

(b) such notice is given and no application is made under paragraph (7) 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 (7) 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, subject to paragraph (10),

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.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) 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.

(11) 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 (9) must be sent by the undertaker to the relevant planning authority mentioned in paragraph (4).

(12) No notice is required under paragraph (3) before the removal of any human remains where the undertaker is satisfied that—

(a) that the remains were interred more than 100 years ago; and

(b) that no relative or personal representative of the deceased is likely to object to the remains being removed in accordance with this article.

(13) In the case of remains in relation to which paragraph (12) applies, the undertaker—

(a) may remove the remains;

(b) must apply for direction from the Secretary of State under paragraph (15) as to their subsequent treatment; and

(c) must deal with the remains in such manner, and subject to such conditions, as the Secretary of State directs.

(14) In this article references to the personal representative of the deceased are to a person or persons who—

(a) is the lawful executor of the estate of the deceased; or

(b) is the lawful administrator of the estate of the deceased.

(15) The removal and subsequent treatment 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.

(16) Any jurisdiction or function conferred on the county court by this article may be carried out in accordance with any directions which may be given by the Secretary of State.

(17) 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 25 (compulsory acquisition of rights etc.), article 32 (temporary use of land for carrying out the authorised development) and article 42 (Crown rights).

(**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).

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) 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 156 (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 is to be served under Part 1 (compulsory purchase under acquisition of Land Act of 1946) of the 1965 Act; and

(b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act (as applied by article 27 (application of the 1981 Act)).

(2) The authority conferred by article 32 (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 also 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 pursuant to article 8(2) (consent to transfer benefit of this Order).

(3) The powers of paragraph (1) may also be exercised by a statutory undertaker in any case where the undertaker transfers the power to a statutory undertaker and the Secretary of State's consent is not required pursuant to article 8(6) and the undertaker has notified the Secretary of State and, where the transfer or grant relates to the STDC area, STDC and Teesworks Limited in writing pursuant to article 8(7).

(4) Where in consequence of paragraph (2) or (3), 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.

(5) In the case of the Order land specified in column (1) of Table 9 in Schedule 9 (land in which new rights etc. may be acquired) and which is shaded blue on the land plans 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 9 in relation to that land.

(6) 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.

(7) 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 10 (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.

(8) Schedule 10 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.

(9) For the purposes of this article and Schedule 9 "statutory undertaker" includes any person who has apparatus within the Order limits.

(10) 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.

(11) Nothing in this article permits the undertaker to acquire or create rights or impose restrictive covenants in land specified in Schedule 11 (land of which temporary possession may be taken).

(12) This article is subject to article 42 (Crown 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 restrictions 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 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 34 (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 (notices after execution of declaration), in subsection (1)(b) 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 (constructive notice to treat), in subsection (1)(a), 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 that Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (as modified by article 30 (modification of Part 1 of the 1965 Act) to the compulsory acquisition of land under this Order).

Acquisition of subsoil or 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.

Special category land and replacement special category land

29.—(1) The undertaker must not exercise the relevant Order powers in respect of the cowpen bewley special category land until the undertaker has—

(a) exercised a relevant Order power over or has taken possession of the replacement special category land;

(b) obtained the approval of the relevant planning authority for a scheme for the layout and management of the replacement special category land; and

(c) notified the relevant planning authority of the extent of the cowpen bewley special category land (acquisition) and cowpen bewley special category land (rights) that paragraph (2) is to operate against when all of the requirements in this paragraph have been satisfied.

(2) On the requirements of paragraph (1) being satisfied—

(a) the extent of the cowpen bewley special category land (acquisition) that was notified to the relevant planning authority under paragraph (1)(c) vests in the undertaker and is discharged from all rights, trusts and incidents to which it was previously subject, save for any rights held or apparatus owned or operated by statutory undertakers; and

(b) the rights and restrictive covenants set out in column (2) of Table 1 vest for the benefit of the undertaker in respect of the extent of each plot of the cowpen bewley special category land (rights) that was notified to the relevant planning authority under paragraph (1)(c), which are also discharged from all rights, trusts and incidents to which it was previously subject insofar as they are inconsistent with the new rights and restrictive covenants vested for the benefit of the undertaker, save for any rights held or apparatus owned or operated by statutory undertakers.

Table 1

(1) Plot numbers shown on Special Category Land and Crown Land Plans	*(2) The rights over land which are acquired and the restrictive covenants which are imposed*
4/4,	For and in connection with the Work No. 10A.2 access and highway improvements, the right to create, maintain 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, machinery and equipment, at all times and 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.
4/5, 4/6, 4/25, 4/28, 4/29	For and in connection with the Work No. 6B.2 infrastructure, the right to create, maintain 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, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 6B.2 infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 6B.2 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. 6B.2 infrastructure, or interfere with or obstruct access from and to the Work No. 6B.2 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.
4/30	For and in connection with the Work No. 6A.2 infrastructure, the right to create, maintain 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, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 6A.2 infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 6A.2 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. 6A.2 infrastructure, or interfere with or obstruct access from and to the Work No. 6A.2 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.

(3) The undertaker must lay out and provide the replacement special category land in accordance with the scheme approved under paragraph (1) and on the date on which the replacement special category land is laid out and provided in accordance with the scheme requirements at paragraph (1), the council replacement special category land vests in STBC and the NGN replacement special category land vests in NGN, and in each case the replacement special category land is to be subject to the same rights, trusts and incidents as attached to the cowpen bewley special category land.

(4) On the date on which the replacement special category land vests in accordance with paragraph (3), the replacement special category land access rights vest in the undertaker, STBC and NGN.

(5) On the date on which the replacement special category land vests in accordance with paragraph (3), the replacement special category land rights vest in the undertaker and STBC, unless otherwise agreed between the undertaker, STBC and NGN.

(6) The undertaker, STBC and NGN may make an agreement referred to in paragraph (5) before or after the date on which the replacement special category land vests in accordance with paragraph (3).

(7) The date on which the replacement special category land is laid out and provided in accordance with the scheme requirements pursuant to paragraphs (1) and (3) must be no later than 24 months from the undertaker taking possession of the cowpen bewley special category land, unless otherwise agreed with the relevant planning authority.

(8) On the exercise of the relevant Order powers, the rights to be acquired over the coatham marsh special category land are to vest in the undertaker and 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.

(9) So much of the special category land as is required for the purposes of exercising the powers pursuant to article 32 (temporary use of land for carrying out the authorised development) or article 33 (temporary use of land for maintaining the authorised development) 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 article 32 or article 33.

(10) In this article, "relevant Order powers" means articles 22 (compulsory acquisition of land), 25 (compulsory acquisition of rights etc.) and 32 (temporary use of land for carrying out the authorised development).

Modification of Part 1 of the 1965 Act

30.—(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 H2Teesside Order 202*".

(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 H2Teesside Order 202*, 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 32 (temporary use of land for carrying out the authorised development) or article 33 (temporary use of land for maintaining the authorised development) of the H2Teesside Order 202*.".

Rights under or over streets

31.—(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 to be 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

32.—(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 10 in Schedule 11 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that Table 10;

(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 10 in Schedule 11; 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 11 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—

(a) replace a building or any debris removed under this article; or

(b) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development.

(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 9 (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 31 (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 11.

(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 necessary for the authorised development within the Order land.

Temporary use of land for maintaining the authorised development

33.—(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.

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

(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, but the undertaker is not to be required to replace a building or any debris removed under this article.

(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.

Statutory undertakers

34. Subject to the provisions of Schedules 16 to 44 (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

35. 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 closure of streets and public rights of way) 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 Schedules 16 to 44 (protective provisions), as if this Order had not been made.

Recovery of costs of new connections

36.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 34 (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 34 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 35 (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

37. Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981 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.

(**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).

PART 6

MISCELLANEOUS AND GENERAL

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; and

(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, 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.

(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.

Planning permission, etc.

39.—(1) It does not constitute a breach of the terms of this Order, if, following the coming into force of this Order, any development is carried out or used within the Order limits in accordance with any planning permission granted (either prior to or after the Order has come into force) under the powers conferred by the 1990 Act, any development consent granted (either prior to or after the Order has come into force) under the powers conferred by the 2008 Act or other equivalent consent.

(2) 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.

(3) To the extent any development carried out or used pursuant to a planning permission granted under section 57 (requirement of planning permission) of the 1990 Act, any development consent granted (either prior to or after the Order has come into force) under the powers conferred by the 2008 Act or other equivalent consent, or compliance with any conditions or requirements of that permission or consent is inconsistent with the exercise of any power or right under this Order or the authorised development—

(a) that inconsistency is to be disregarded for the purposes of establishing whether any development which is the subject matter of that permission or consent is capable of physical implementation; and

(b) in respect of that inconsistency, no enforcement action under the 1990 Act may be taken in relation to development carried out or used pursuant to that permission or consent whether inside or outside the Order limits.

(4) Any development or any part of a development within the Order limits which is constructed or used under the authority of a permission granted under section 57 of the 1990 Act including permissions falling under paragraph (1) or (3) or otherwise, is deemed not to be a

breach of, or inconsistent with, this Order and does not prevent the authorised development being carried out or used or any other power or right under this Order being exercised.

(5) Any works carried out under this Order are deemed to be work requiring development consent under section 31 (when development consent is required) of the 2008 Act for the purpose of paragraph 7(3) of Schedule 3 to the Flood and Water Management Act 2010(**a**).

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(**b**) 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—

(a) the defendant shows that the nuisance—

(i) 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(**c**); or

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

(b) 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. Schedules 16 to 46 (protective provisions) have effect.

Crown rights

42.—(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 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.

(**a**) 2010 c.29.

(**b**) 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.

(**c**) 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).

(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

43.—(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 12 (appeals to the Secretary of State) has effect.

(4) 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.

(5) Save for applications made pursuant to Schedule 13 and 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.

(6) 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 (5).

Certification of plans etc.

44.—(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 11 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

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

(a) by post; and

(b) subject to article 3 (electronic communications) 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

46.—(1) 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 is required under any provision of this Order is not subject to arbitration.

Funding for compulsory acquisition compensation

47.—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to the relevant 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 the relevant Order land in respect of which a power is to be exercised; or

(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 31 (rights under or over streets);

(f) article 32 (temporary use of land for carrying out the authorised development);

(g) article 33 (temporary use of land for maintaining the authorised development); and

(h) article 34 (statutory undertakers).

(**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.

(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.

(5) In this article "the relevant Order land" means the part of the Order land in relation to which the undertaker proposes to exercise the powers referred to in paragraph (2).

Interface with anglo american permit

48.—(1) The carrying out of an authorised activity shall not constitute a breach of, or non-compliance with, the anglo american permit.

(2) In this article—

"anglo american permit" means environmental permit number FB3601GS; and

"authorised activity" means any works or activities authorised by this Order, works carried out in connection with the authorised development, or the exercise by the undertaker of functions conferred by this Order.

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

Name

Address

Title

Date

Department for Energy Security and Net Zero

SCHEDULES

SCHEDULE 1

Article 2

AUTHORISED DEVELOPMENT

In the Borough of Redcar and Cleveland, the Borough of Stockton-on-Tees and the Borough of Hartlepool a development which is to be treated as development for which development consent is required by direction under sections 35(1) and 35ZA of the 2008 Act, and associated development under section 115(1)(b) of that Act, comprising—

Work No. 1 – a carbon capture enabled hydrogen production facility of up to 1.2 Gigawatt Thermal (GWth) lower heating value, comprising—

(a) **Work No. 1A.1** – one carbon capture enabled hydrogen unit of 600 MW, which is designed to capture a minimum rate of 95% of the carbon dioxide emissions of this hydrogen unit operating at full load, comprising—

(i) compressors;

(ii) pre-treatment facilities including heaters and saturators;

(iii) start-up fired heater;

(iv) reformers;

(v) shift reactors;

(vi) carbon dioxide absorber;

(vii) amine regeneration system;

(viii) methanator;

(ix) hydrogen drying unit;

(x) pressure swing adsorber;

(xi) cooling water circulation system;

(xii) steam system;

(xiii) auxiliary boiler;

(xiv) steam turbine generator;

(xv) flare;

(xvi) fire water system; and

(xvii) emergency diesel generator.

(b) **Work No. 1A.2** – a second carbon capture enabled hydrogen unit of 600 MW, which is designed to capture a minimum rate of 95% of the carbon dioxide emissions of this hydrogen unit operating at full load, comprising—

(i) compressors;

(ii) pre-treatment facilities including heaters and saturators;

(iii) start-up fired heater;

(iv) reformers;

(v) shift reactors;

(vi) carbon dioxide absorber;

(vii) amine regeneration system;

(viii) methanator;

(ix) hydrogen drying unit;

(x) pressure swing adsorber;

(xi) air separation units;

(xii) cooling water circulation system;

(xiii) steam system;

(xiv) auxiliary boiler;

(xv) steam turbine generator;

(xvi) flare;

(xvii) fire water system; and

(xviii) emergency diesel generator.

(c) **Work No. 1B.1** – water connections and water and effluent treatment plant for Work Nos. 1A.1 and 1A.2, comprising—

(i) process water treatment plant;

(ii) demineralisation plant;

(iii) bio-treatment plant;

(iv) effluent treatment plant; and

(v) water networks, pipework, cables, racks, infrastructure, instrumentation and utilities including connections between Work Nos. 1A.1 and 1A.2 and parts of Work Nos. 4 and 5.

(d) **Work No. 1B.2** – water connections and water and effluent treatment plant for Work No. 1A.2, comprising—

(i) process water treatment plant;

(ii) demineralisation plant;

(iii) bio-treatment plant;

(iv) effluent treatment plant; and

(v) water networks, pipework, cables, racks, infrastructure, instrumentation and utilities including connections between Work No. 1A.2 and parts of Work Nos. 4 and 5.

(e) **Work No. 1C** – above ground pressurised hydrogen storage including high pressure compression and let down facilities.

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

(i) administration and control buildings and gatehouse; and

(ii) workshop and stores buildings;

(g) **Work No. 1E.1** – connections and ancillary works in connection with Work Nos. 1A.1, 1A.2, 1B.1, 1B.2, 1C and 1D—

(i) above ground installations;

(ii) ancillary plant, buildings, enclosures, structures and substations;

(iii) pipework, pipe runs and pipe racks;

(iv) firefighting equipment, buildings and distribution pipework;

(v) lubrication oils storage facilities;

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

(vii) chemical storage including tanks;

(viii) nitrogen storage facilities;

(ix) carbon dioxide vents; and

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

(h) **Work No. 1E.2** – connections and ancillary works in connection with Work Nos. 1A.2 and 1B.2—

(i) above ground installations;

(ii) ancillary plant, buildings, enclosures, structures and substations;

(iii) pipework, pipe runs and pipe racks;

(iv) firefighting equipment, buildings and distribution pipework;

(v) lubrication oils storage facilities;

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

(vii) chemical storage including tanks;

(viii) nitrogen storage facilities; and

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

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

(a) **Work No. 2A** – high pressure gas pipelines, connecting Work No. 2B to the above ground installation at Work Nos. 1E.1 and 1E.2, comprising—

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

(ii) cathodic protection posts;

(iii) marker posts; and

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

(b) **Work No. 2B** – above ground installations relating to Work No. 2A, 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; and

(c) **Work No. 2C** – works to bring back to use and recommission an existing high pressure gas pipeline of up to 600 millimetres nominal bore diameter, connecting Work No. 2B to the above ground installation at an existing gas supply network, comprising—

(i) cathodic protection posts;

(ii) marker posts; and

(iii) electrical supply cables, transformers and control systems cables.

Work No. 3 – electrical connection works for the import of electricity from electricity transmission networks to Work Nos. 1E.1 and 1E.2, comprising—

(a) **Work No. 3A** – electrical connection works comprising underground electrical cables running from Work Nos. 1E.1 and 1E.2 to Work Nos. 3B.1, 3B.2 and 3B.3.

(b) **Work No. 3B.1** – above ground installation connecting Work No. 3A to Pellet-Sinter substation, including above ground works within the substation;

(c) **Work No. 3B.2** – above ground installation connecting Work No. 3A to Tod Point substation, including above ground works within the substation; and

(d) **Work No. 3B.3** – above ground installation connecting Work No. 3A to a new substation.

Work No. 4 – water supply connection works to provide cooling and make-up water to Work Nos. 1B.1 and 1B.2, 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 Nos. 1B.1 and 1B.2 comprising pipelines connecting to existing wastewater infrastructure.

Work No. 6 – a hydrogen distribution network, being works for the transport of hydrogen gas from Work Nos. 1A.1 and 1A.2, comprising—

(a) **Work No. 6A.1** – underground and overground pipelines of up to 600mm nominal bore diameter for the transport of hydrogen gas connecting to Work No. 6B.1;

(b) **Work No. 6A.2** – underground and overground pipelines of up to 600mm nominal bore diameter for the transport of hydrogen gas connecting to Work No. 6B.2;

(c) **Work No. 6B.1** – above ground installations connecting Work No. 6A.1 to:

(i) existing gas transmission system and gas distribution networks including tunnel head; and

(ii) tie-in points to connect to premises or land to which a supply of hydrogen is to be provided; and

(d) Work No. 6B.2 – above ground installation connecting Work No. 6A.2 to Cowpen Bewley Natural Gas AGI.

Work No. 7 – a carbon dioxide export pipeline, comprising—

(a) **Work No. 7A** – an overground or underground pipeline of up to 600 millimetres nominal bore diameter and associated power and fibre-optic cables connecting the above ground installation at Work Nos. 1E.1 and 1E.2 to Work No. 7B; and

(b) **Work No. 7B** – above ground installation connection between Work No. 7A and a carbon dioxide pipeline network.

Work No. 8 – gas connections, being works for the transport of oxygen and nitrogen to Work Nos. 1E.1 and 1E.2, comprising an oxygen gas connection comprising of underground and or overground pipelines and a nitrogen gas connection comprising of underground and or overground pipelines.

Work No. 9 – temporary construction compounds comprising laydown and open storage areas, contractor offices and 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.

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

(a) **Work No. 10A.1** – access and highway improvements and use relating to Work Nos. 1, 2, 3, 4, 5, 6A.1, 6B.1, 7, 8 and 10; and

(b) **Work No. 10A.2** – access and highway improvements and use relating to Work Nos. 6A.2 and 6B.2.

Work No. 11 – replacement land relating to Work Nos. 6A.2 and 6B.2, comprising works for habitat creation, reinstatement, enhancement and management including landscaping, provision for vehicle parking and access, planting, and means of enclosure.

In connection with and in addition to Work Nos. 1 to 11, further ancillary development comprising such other works or operations for the purposes of or in connection with the construction, operation and maintenance of the authorised development but only within the Order limits and insofar as they are unlikely to give rise to any materially new or materially different environmental effects which are worse than those assessed in 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 compounds, including—

(i) materials and plant storage and laydown areas;

(ii) contractor facilities;

(iii) generators;

(iv) concrete batching facilities;

(v) vehicle and cycle parking facilities;

(vi) pedestrian and cycle routes and facilities;

(vii) offices and staff welfare facilities;

(viii) security fencing and gates;

(ix) external lighting;

(x) roadways and haul routes;

(xi) wheel wash facilities; and

(xii) 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

Articles 2 and 4

REQUIREMENTS

Commencement of the authorised development

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

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

(3) Notice of the intended date of final commissioning of Work No. 1A.1 must be given to the relevant planning authority no later than fourteen days prior to the date of final commissioning.

(4) Notice of the intended date of final commissioning of Work No. 1A.2 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, after consultation with STDC, approved by the relevant planning authority—

(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, cycle parking and routes, and pedestrian routes.

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

(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, after consultation with STDC, Sembcorp and the NSMP entities, approved by the relevant planning authority—

(a) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings and structures, and all of which must be no higher than 4 metres above ground level;

(b) hard standings; and

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

(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, after consultation with STDC and Sembcorp, approved by the relevant planning authority—

(a) the route and method of installation of the electrical cables and control system cables;

(b) works to create new or improve any existing substation 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 route and method of construction of the water supply pipelines for that part have been submitted to and, after consultation with STDC, approved by the relevant planning authority.

(6) No part of the authorised development comprised in Work No. 5 may commence, save for the permitted preliminary works, until details of the route and method of construction of any new wastewater pipelines for that part have been submitted to and, after consultation with STDC, approved by the relevant planning authority.

(7) No part of the authorised development comprised in Work Nos. 6A.1 and 6A.2 may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, after consultation with STDC and Sembcorp, approved by the relevant planning authority—

(a) the route and method of installation of the hydrogen distribution network 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 Nos. 6B.1 and 6B.2 may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, after consultation with STDC and Sembcorp, approved by the relevant planning authority—

(a) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings and structures of the hydrogen distribution network above ground installations, and all of which must be no higher than 4 metres above ground level;

(b) hard standings; and

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

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

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

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

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

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

(b) hard standings; and

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

(11) 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, after consultation with STDC and Sembcorp, approved by the relevant planning authority—

(a) the route and method of installation of the oxygen and nitrogen pipelines and any electrical supply, telemetry and other apparatus; and

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

(12) Work Nos. 1, 2, 3, 4, 5, 6, 7 and 8 must be carried out in accordance with the design parameters in Schedule 15 (design parameters) and carried out in accordance with the approved details, unless otherwise agreed with the relevant planning authority.

Landscape and biodiversity management plan

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

(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 the authorised development may be commissioned until a landscape and biodiversity management plan for that part has been submitted to and, after consultation with STDC, approved by the relevant planning authority.

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

(a) implementation and management of any 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; and

(e) landscape and biodiversity management, maintenance and monitoring.

(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 substantial accordance with the outline landscape and biodiversity management plan; and

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

Public rights of way

5.—(1) No public rights of way may be temporarily diverted or closed until a management plan for the relevant section of the public right of way 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 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.

(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 23) 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 in that part (with the exception of the aviation warning lighting required by virtue of requirement 23) has been submitted to and approved by the relevant planning authority.

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

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

(5) The schemes submitted and approved pursuant to sub-paragraphs (1) and (2) must be implemented as approved unless otherwise agreed with the relevant planning authority.

Means of enclosure

7.—(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, after consultation with STDC, approved by the relevant planning authority.

(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

8.—(1) No part of Work No. 1 may be commissioned 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 scheme must be implemented as approved and must be maintained and operated throughout the operation of the relevant part of the authorised development.

Fire prevention

9.—(1) No part of Work No. 1 may commence, save for the permitted preliminary works, until a fire prevention method statement providing details of fire detection measures, fire suppression measures including measures to contain and treat water used to suppress any fire 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 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 suppression measures 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.

Drainage

10.—(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 substantial accordance with the construction environmental management plan and the surface water drainage strategy to ensure that the systems remain fully operational throughout the construction of the relevant parts of the authorised development have, for that part, been submitted to, and after consultation with the Environment Agency, the lead local flood authority 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 water, process effluent and foul water drainage systems, including a water quality risk assessment and programme for their implementation and a surface water maintenance and monitoring plan, must be submitted to and, after consultation with the Environment Agency, the lead local flood authority and STDC, 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—

(a) be in substantial accordance with the mitigation measures set out in chapter 9 of the environmental statement, flood risk assessment, indicative surface water drainage plan, nutrient neutrality assessment and water framework directive assessment;

(b) in the case of the process effluent drainage system, provide that case 1B, as described in the nutrient neutrality assessment, is not to be used; and

(c) provide that amines are not disposed of via a licenced facility into the Teesmouth and Cleveland Coast Special Protection Area and Ramsar site.

(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 surface and foul water drainage systems.

Flood risk mitigation

11.—(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, the lead local flood authority 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, the lead local flood authority 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 the flood risk assessment.

(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) No part of the authorised development may be commissioned until the scheme for the mitigation of flood risk approved under sub-paragraph (3) has been implemented and a flood management plan has been submitted to, and after consultation with the Environment Agency, the lead local flood authority and STDC, approved by the relevant planning authority.

(7) The flood management plan approved pursuant to sub-paragraph (6) must be implemented and maintained 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

12.—(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, the preparation of facilities for the use of contractors and the provision of temporary means of enclosure and site security for construction (where no foundations are required), 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 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**);

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

(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 environmental risk assessment including a contaminated land conceptual site 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) Where a remediation strategy is required and approved under sub-paragraph (2)(c), following its implementation, 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.

(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 the authorised development 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 limits where the undertaker demonstrates to the relevant planning authority following consultation with the Environment Agency that the relevant part of the Order limits 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 limits 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

13.—(1) No part of the authorised development may commence until a written scheme of investigation for that part has been submitted to and approved by the relevant planning authority.

(2) The scheme submitted and approved must be in accordance with chapter 17 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 unless otherwise agreed with the relevant planning authority.

Protected species

14.—(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(**a**).

Construction environmental management plan

15.—(1) No part of the permitted preliminary works may be carried out until a permitted preliminary works construction environmental management plan for that part has been submitted to and, after consultation with STDC, approved by the relevant planning authority.

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

(2) The permitted preliminary works construction environmental management plan submitted must be in substantial accordance with the framework construction environmental management plan, to the extent that it is relevant to the permitted preliminary works.

(3) 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.

(4) The plan submitted and approved in sub-paragraph (3) must be in substantial accordance with the framework construction environmental management plan.

(5) 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.

(6) The relevant planning authority must not withhold its approval of a plan under sub-paragraph (3) on the basis that the proposed activities in the plan include 24-hour working, if the activities proposed to be subject to 24-hour working are consistent with those listed in the framework construction environmental management plan.

(7) No part of the authorised development may commence, save for the permitted preliminary works, unless the following plans for that part have been submitted to and, after consultation with the Environment Agency, Sembcorp and STDC, approved by the relevant planning authority—

(a) site waste management plan (produced in substantial accordance with the outline site waste management plan);

(b) water management plan (produced in substantial accordance with the outline water management plan);

(c) lighting strategy (construction) (produced in substantial accordance with the indicative lighting strategy (construction));

(d) soils management plan;

(e) pollution prevention plan;

(f) emergency response plan;

(g) construction dewatering strategy;

(h) flood risk management action plan;

(i) materials management plan;

(j) hazardous materials management plan, including an asbestos management plan;

(k) invasive plant species management plan;

(l) bird mitigation and monitoring plan (produced following consultation by the undertaker with Natural England);

(m) groundwater risk assessment;

(n) UXO emergency response plan;

(o) foundation works risk assessment;

(p) hydraulic fracture risk assessment;

(q) drilling method statement;

(r) HDD collapse clean-up plan; and

(s) a scheme for the notification of any significant construction impacts on local residents and for handling of any complaints received from local residents relating to construction impacts.

(8) The plans may be submitted under sub-paragraph (7) using a combination of any of the following methods—

(a) appended to the construction environmental management plan submitted and approved under sub-paragraph (3);

(b) submitted as separate, individual plans; or

(c) where a number of the related sub-sets of plans listed in sub-paragraph (7) have been merged into fewer documents as required and reasonably practicable to achieve the desired effect as set out in the framework construction environmental management plan.

(9) All construction works associated with the authorised development must be carried out in accordance with the plans approved under sub-paragraph (7) unless otherwise agreed with the relevant planning authority.

Protection of highway surfaces

16.—(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 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.

Extended planned shutdown maintenance period

17.—(1) Prior to the authorised development's first extended planned shutdown maintenance period, an environmental and traffic management plan for that period must be submitted and, after consultation with National Highways on matters relating to traffic management, approved by the relevant planning authority.

(2) The plan in sub-paragraph (1) must be implemented as approved unless otherwise agreed with the relevant planning authority.

(3) Prior to each subsequent extended planned shutdown maintenance period, a statement must be submitted to the relevant planning authority to either confirm no changes or notify changes to environmental and traffic management plan submitted in sub-paragraph (1).

(4) If the statement in sub-paragraph (3) is a notification of changes to the plan, then these changes must be approved, after consultation with National Highways to the extent that the changes relate to traffic management, by the relevant planning authority before that extended planned shutdown maintenance period can begin.

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, the relevant highway authority, the NSMP entities and STDC, approved by the relevant planning authority.

(2) The plan submitted and approved must be in substantial accordance with 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;

(f) details of how the undertaker will seek to engage with the undertaker as defined in the Net Zero Teesside Order 2024 and the developer of HyGreen Teesside to manage cumulative construction transport impacts;

(g) details of the monitoring to be undertaken; and

(h) a construction workers travel plan (which must be substantially in accordance with the framework construction workers travel 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 hours

19.—(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) do 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 20;

(b) are carried out with the prior approval of the relevant planning authority, including as part of a construction environmental management plan approved under requirement 15; 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, including as part of a construction traffic management plan approved under requirement 18.

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

(a) mobilisation and de-mobilisation periods from 0600 to 0700 and from 1900 to 2000 Monday to Friday;

(b) mobilisation and de-mobilisation periods from 0600 to 0700 and from 1300 to 1400 on a Saturday; or

(c) maintenance at any time of plant and machinery engaged in the construction of the authorised development where such activities do not exceed a noise limit measured at the Order limits agreed with the relevant planning authority in accordance with Requirement 20.

Control of noise - construction

20.—(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.

(2) The scheme submitted and approved must 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.

Piling and penetrative foundation design

21.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a written piling and penetrative foundation design method statement, informed by a risk assessment for that part, has been submitted to and, after consultation with the Environment Agency, Natural England 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.

Restoration of land used temporarily for construction

22.—(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 only for construction must, for each relevant Work No. of the authorised development, be submitted to and, after consultation with STDC, approved by the relevant planning authority.

(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 environmental risk assessment and any further ground investigation reports and groundwater monitoring required by requirement 12(2)(f).

Aviation warning lighting

23.—(1) No part of the authorised development comprised within Work No. 1 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

24. No part of Work No. 1 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

25.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until the undertaker has established, or has convened jointly with either both or one of the undertaker as defined in The Net Zero Teesside Order 2024 and the promoter of HyGreen Teesside, a group to liaise with local residents and organisations about matters relating to the authorised development (a 'local liaison group').

(2) The undertaker must invite the relevant planning authority, STDC, the NSMP 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 and its contractors; 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.

(5) In this requirement, "convened" means either the undertaker establishing a new group or becoming part of an existing local liaison group established pursuant to requirement 29 of The Net Zero Teesside Order 2024.

Employment, skills and training plan

26.—(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 authority.

(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.

(5) The plans submitted pursuant to sub-paragraphs (1) and (3) may be submitted jointly with either both or one of the undertaker as defined in The Net Zero Teesside Order 2024 and the promoter of HyGreen Teesside.

Carbon dioxide transport and storage

27.—(1) No part of the authorised development other than 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; and

(b) that an environmental permit has been granted for Work No. 1A.1.

Decommissioning

28.—(1) Within 12 months of the date that a Work No. permanently ceases operation (or such longer period as may be agreed in writing with the relevant planning authority), the undertaker must submit to the relevant planning authority for its approval (following consultation with the Environment Agency, Sembcorp, CF Fertilisers, Anglo American and, on matters relating to traffic management arrangements pursuant to sub-paragraph (6)(h), National Highways)—

(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) Prior to the start of decommissioning works for any part of the authorised development, the undertaker must carry out surveys to determine the presence or absence of protected species, notable species and invasive non-native species in that part of the authorised development to inform the plan submitted pursuant to sub-paragraph (1)(a).

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

(a) approved the plan 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).

(4) 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 paragraph 5(1) of Schedule 13 (procedure for discharge of requirements).

(5) Where the undertaker has submitted an appeal pursuant to paragraph 5(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 receiving 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.

(6) 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 plan;

(h) traffic management arrangements during any demolition, removal and remediation works;

(i) the monitoring and control of noise;

(j) waste management measures required; and

(k) how the undertaker has applied the waste hierarchy.

(7) 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

29. 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

30.—(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 44 (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

31.—(1) Where the words "unless otherwise agreed by the relevant planning authority" appear in the above 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

32. 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.

Highway accesses

33.—(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 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 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.

Operational traffic management plan

34.—(1) No part of the authorised development may be commissioned until an operational traffic management plan has, for that part, been submitted to and, after consultation with National Highways, approved by the relevant planning authority.

(2) The plan submitted for approval under sub-paragraph (1) must include—

(a) information on the staff numbers and proposed shift times for the operational phase of the authorised development;

(b) an assessment of the impacts to the strategic road network on the basis of the information provided under paragraph (a);

(c) measures in relation to operational travel movements consistent with the principles of the measures set out in section 6.0 (travel plan measures) of the framework construction workers travel plan; and

(d) arrangements for monitoring operational traffic impacts.

SCHEDULE 3

Article 9

MODIFICATIONS TO AND AMENDMENTS OF THE YORK POTASH HARBOUR FACILITIES ORDER 2016

1. Article 34 is deleted and replaced with "Schedules 7 to 13 have effect".

2. After Schedule 12 insert new Schedule 13—

"SCHEDULE 13

FOR THE PROTECTION OF THE H2T UNDERTAKER

Interpretation

1. For the protection of the H2T Undertaker, the following provisions have effect, unless otherwise agreed in writing between the Parties.

2. The following definitions apply in 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;

"expert" means a person appointed pursuant to paragraph 12(b);

"H2T Apparatus" means the pipeline, cables, structures to be owned, occupied or maintained by the H2T Undertaker within the Shared Area;

"H2T Order" means the H2Teesside Order 202*;

"H2T Project" means the construction, operation or maintenance of the authorised development as is defined by the H2T Order;

"H2T Specified Works" means so much of the H2T Project as is within the Shared Area;

"H2T Undertaker" means the undertaker as defined by the H2T Order;

"Land Plans" means the land plans as defined by the H2T Order;

"Parties" means the H2T 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 as at the date of the H2T Order;

"Respective Projects" means the H2T 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 so far within the H2T Order limits;

"Shared Area Plan" means the plan which is certified as the H2 Teesside Anglo American Shared Area Plan by the Secretary of State under article 44 (certification of plans etc.) for the purposes of the H2T 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 H2T Undertaker is required under the provisions of this Schedule the undertaker must give at least 21 days written notice to the H2T 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 H2T 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 H2T Project it requires to be taken into account;

(c) the named point of contact for the H2T 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 H2T Undertaker pursuant to 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 H2T Undertaker.

(5) Wherever in this Schedule provision is made with respect to the agreement approval or consent of the H2T Undertaker, that approval or consent must be in writing and subject to such reasonable terms and conditions as the H2T 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 H2T Project (where the conditions proposed or any refusal relate to such matters, a reasoned explanation or other form of evidence will be provided by the H2T Undertaker to provide an understanding of the matters raised); and/or

(b) prevent the ability of the H2T Undertaker to have uninterrupted access to the H2T Project; and/or

(c) make regulatory compliance materially more difficult or expensive,

provided that before the H2T Undertaker can validly refuse consent for any of the reasons set out in sub-paragraphs (a) and (c) 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 H2T 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 H2T 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 H2T 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 14.

(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 H2T Undertaker by recorded delivery and addressed to Chris Daykin, BP Hydrogen & CCU, 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 chris.daykin@uk.bp.com and clare.haley@uk.bp.com.

(9) In the event that the H2T 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 H2T Undertaker written notice requiring the H2T Undertaker to give their decision within a further 28 days beginning with the date upon which the H2T 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 H2T Undertaker has failed to notify the undertaker of its decision the H2T 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 H2T Specified Works are or may be undertaken concurrently with the Specified Works within any of the Shared Area, the undertaker must—

(a) co-operate with the H2T Undertaker with a view to ensuring—

(i) the co-ordination of programming of all activities and the carrying out of works within the relevant Shared Area; and

(ii) that access for the purposes of the construction and operation of the H2T Project is maintained for the H2T 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 H2T Undertaker obtained pursuant to, and in accordance with, the provisions of paragraph 3.

(2) Where under paragraph 3(5) the H2T 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 H2T 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 the Specified Works 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 14(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 12.

(5) The undertaker must give to the H2T 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 H2T 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 H2T 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 H2T 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 H2T 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) above, the H2T 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 H2T Undertaker to the H2T Specified Works unless first agreed in writing by the H2T 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 H2T Specified Works is materially obstructed, the undertaker must provide such alternative means of access to the H2T Specified Works as will enable the H2T Undertaker to construct, maintain or operate the H2T 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 H2T Undertaker of the location of any part of its then existing or proposed H2T 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 H2T Specified Works without the prior written consent of the H2T 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 H2T 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); and

(e) article 15 (protective works to buildings).

(4) In the event that the H2T 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.

Constructability Principles

7.—(1) Subject to sub-paragraph (3), the undertaker must in respect of the Specified Works (unless otherwise agreed, or in an emergency relating to potential death or serious injury, or where it would render the H2T Specified Works, H2T Apparatus, Specified Works or Anglo American Apparatus unsafe, or put the undertaker in breach of its statutory duties)—

(a) carry out the Specified Works in such a way that will not prevent or interfere with the continued construction of the H2T Specified Works, or the maintenance or operation of the H2T Apparatus unless the action leading to such prevention or interference has the prior written consent of H2T 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 H2T Undertaker in respect of any H2T Apparatus will be of adequate specification to bear the loads;

(c) prior to the carrying out 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 H2T Undertaker and obtain agreement thereof from the H2T Undertaker (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 7;

(ii) provide a copy to the H2T Undertaker any relevant construction environmental management plan approved under Requirement 6 which relate to construction activities in the Shared Area;

(iii) where applicable, confirm to the H2T Undertaker in writing the identity of the client for the purposes of the relevant Construction Design and Management Regulations applicable from time to time; and

(iv) at all times construct the Specified Works in compliance with the relevant approved construction traffic and access management plan;

(d) update on a monthly basis the construction programme approved under sub-paragraph (c)(i) and supply a copy of the updated programme to the H2T Undertaker every month;

(e) notify the H2T Undertaker of any incidence 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;

(f) report to the H2T Undertaker of any environmental incidents which occur as a consequence of or are found in association with the carrying out of the Specified Works including the identification of contamination or hazards to construction;

(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 or if required by the H2T Undertaker earlier than three months of the date of completion, providing reasonable information

regarding the layout of the Specified Works in the shared area in question, subject to the H2T Undertaker providing reasonable notice to the undertaker;

(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 H2T Undertaker 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;

(i) in respect of land in which the undertaker 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 H2T Specified Works;

(j) obtain the prior written consent of the H2T Undertaker for the use of any re-cycled aggregate material within the Shared Area;

(k) prior to carrying out any works in plots 13/1, 13/2 and 13/3 of the Land Plans and adjacent waterside, obtain the H2T Undertaker's approval for such works, such approval not to be unreasonably withheld or delayed and will consider (l); and

(l) ensure the H2T Undertaker has unhindered land and waterside access (as applicable) to plots 13/1, 13/2 and 13/3 of the Land Plans, including the ability to berth and/or moor vessels to the existing infrastructure.

(2) Any spoil from the H2T 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 the event that the H2T Undertaker notifies the undertaker in writing that the H2T Undertaker will not construct part of the H2T Specified Works ("H2T Abandoned Works"), the undertaker can construct, operate and maintain the Specified Works without regard to and without complying with paragraphs 7(1) and 7(2) insofar as those paragraphs apply to the H2T Abandoned Works.

(4) In considering a request for any consent under the provisions of this Schedule, the H2T 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)(i) (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 H2T 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 H2T 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 H2T 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 H2T Undertaker.

(5) In considering any request for consent or approval under this Schedule, the H2T Undertaker must not refuse consent for details that are consistent with those approved under sub-paragraph (2) unless the H2T 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 authorised development or the H2T Project.

Miscellaneous provisions

9.—(1) The undertaker and the H2T 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 H2T Undertaker the reasonable expenses incurred by the H2T 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 H2T 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 H2T Apparatus used in connection with the H2T Specified Works or damage is caused to any part of the H2T Specified Works or there is any interruption in any service provided, or the operations of the H2T Undertaker, or in the supply of any goods, by the H2T Undertaker, the undertaker must—

(a) bear and pay the costs reasonably incurred by H2T Undertaker in making good such damage or restoring the service, operations or supply; and

(b) compensate the H2T Undertaker for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the H2T 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 the H2T Undertaker, its officers, employees, servants, contractors or agents; or

(b) any indirect or consequential loss or loss of profits by the H2T Undertaker.

(3) The H2T Undertaker 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 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 subparagraph (3) it must—

(a) keep the H2T Undertaker fully informed of the developments and material elements of the proceedings;

(b) take account of the views of the H2T Undertaker before taking any action in relation to the claim;

(c) not bring the name of the H2T Undertaker 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 the H2T Undertaker such consent not to be unreasonably withheld or delayed

(5) The H2T 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 H2T 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).

(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 the H2T Undertaker has not used its reasonable endeavours to mitigate and/or minimise that claim accordance with sub-paragraph (5).

(7) The fact that any work or thing has been executed or done with the consent of the H2T Undertaker and in accordance with any conditions or restrictions prescribed by the H2T Undertaker or in accordance with any plans approved by the H2T Undertaker or to its satisfaction or in accordance with any directions or award of any expert appointed pursuant to paragraph 12 does not relieve the undertaker from any liability under this paragraph.

(8) The undertaker shall only be liable under this paragraph 10 for claims reasonably incurred by the H2T Undertaker.

Dispute resolution

11. Article 40 (arbitration) does not apply to provisions of this Schedule.

12. Any difference in relation to the provisions in this Schedule must be referred to—

(a) a meeting of BP Vice President Hydrogen and Carbon Capture and Storage in the United Kingdom and the Project Manager, Anglo American Woodsmith Mine and the Company Secretary of Anglo American 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 H2T Undertaker and the undertaker or, in the absence of agreement identified by the President of the Law Society, who must be sought to be appointed within 28 days of the notification of the dispute.

13. The fees of the expert appointed pursuant to paragraph 12(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.

14. 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.

15. The expert must consider where relevant—

(a) the development outcomes sought by the H2T Undertaker and the undertaker;

(b) the ability of the H2T 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 H2T Order or the Order, the H2T Undertaker's or the undertaker's outcomes could be achieved in any alternative manner without the H2T Specified Works being materially compromised in terms of increased cost or increased length of programme; and

(e) any other important and relevant considerations.

16. 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 Law Society.".

SCHEDULE 4

Articles 10, 11 and 14

STREETS SUBJECT TO STREET WORKS

Table 2

(1) *Area*	*(2)* *Street subject to street works*	*(3)* *Description of the street works*
In the Borough of Stockton-on-Tees	Unnamed road extending from Wolviston Back Lane to A1185 between Billingham Cemetery and Railway linking Billingham and Seaton Carew	Works for the improvement of the access at the point marked A1 and A1a on sheets 1 and 2 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Unnamed road extending from Wolviston Back Lane to A1185 between Billingham Cemetery and Railway linking Billingham and Seaton Carew	Works for the installation of a new access at the point marked A2 and A2a on sheets 1 and 2 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Unnamed road extending from Wolviston Back Lane to A1185 between Billingham Cemetery and Railway linking Billingham and Seaton Carew	Works for the installation of a new access at the point marked A3 and A3a on sheets 1 and 2 of the access and rights of way plans
In the Borough of Stockton-on-Tees	A1185	Works for the improvement of the access at the point marked B1 and B1a on sheets 1 and 2 of the access and rights of way plans
In the Borough of Stockton-on-Tees	A1185	Works for the improvement of the access at the point marked B2 and B2a on sheets 2 and 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	A1185	Works for the improvement of the access at the point marked B3 and B3a on sheets 2 and 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	A1185	Works for the improvement of the access at the point marked B4 and B4a on sheets 2 and 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Tees Road (A178)	Works for the improvement of the access at the point marked C1 and C1a on sheet 5 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178)	Works for the improvement of the access at the point marked D1 and D1a on sheet 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178)	Works for the improvement of the access at the point marked D2 and D2a on sheet 4 of the

		access and right of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178)	Works for the improvement of the access at the point marked D3 and D3a on sheet 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178)	Works for the improvement of the access at the point marked D4 and D4a on sheet 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178)	Works for the improvement of the access at the point marked D5 on sheet 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road	Pipeline works beneath the width of the highways for the proposed pipeline crossing between the points X and X1 on sheet 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road	Works for the improvement of the access at the point marked E2 and E2a on sheet 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road	Works for the improvement of the access at the point marked E3 and E3a on sheet 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road	Works for the improvement of the access at the point marked E4 on sheet 6 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road	Works for the installation of a new access at the point marked E5 on sheet 6 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road	Works for the improvement of the access at the point marked E6 on sheet 7 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road	Works for the installation of a new access at the point marked E7 on sheet 6 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Huntsman Drive	Works for the improvement of the access at the point marked F1 on sheet 6 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Cowpen Bewley Road	Works for the improvement of the access at the point marked G1 and G1a on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Cowpen Bewley Road	Works for the improvement of the access at the point marked G2 on sheet 3 of the access and rights of way plans

In the Borough of Stockton-on-Tees	Nelson Avenue	Works for the improvement of the access at the point marked H1 and H1a on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Nelson Avenue	Works for the improvement of the access at the point marked H2 on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Belasis Avenue (B1275)	Works for the installation of a new access at the point marked I1 and I1a on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Belasis Avenue (B1275)	Works for the improvement of the access at the point marked I2 on sheet 3 of the access and rights of way plans
In the Borough of Redcar and Cleveland	Trunk Road (A1085)	Works for the improvement of the access at the point marked K1 on sheet 9 of the access and rights of way plans
In the Borough of Stockton-on-Tees	New Road	Pipeline works above the width of the highway for the proposed pipeline crossing at the point marked L1 on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Tees Road (A178)	Works for the improvement of the access at the point marked M1 and M1a on sheet 5 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 3

(1) *Area*	*(2)* *Street*	*(3)* *Description of relevant part of access*
In the Borough of Stockton-on-Tees	Unnamed road extending from Wolviston Back Lane to A1185 between Billingham Cemetery and Railway linking Billingham and Seaton Carew / unnamed private track	That part of the access cross-hatched in blue at the point marked A1a on sheets 1 and 2 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Unnamed road extending from Wolviston Back Lane to A1185 between Billingham Cemetery and Railway linking Billingham and Seaton Carew / unnamed private track	That part of the access cross-hatched in blue at the point marked A2a on sheets 1 and 2 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Unnamed road extending from Wolviston Back Lane to A1185 between Billingham Cemetery and Railway linking Billingham and Seaton Carew / unnamed private track	That part of the access cross-hatched in blue at the point marked A3a on sheets 1 and 2 of the access and rights of way plans
In the Borough of Stockton-on-Tees	A1185 / Cowpen Lane	That part of the access cross-hatched in blue at the point marked B1a on sheets 1 and 2 of the access and rights of way plans
In the Borough of Stockton-on-Tees	A1185 / Saltholme Power Station private access track	That part of the access cross-hatched in blue at the point marked B2a on sheets 2 and 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	A1185 / Saltholme Substation private access track	That part of the access cross-hatched in blue at the point marked B3a on sheets 2 and 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	A1185 / unnamed private track	That part of the access cross-hatched in blue at the point marked B4a on sheets 2 and 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Tees Road (A178) / PD Teesport Ltd private access	That part of the access cross-hatched in blue at the point

	track	marked C1a on sheet 5 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178) / unnamed private track	That part of the access cross-hatched in blue at the point marked D1a on sheet 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178) / unnamed private track	That part of the access cross-hatched in blue at the point marked D2a on sheet 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178) / Sembcorp Linkline Corridors private access track	That part of the access cross-hatched in blue at the point marked D3a on sheet 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178) / unnamed private track	That part of the access cross-hatched in blue at the point marked D4a on sheet 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road / new private track	That part of the access cross-hatched in blue at the point marked E2 on sheet 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road / new private track	That part of the access cross-hatched in blue at the point marked E3a on sheet 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Cowpen Bewley Road / unnamed private track	That part of the access cross-hatched in blue at the point marked G1a on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Nelson Avenue / unnamed private track	That part of the access cross-hatched in blue at the point marked H1a on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Belasis Avenue (B1275) / unnamed private track	That part of the access cross-hatched in blue at the point marked I1a on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Tees Road (A178) / PD Teesport Ltd private access track	That part of the access cross-hatched in blue at the point marked M1a on sheet 5 of the access and rights of way plans

PART 2

THOSE PARTS OF THE ACCESSES TO BE MAINTAINED BY THE STREET AUTHORITY

Table 4

(1) *Area*	*(2)* *Street*	*(3)* *Description of relevant part of access*
In the Borough of Stockton-on-Tees	Unnamed road extending from Wolviston Back Lane to	That part of the access cross-hatched in red at the point

	A1185 between Billingham Cemetery and Railway linking Billingham and Seaton Carew / unnamed private track	marked A1 on sheets 1 and 2 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Unnamed road extending from Wolviston Back Lane to A1185 between Billingham Cemetery and Railway linking Billingham and Seaton Carew / unnamed private track	That part of the access cross-hatched in red at the point marked A2 on sheets 1 and 2 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Unnamed road extending from Wolviston Back Lane to A1185 between Billingham Cemetery and Railway linking Billingham and Seaton Carew / unnamed private track	That part of the access cross-hatched in red at the point marked A3 on sheets 1 and 2 of the access and rights of way plans
In the Borough of Stockton-on-Tees	A1185 / Cowpen Lane	That part of the access cross-hatched in red at the point marked B1 on sheets 1 and 2 of the access and rights of way plans
In the Borough of Stockton-on-Tees	A1185 / Saltholme Power Station private access track	That part of the access cross-hatched in red at the point marked B2 on sheets 2 and 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	A1185 / Saltholme Substation private access track	That part of the access cross-hatched in red at the point marked B3 on sheets 2 and 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	A1185 / unnamed private track	That part of the access cross-hatched in red at the point marked B4 on sheets 2 and 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Tees Road (A178) / PD Teesport Ltd private access track	That part of the access cross-hatched in red at the point marked C1 on sheet 5 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178) / unnamed private track	That part of the access cross-hatched in red at the point marked D1 on sheet 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178) / unnamed private track	That part of the access cross-hatched in red at the point marked D2 on sheet 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178) / Sembcorp Linkline Corridors private access track	That part of the access cross-hatched in red at the point marked D3 on sheet 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178) / unnamed private track	That part of the access cross-hatched in red at the point marked D4 on sheet 4 of the access and rights of way plans

In the Borough of Stockton-on-Tees	Seaton Carew Road (A178) / unnamed private track	That part of the access cross-hatched in red at the point marked D5 on sheet 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road / unnamed private track	That part of the access cross-hatched in red at the point marked E2 on sheet 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road / Sabic Brine Fields Site private access track	That part of the access cross-hatched in red at the point marked E3 on sheet 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road / Seal Sands Power Station private access track	That part of the access cross-hatched in red at the point marked E4 on sheet 6 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road / new private track	That part of the access cross-hatched in red at the point marked E5 on sheet 6 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road / unnamed private track	That part of the access cross-hatched in red at the point marked E6 on sheet 7 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road / new private track	That part of the access cross-hatched in red at the point marked E7 on sheet 6 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Huntsman Drive / unnamed private track	That part of the access cross-hatched in red at the point marked F1 on sheet 6 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Cowpen Bewley Road / unnamed private track	That part of the access cross-hatched in red at the point marked G1 on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Cowpen Bewley Road / unnamed private track	That part of the access cross-hatched in red at the point marked G2 on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Nelson Avenue / unnamed private track	That part of the access cross-hatched in red at the point marked H1 on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Nelson Avenue / unnamed private track	That part of the access cross-hatched in red at the point marked H2 on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Belasis Avenue (B1275) / unnamed private track	That part of the access cross-hatched in red at the point marked I1 on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Belasis Avenue (B1275) / unnamed private track	That part of the access cross-hatched in red at the point marked I2 on sheet 3 of the access and rights of way plans

In the Borough of Redcar and Cleveland	Trunk Road (A1085) / unnamed private track	That part of the access cross-hatched in red at the point marked K1 on sheet 9 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Tees Road (A178) / PD Teesport Ltd private access track	That part of the access cross-hatched in red at the point marked M1 on sheet 5 of the access and rights of way plans

SCHEDULE 6

Article 13

TEMPORARY CLOSURE OF STREETS AND PUBLIC RIGHTS OF WAY

PART 1

THOSE PARTS OF THE STREET TO BE TEMPORARILY CLOSED

Table 5

(1) *Area*	*(2)* *Street subject to temporary closure of use*	*(3)* *Extent of temporary closure of use of street*
In the Borough of Stockton-on-Tees	Unnamed road extending from Wolviston Back Lane to A1185 between Billingham Cemetery and Railway linking Billingham and Seaton Carew	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked AA and AB on sheets 1 and 2 of the access and rights of way plans
In the Borough of Stockton-on-Tees	A1185	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked BA and BB on sheets 1 and 2 of the access and rights of way plans
In the Borough of Stockton-on-Tees	A1185	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked BC and BD on sheets 2 and 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	A1185	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked BE and BF on sheets 2 and 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	A1185	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked BG and BH on sheets 2 and 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Tees Road (A178)	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked CA and CB on sheet 5

		of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178)	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked DA and DB on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178)	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked DC and DD on sheet 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked EA and EB on sheet 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked EC and ED on sheet 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked EE and EF on sheet 6 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked EG and EH on sheet 6 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked EI and EJ on sheet 7 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Huntsman Drive	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked FA and FB on sheet 6

		of the access and rights of way plans
In the Borough of Stockton-on-Tees	Cowpen Bewley Road	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked GA and GB on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Nelson Avenue	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked HA and HB on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Belasis Avenue (B1275)	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked IA and IB on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	New Road	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked LA and LB on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Tees Road (A178)	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked MA and MB on sheet 5 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Unnamed private track	Temporarily close, prohibit the use of, restrict the use of, alter or divert the private access between the points marked Z1 and Z2 on sheet 2 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Cowpen Lane	Temporarily close, prohibit the use of, restrict the use of, alter or divert the private access between the points marked Z3 and Z4 on sheet 2 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Saltholme Power Station private access track	Temporarily close, prohibit the use of, restrict the use of, alter or divert the private access between the points marked Z7 and Z8 on sheets 2 and 3 of the access and rights of way plans
In the Borough of Stockton-	Saltholme Substation private	Temporarily close, prohibit the

on-Tees	access track	use of, restrict the use of, alter or divert the private access between the points marked Z9 and Z10 on sheets 2 and 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Unnamed private track	Temporarily close, prohibit the use of, restrict the use of, alter or divert the private access between the points marked Z11 and Z12 on sheets 2 and 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Unnamed private track	Temporarily close, prohibit the use of, restrict the use of, alter or divert the private access between the points marked Z13 and Z14 on sheets 2 and 3 of the access and rights of way plans

PART 2

THOSE PUBLIC RIGHTS OF WAY TO BE TEMPORARILY CLOSED

Table 6

(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 the public right of way*
In the Borough of Redcar and Cleveland	Public footpath – England Coast Path / Teesdale Way LDR	Temporarily close, prohibit the use of, restrict the use of, alter or divert the footpath between the points marked W1 and W2 on sheet 9 of the access and rights of way plans
In the Borough of Redcar and Cleveland	Public bridleway – England Coast Path / Teesdale Way LDR	Temporarily close, prohibit the use of, restrict the use of, alter or divert the bridleway between the points marked W3 and W4 on sheet 9 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Public footpath – England Coast Path	Temporarily close, prohibit the use of, restrict the use of, alter or divert the footpath between the points marked W7 and W8 on sheet 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Public footpath – Cowpen Bewley Woodland Park	Temporarily close, prohibit the use of, restrict the use of, alter or divert the footpath between W9 and W10 on sheets 1 and 2 of the access and rights of way plans
In the Borough of Stockton-	Public footpath – Cowpen	Temporarily close, prohibit the

on-Tees	Bewley Woodland Park	use of, restrict the use of, alter or divert the footpath between W11 and W12 on sheets 1 and 2 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Public footpath – Cowpen Bewley Woodland Park	Temporarily close, prohibit the use of, restrict the use of, alter or divert the footpath between W13 and W14 on sheets 1 and 2 of the access and rights of way plans

SCHEDULE 7

Article 16

TRAFFIC REGULATION MEASURES

Table 7

(1) *Area*	*(2)* *Street*	*(3)* *Description of traffic regulation measures*	*(4)* *Traffic regulation measure reference as shown on the temporary traffic regulation measures plan*
In the Borough of Stockton-on-Tees	Unnamed road extending from Wolviston Bank Lane to A1185 between Billingham Cemetery and Railway linking Billingham and Seaton Carew	Road closure between points AA and AB	TM01
In the Borough of Stockton-on-Tees	A1185	Contraflow between points BA and BB, and temporary 30mph speed limit and parking restrictions between points BA1 and BB1	TM02
In the Borough of Stockton-on-Tees	A1185	Contraflow between points BC and BD, and temporary 30mph speed limit and parking restrictions between points BC1 and BD1	TM03
In the Borough of Stockton-on-Tees	A1185	Contraflow between points BE and BF, and temporary 30mph speed limit and parking restrictions between points BE1 and BF1	TM04
In the Borough of Stockton-on-Tees	A1185	Contraflow between points BG and BH, and temporary 30mph speed limit and parking restrictions between points BG1 and BH1	TM05
In the Borough of Stockton-on-Tees	Tees Road (A178)	Contraflow between points CA and CB, and temporary 30mph speed limit and parking restrictions	TM06

		between points CA1 and CB1	
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178)	Contraflow between points DA and DB, and temporary 30mph speed limit and parking restrictions between points DA1 and DB1	TM07
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178)	Contraflow between points DC and DD, and temporary 30mph speed limit and parking restrictions between points DC1 and DD1	TM08
In the Borough of Stockton-on-Tees	Seal Sands Road	Contraflow between points EA and EB, and temporary 30mph speed limit and parking restrictions between points EA1 and EB1	TM09
In the Borough of Stockton-on-Tees	Seal Sands Road	Contraflow between points EC and ED, and temporary 30mph speed limit and parking restrictions between points EC1 and ED1	TM10
In the Borough of Stockton-on-Tees	Cowpen Bewley Road	Contraflow between points GA and GB, and temporary 30mph speed limit and parking restrictions between points GA1 and GB1	TM11
In the Borough of Stockton-on-Tees	Nelson Avenue	Contraflow between points HA and HB, and parking restrictions between points HA1 and HB1	TM12
In the Borough of Stockton-on-Tees	Belasis Avenue (B1275)	Contraflow between points IA and IB, and temporary 30mph speed limit and parking restrictions between points IA1 and IB1	TM13
In the Borough of Redcar and Cleveland	Trunk Road (A1085)	Lane closure between points JC and JD, and temporary 30mph speed limit and parking restrictions between points JC1 and JD	TM14

In the Borough of Redcar and Cleveland	Trunk Road (A1085)	Lane closure between points KA and KB and temporary 30mph speed limit and parking restrictions between points KA1 and KB	TM15
In the Borough of Stockton-on-Tees	New Road	Road closure between points LA and LB	TM16
In the Borough of Stockton-on-Tees	New Road	Contraflow between points LA and LB, and temporary 30mph speed limit and parking restrictions between points LA1 and LB1	TM17

SCHEDULE 8

Article 18

IMPORTANT HEDGEROWS TO BE REMOVED

Table 8

(1) *Area*	*(2)* *Number of hedgerow and extent of removal*
In the Borough of Stockton-on-Tees	Removal of that part of the 4 x hedgerows shown within the Order limits as identified by the green lines on figure 2.15 – important hedgerows to be removed

SCHEDULE 9

Article 25

LAND IN WHICH NEW RIGHTS ETC. MAY BE ACQUIRED

Interpretation

In this Schedule—

"Work No. 1A.1 infrastructure" means any works or development comprised within Work No. 1A.1, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 1A.1 on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 1A.2 infrastructure" means any works or development comprised within Work No. 1A.2, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 1A.2 on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 1B.1 infrastructure" means any works or development comprised within Work No. 1B.1, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 1B.1 on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 1B.2 infrastructure" means any works or development comprised within Work No. 1B.1, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 1B.2 on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 1C infrastructure" means any works or development comprised within Work No. 1C, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 1C on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 1D infrastructure" means any works or development comprised within Work No. 1D, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 1D on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 1E.1 infrastructure" means any works or development comprised within Work No. 1E.1, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 1E.1 on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 1E.2 infrastructure" means any works or development comprised within Work No. 1E.2, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 1E.2 on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"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. 2C infrastructure" means any works or development comprised within Work No. 2C, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 2C on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 3A infrastructure" means any works or development comprised within Work No. 3A, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 3A on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 3B.1 infrastructure" means any works or development comprised within Work No. 3B.1, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 3B.1 on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 3B.2 infrastructure" means any works or development comprised within Work No. 3B.2, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 3B.2 on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 3B.3 infrastructure" means any works or development comprised within Work No. 3B.3, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 3B.3 on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 4 infrastructure" means any works or development comprised within Work No. 4, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 4 on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 5 infrastructure" means any works or development comprised within Work No. 5, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 5 on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 6A.1 infrastructure" means any works or development comprised within Work No. 6A.1, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 6A.1 on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 6A.2 infrastructure" means any works or development comprised within Work No. 6A.2, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 6A.2 on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 6B.1 infrastructure" means any works or development comprised within Work No. 6B.1, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 6B.1 on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 6B.2 infrastructure" means any works or development comprised within Work No. 6B.2, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 6B.2 on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 7A infrastructure" means any works or development comprised within Work No. 7A, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 7A on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 7B infrastructure" means any works or development comprised within Work No. 7B, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 7B 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;

"Work No. 10A.1 access and highway improvements" means any works or development comprised within Work No. 10A.1, including any other necessary works or development permitted within the area delineated as Work No. 10A.1 on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 10A.2 access and highway improvements" means any works or development comprised within Work No. 10A.2, including any other necessary works or development permitted within the area delineated as Work No. 10A.2 on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 11 infrastructure" means any works or development comprised within Work No. 11, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 11 on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

Table 9

(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 pink on the land plans— 13/16, 13/19, 13/20, 13/21, 13/23, 14/1, 14/2, 14/3, 14/4, 14/5	For and in connection with the Work No. 1A.1 infrastructure, the right to create, maintain 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, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 1A.1 infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 1A.1 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. 1A.1 infrastructure, or interfere with or obstruct access from and to the Work No. 1A.1 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— 13/16, 13/19, 13/21, 13/23, 14/1, 14/2, 14/9	For and in connection with the Work No. 1A.2 infrastructure, the right to create, maintain or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pas and re-pass, on foot, with or without vehicles, plant, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 1A.2 infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 1A.2 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. 1A.2 infrastructure, or

	interfere with or obstruct access from and to the Work No. 1A.2 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— 13/16, 13/20, 14/4, 14/5	For and in connection with the Work No. 1B.1 infrastructure, the right to create, maintain 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, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 1B.1 infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 1B.1 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. 1B.1 infrastructure, or interfere with or obstruct access from and to the Work No. 1B.1 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— 13/19, 13/21, 13/23, 14/1, 14/2, 14/9	For and in connection with the Work No. 1B.2 infrastructure, the right to create, maintain 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, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 1B.2 infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 1B.2 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. 1B.2 infrastructure, or interfere with or obstruct access from and to the Work No. 1B.2 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— 13/16, 13/19, 13/21, 13/23, 14/1, 14/2, 14/3, 14/4	For and in connection with the Work No. 1C infrastructure, the right to create, maintain 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, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 1C infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 1C 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. 1C infrastructure, or interfere with or obstruct access from and to the Work No. 1C 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— 13/16, 13/19, 13/20, 13/21, 13/23, 14/1, 14/2, 14/3, 14/4, 14/5, 14/9	For and in connection with the Work No. 1D infrastructure, the right to create, maintain 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, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 1D infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 1D 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. 1D infrastructure, or interfere with or obstruct access from and to the Work No. 1D infrastructure, including the right to prevent or remove the whole of any building, or 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.
The following plots shown coloured pink on the land plans— 13/16, 13/20, 14/1, 14/2, 14/3, 14/4, 14/5, 14/9	For and in connection with the Work No. 1E.1 infrastructure, the right to create, maintain 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, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 1E.1 infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 1E.1 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. 1E.1 infrastructure, or interfere with or obstruct access from and to the Work No. 1E.1 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— 13/16, 13/20, 14/1, 14/2, 14/9	For and in connection with the Work No. 1E.2 infrastructure, the right to create, maintain 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, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 1E.2 infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 1E.2 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. 1E.2 infrastructure, or interfere with or obstruct access from and to the Work No. 1E.2 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— 9/5, 9/7, 9/9, 9/10, 13/17, 13/18, 13/22, 14/6, 14/7, 14/8, 14/14, 14/23, 14/25, 14/26, 14/27, 14/28, 14/29, 15/3, 15/4, 15/5, 15/7. 15/8, 15/9, 15/17, 15/25, 15/26, 15/27, 15/28, 15/29, 15/30, 15/43, 15/47, 15/48, 15/49, 15/50, 15/51, 15/52, 15/53, 15/54, 15/55, 15/56, 15/70, 15/71, 15/72, 15/87, 15/88, 15/90, 15/93, 15/94, 15/97, 15/98, 15/103, 15/104, 15/105, 15/106, 15/107, 15/110, 15/111, 15/113	For and in connection with the Work No. 2A infrastructure, the right to create, maintain 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, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 2A infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove 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— 13/20, 14/5, 15/69	
The following plots shown coloured pink on the land plans— 9/8, 14/16, 14/17, 14/18, 14/19,	For and in connection with the Work No. 2B infrastructure, the right to create, maintain or

14/20, 14/21, 15/69	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, machinery and equipment, at all times and 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, maintain, alter, replace and remove 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— 9/2, 9/3, 9/4, 9/5, 9/48, 9/49, 9/50, 10/48, 11/1, 11/2, 11/3, 11/22c, 11/25a, 11/28, 11/29, 11/31, 11/45a, 11/53, 11/60, 11/62a, 11/65, 11/70, 11/101, 11/102, 11/123, 11/124, 11/132, 11/133, 11/137, 12/2, 12/3, 12/4, 12/6, 15/82, 15/84, 15/86, 15/87, 15/88, 15/106, 15/244, 15/245 The following plot shown coloured pink on the land plans— 11/66	For and in connection with the Work No. 2C infrastructure, the right to create, maintain 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, machinery and equipment, at all times and for all purposes in connection with the bringing back into use, recommissioning and maintenance of the Work No. 2C infrastructure, together with the right to lay, retain, use, maintain, alter, replace and remove the Work No. 2C infrastructure, and a right of support for it as well as a right to use the Work No. 2C infrastructure, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 2C infrastructure, or interfere with or obstruct access from and to the Work No. 2C 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— 13/17, 13/18, 13/22, 14/10, 14/10a, 14/11, 14/12, 14/13, 14/14, 14/23, 14/25, 14/26, 14/27, 14/28, 14/29, 14/38, 14/39, 14/6, 14/7, 14/8, 15/1, 15/10, 15/103, 15/104, 15/105, 15/106, 15/107, 15/11, 15/110, 15/111. 15/113, 15/12, 15/13, 15/14, 15/140, 15/141, 15/15, 15/16, 15/160, 15/163, 15/164, 15/165, 15/166, 15/17, 15/18, 15/19, 15/20, 15/21, 15/22, 15/23, 15/24, 15/25, 15/26, 15/27, 15/28, 15/29, 15/3, 15/30, 15/31, 15/32, 15/33, 15/34, 15/35, 15/36, 15/37, 15/38, 15/39, 15/4, 15/40,	For and in connection with the Work No. 3A infrastructure, the right to create, maintain 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, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 3A infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 3A infrastructure, and a right of support for it,

15/41, 15/42, 15/43, 15/45, 15/47, 15/48, 15/49, 15/5, 15/50, 15/51, 15/52, 15/53, 15/54, 15/55, 15/56, 15/60, 15/61, 15/63, 15/7, 15/70, 15/71, 15/8, 15/87, 15/88, 15/9, 15/90, 15/93, 15/94, 15/97, 15/98	along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 3A infrastructure, or interfere with or obstruct access from and to the Work No. 3A infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or 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— 13/20, 14/16, 14/17, 14/18, 14/19, 14/20, 14/21, 14/5, 15/157	
The following plots shown coloured pink on the land plans— 14/49	For and in connection with the Work No. 3B.1 infrastructure, the right to create, maintain 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, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 3B.1 infrastructure, together with the rights to install, retain, use, maintain, alter, replace and remove the Work No. 3B.1 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. 3B.1 infrastructure, or interfere with or obstruct access from and to the Work No. 3B.1 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— 15/157	For and in connection with the Work No. 3B.2 infrastructure, the right to create, maintain 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, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 3B.2 infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 3B.2 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. 3B.2 infrastructure, or interfere with or obstruct access from and to the Work No. 3B.2 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 coloured pink on the land plans— 14/16, 14/17, 14/18, 14/19, 14/20, 14/21	For and in connection with the Work No. 3B.3 infrastructure, the right to create, maintain 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, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 3B.3 infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 3B.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. 3B.3 infrastructure, or interfere with or obstruct access from and to the Work No. 3B.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 blue on the land plans— 13/17, 13/18, 13/22, 14/10, 14/10a, 14/11, 14/12, 14/14, 14/23, 14/25, 14/26, 14/27, 14/28, 14/29, 14/30, 14/31, 14/32, 14/33, 14/34, 14/35, 14.36, 14/37, 14/38, 14/39, 14/40, 14/41, 14/42, 14/43, 14/44, 14/45, 14/46, 14/47, 14/48, 14/6, 14/7, 14/8, 15/10, 15/11, 15/12, 15/13, 15/14, 15/15, 15/16, 15/17, 15/18, 15/19, 15/20, 15/235, 15/236, 15/237, 15/238, 15/239, 15/240, 15/241, 15/242, 15/243, 15/3, 15/4, 15/5, 15/7, 15/8, 15/9 The following plots shown coloured pink on the land plans— 13/20, 14/16, 14/17, 14/18, 14/19, 14/20, 14/21, 14/5	For and in connection with the Work No. 4 infrastructure, the right to create, maintain 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, machinery and equipment, at all times and 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, maintain, alter, replace and remove 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— 13/17, 13/18, 13/22, 14/10, 14/10a, 14/11, 14/12, 14/14, 14/23, 14/25, 14/26, 14/27, 14/28, 14/29, 14/30, 14/31, 14/32, 14/33, 14/34, 14/35, 14/37, 14/38, 14/39, 14/6, 14/7, 14/8, 15/10, 15/11, 15/12, 15/13, 15/14, 15/15, 15/16, 15/17, 15/18, 15/19, 15/20, 15/3, 15/4, 15/5, 15/7, 15/8, 15/9 The following plots shown coloured pink on the land plans— 13/20, 14/16, 14/17, 14/18, 14/19, 14/20, 14/21, 14/5	For and in connection with the Work No. 5 infrastructure, the right to create, maintain 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, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 5 infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 5

	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. 5 infrastructure, or interfere with or obstruct access from and to the Work No. 5 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— 1/12, 1/13, 1/19, 1/20, 1/22, 1/24, 1/26, 1/30, 1/43, 1/44, 1/5, 1/6, 1/7, 10/1, 10/10, 10/14, 10/15, 10/16, 10/25, 10/26, 10/28, 10/38, 10/39, 10/43, 10/45, 11/10, 11/100, 11/101, 11/102, 11/103, 11/104, 11/105, 11/106, 11/107, 11/108, 11/109, 11/110, 11/111, 11/112, 11/113, 11/114, 11/115, 11/116, 11/117, 11/118, 11/119, 11/12, 11/120, 11/121, 11/122, 11/123, 11/124, 11/125, 11/127, 11/13, 11/130, 11/131, 11/132, 11/133, 11/135, 11/15, 11/16, 11/19, 11/23, 11/26, 11/27, 11/29, 11/31, 11/33, 11/36, 11/38, 11/43, 11/44, 11/47, 11/5, 11/52, 11/53, 11/54, 11/57, 11/59, 11/60, 11/61, 11/63, 11/64, 11/65, 11/67, 11/68, 11/69, 11/70, 11/71, 11/72, 11/73, 11/74, 11/75, 11/76, 11/77, 11/78, 11/79, 11/8, 11/80, 11/81, 11/82, 11/83, 11/84, 11/85, 11/86, 11/87, 11/88, 11/89, 11/90, 11/91, 11/92, 11/93, 11/94, 11/95, 11/96, 11/97, 11/98, 11/99, 12/2, 12/3, 12/4, 12/5, 13/12, 13/13, 13/17, 13/18, 13/22, 14/14, 14/6, 14/7, 14/8, 15/100, 15/101, 15/102, 15/103, 15/104, 15/105, 15/106, 15/107, 15/108, 15/109, 15/110, 15/111, 15/112, 15/113, 15/114, 15/115, 15/116, 15/127, 15/128, 15/129, 15/130, 15/131, 15/132, 15/133, 15/134, 15/135, 15/136, 15/137, 15/138, 15/14, 15/140, 15/141, 15/142, 15/143, 15/144, 15/145, 15/147, 15/148, 15/15, 15/151, 15/153, 15/154, 15/155, 15/156, 15/16, 15/160, 15/163, 15/164, 15/165, 15/166, 15/17, 15/173, 15/177, 15/178, 15/179, 15/18, 15/182, 15/183, 15/184, 15/186, 15/187, 15/188, 15/189, 15/19, 15/195, 15/20, 15/209, 15/21, 15/210, 15/211, 15/212, 15/213, 15/214, 15/215, 15/216, 15/22, 15/220, 15/221, 15/222, 15/223, 15/224, 15/226, 15/23, 15/231, 15/24, 15/25, 15/26, 15/27, 15/28, 15/29, 15/3, 15/30, 15/31, 15/32, 15/33, 15/34, 15/35, 15/36, 15/37, 15/38, 15/39, 15/4, 15/40, 15/41, 15/42, 15.43, 15/45, 1546, 1547, 15/48, 15/49, 15/5, 15/50, 15/51, 15/52, 15/53, 15/54, 15/55, 15/56, 15/60, 15/61, 15/62, 15/70, 15/71, 15/72, 15/73, 15/74, 15/75, 15/76, 15/77, 15/78, 15/79, 15/80, 15/81, 15/82, 15/85, 15/86, 15/97, 15/88, 15/89, 15/90, 15/91, 15/92, 15/93, 15/94, 15/95, 15/96,	For and in connection with the Work No. 6A.1 infrastructure, the right to create, maintain 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, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 6A.1 infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 6A.1 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. 6A.1 infrastructure, or interfere with or obstruct access from and to the Work No. 6A.1 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.

15/97, 15/98, 15/99, 18/1, 18/4, 18/7, 19/19, 19/2, 19/22, 19/24, 19/26, 19/28, 19/3, 19/32, 19/36, 19/6, 2/1, 2/13, 2/14, 2/15, 2/17, 2/18, 2/2, 2/22, 2/23, 2/26, 2/27, 2/29, 2/32, 2/33, 2/38, 2/39, 2/42, 2/45, 2/47, 2/48, 2/5, 2/52, 2/53, 2/54, 2/55, 2/56, 2/57, 2/58, 2/59, 2/60, 2/61, 2/63, 2/8, 20/1, 20/17, 20/6, 21/3, 3/1, 3/10, 3/11, 3/12, 3/2, 3/21, 3/28, 3/3, 3/31, 3/40, 3/41, 3/6, 3/7, 3/9, 5/1, 5/106, 5/12, 5/13, 5/16, 5/17, 5/18, 5/2, 5/23, 5/25, 5/27, 5/28, 5/29, 5/30, 5/32, 5/35, 5/36, 5/37, 5/38, 5/39, 5/4, 5/40, 5/41, 5/42, 5/44, 5/45, 5/48, 5/49, 5/5, 5/50, 5/51, 5/54, 5/55, 5/56, 5/57, 5/58, 5/59, 5/62, 5/63, 5/64, 5/65, 5/70, 5/8, 5/90, 5/92, 6/10, 6/11, 6/12, 6/13, 6/2, 6/5, 6/8, 7/1, 7/10, 7/11, 7/12, 7/13, 7/14, 7/15, 7/16, 7/17, 7/18, 7/19, 7/2, 7/20, 7/21, 7/22, 7/23, 7/24, 7/25, 7/3, 7/38, 7/39, 7/4, 7/40b, 7/41, 7/5, 7/6, 7/7, 7/8, 7/9, 9/11, 9/12, 9/13, 9/15, 9/17, 9/18, 9/19, 9/21, 9/27, 9/30, 9/32, 9/33, 9/38, 9/40 The following plots shown coloured pink on the land plans— 13/20, 14/5, 15/157, 15/69, 20/11	
The following plots shown coloured blue on the land plans— 3/100, 3/46, 3/58, 3/61, 3/64, 3/70, 3/87, 4/10, 4/13, 4/16, 4/17, 4/26, 4/27, 4/31, 4/32, 4/33, 4/34, 4/38, 4/41, 4/46, 4/48, 4/49, 4/50, 4/52, 4/54, 4/57, 4/59, 4/63, 4/64, 4/65, 4/66, 4/67, 4/68, 4/69, 4/7, 4/70, 4/76, 4/79, 4/8, 4/84, 4/9	For and in connection with the Work No. 6A.2 infrastructure, the right to create, maintain 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, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 6A.2 infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 6A.2 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. 6A.2 infrastructure, or interfere with or obstruct access from and to the Work No. 6A.2 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— 1/36, 7/40, 10/9, 11/126, 11/128, 11/129, 11/134, 11/56, 11/58, 11/66, 15/146, 15/149, 15/150, 15/152, 19/4, 19/5, 2/35, 2/36, 2/37, 20/11, 3/35, 3/36, 3/38, 3/39, 5/21, 9/16, 9/41	For and in connection with the Work No. 6B.1 infrastructure, the right to create, maintain 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, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 6B.1 infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 6B.1 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. 6B.1 infrastructure, or interfere with or obstruct access from and to the Work No. 6B.1 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— 13/17, 13/18, 13/22, 14/10, 14/10a, 14/11, 14/12, 14/14, 14/23, 14/24, 14/25, 14/26, 14/27, 14/28, 14/29, 14/6, 14/7, 14/8, 15/17, 15/25, 15/26, 15/3, 15/4, 15/5, 15/7, 15/8, 15/9 The following plots shown coloured pink on the land plans— 13/20, 14/5	For and in connection with the Work No. 7A infrastructure, the right to create, maintain 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, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 7A infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 7A 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. 7A infrastructure, or interfere with or obstruct access from and to the Work No. 7A 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— 14/16, 14/17, 14/18, 14/19, 14/20, 14/21	For and in connection with the Work No. 7B infrastructure, the right to create, maintain 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, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 7B infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 7B 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. 7B infrastructure, or interfere with or obstruct access from and to the Work No. 7B 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— 13/17, 13/18, 13/22, 14/14, 14/6, 14/7, 14/8, 15/100, 15/101, 15/102, 15/103, 15/104, 15/105, 15/106, 15/107, 15/108, 15/109, 15/110, 15/111, 15/112, 15/113, 15/114, 15/115, 15/116, 15/117, 15/119, 15/120, 15/121, 15/127, 15/131, 15/133, 15/134, 15/135, 15/136, 15/14, 15/15, 15/16, 15/17, 15/18, 15/19, 15/20, 15/21, 15/22, 15/23, 15/24, 15/25, 15/26, 15/27, 15/28, 15/29, 15/3, 15/30, 15/31, 15/32, 15/33, 15/34, 15/35, 15/37, 15/39, 15/4, 15/40, 15/41, 15/42, 15/43, 15/47, 15/48, 15/49, 15/5, 15/50, 15/51, 15/52, 15/53, 15/54, 15/55, 15/56, 15/64, 15/70, 15/71, 15/87, 15/88, 15/89, 15/90, 15/91, 15/92, 15/93, 15/94, 15/95, 15/96, 15/97, 15/98, 15/99, 16/10, 16/11, 16/12, 16/13, 16/14, 16/15, 16/18, 16/8, 16/9 The following plots shown coloured pink on the land plans— 13/20, 14/5, 15/69	For and in connection with the Work No. 8 infrastructure, the right to create, maintain 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, machinery and equipment, at all times and 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, maintain, alter, replace and remove 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— 1/1, 1/2, 1/29, 10/11, 10/12, 10/13, 10/17, 10/29, 10/30, 10/31, 10/32, 10/33, 10/34, 10/35, 10/36, 10/4, 10/40, 10/42, 10/7, 11/1, 11/18, 11/2, 11/20, 11/28, 11/3, 11/35, 11/36, 11/37, 11/38, 11/6, 11/7, 14/36, 15/170, 15/171, 15/172, 15/232, 15/83, 15/84, 16/1, 16/16, 16/2, 16/22, 16/23, 16/24, 16/25, 16/26, 16/27, 16/28, 16/29, 16/3, 16/5, 16/6, 16/7, 18/5, 19/1, 19/16, 19/18, 19/23, 19/30, 19/7, 19/8, 20/19, 20/2, 20/5, 21/1, 21/13, 3/15, 3/16, 3/17, 3/23, 3/24, 3/25, 3/42, 3/43, 3/44, 5/46, 5/52, 5/53, 5/60, 5/61, 5/66, 5/67, 5/72, 5/73, 5/74, 5/96, 7/26, 7/27, 7/28, 8/1, 8/10, 8/11, 8/12, 8/2, 8/3, 8/4, 8/5, 8/6, 8/7, 8/8, 8/9, 9/1, 9/2, 9/3, 9/36, 9/4, 9/46, 9/47, 9/6	For and in connection with the Work No. 10A.1 access and highway improvements, the right to create, maintain 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, machinery and equipment, at all times and 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— 4/1, 4/11, 4/12, 4/14, 4/15, 4/18, 4/19, 4/2, 4/20, 4/21, 4/3, 4/71, 4/72, 4/73, 4/74, 4/91, 4/92, 4/93	For and in connection with the Work No. 10A.2 access and highway improvements, the right to create, maintain 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, machinery and equipment, at all times and 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 pink on the land plans— 4/94, 4/95	For and in connection with the Work No. 11 infrastructure, the right to create, maintain 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, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 11 infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 11 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. 11 infrastructure, or interfere with or obstruct access from and to the Work No. 11 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.

SCHEDULE 10

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 10 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictive covenants) to the H2Teesside Order 202*; 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 10 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictive covenants) to the H2Teesside Order 202* 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 30 (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

(**a**) 1973 c.26.

(b) with such other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4(a) are as follows.

(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 as to secure 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 (entry on warrant in the event of obstruction)(**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 30(3) (modification of Part 1 of the 1965 Act) 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

---

(**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.

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—

"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 1981 Act) of the H2Teesside Order 202* 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 H2Teesside Order 202* 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 decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority do 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 serve 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 11

Article 32

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

Table 10

(1) *Plot numbers shown on Land Plans*	*(2)* *Purpose for which temporary possession may be taken*
1/10, 1/11, 1/14, 1/15, 1/16, 1/17, 1/18, 1/21, 1/23, 1/25, 1/27, 1/28, 1/3, 1/37, 1/38, 1/39, 1/4, 1/40, 1/41, 1/42, 1/45, 1/8, 1/9, 10/2, 10/24, 10/27, 10/37, 10/41, 10/44, 10/8, 11/11, 11/136, 11/14, 11/17, 11/21, 11/22, 11/22a, 11/22b, 11/24, 11/25, 11/30, 11/32, 11/34, 11/4, 11/41, 11/42, 11/45, 11/45b, 11/45c, 11/46, 11/48, 11/49, 11/50, 11/51, 11/55, 11/62, 11/9, 12/1, 13/12a, 13/15, 15/233, 15/234, 18/11, 18/12, 18/13, 18/14, 18/15, 18/6, 18/8, 18/9, 19/17, 19/20, 19/21, 19/25, 19/27, 19/29, 19/31, 19/33, 19/34, 19/35, 19/37, 2/10, 2/11, 2/12, 2/16, 2/19, 2/20, 2/21, 2/24, 2/25, 2/28, 2/3, 2/30, 2/31, 2/34, 2/4, 2/40, 2/41, 2/43, 2/44, 2/46, 2/49, 2/50, 2/51, 2/6, 2/62, 2/7, 2/9, 20/12, 20/13, 20/14, 20/15, 20/16, 20/18, 20/4, 20/7, 21/10, 21/11, 21/12, 21/14, 21/2, 21/4, 21/5, 21/6, 21/7, 21/8, 3/13, 3/14, 3/18, 3/20, 3/22, 3/26, 3/27, 3/29, 3/30, 3/32, 3/33, 3/34, 3/37, 3/4, 3/5, 3/8, 3/45, 3/47, 3/49, 3/57, 3/59, 3/60, 3/62, 3/63, 3/65, 3/69, 3/71, 3/85, 3/90, 3/98, 3/102, 4/35, 4/36, 4/37, 4/39, 4/40, 4/42, 4/43, 4/44, 4/45, 4/47, 4/51, 4/53, 4/55, 4/56, 4/58, 4/60, 4/61, 4/62, 4/75, 4/77, 4/78, 4/80, 4/83, 4/85, 5/10, 5/102, 5/103, 5/104, 5/107, 5/108, 5/11, 5/14, 5/15, 5/19, 5/20, 5/22, 5/24, 5/26, 5/3, 5/31, 5/33, 5/34, 5/43, 5/47, 5/6, 5/68, 5/69, 5/7, 5/71, 5/72, 5/73, 5/74, 5/75, 5/80, 5/83, 5/84, 5/85, 5/91, 5/93, 5/99, 5/9, 6/1, 6/3, 6/6, 6/7, 6/9, 7/36, 7/37, 7/40a, 9/14, 9/22, 9/23, 9/24, 9/26, 9/28, 9/29, 9/31, 9/34, 9/35, 9/37, 9/39, 9/42	Temporary use to facilitate carrying out of Work No. 6
3/102, 3/45, 3/47, 3/57, 3/59, 3/60, 3/62, 3/63, 3/65, 3/69, 3/71, 3/85, 3/90, 3/98, 4/35, 4/36, 4/37, 4/39, 4/40, 4/42, 4/43, 4/44, 4/45, 4/47, 4/51, 4/53, 4/55, 4/56, 4/58, 4/60, 4/61, 4/62, 4/75, 4/77, 4/78, 4/80, 4/83, 4/85	Temporary use to facilitate carrying out of Work No. 6A.2
15/118, 15/122, 15/123, 16/17, 16/19, 16/20, 16/21	Temporary use to facilitate carrying out of Work No. 8
1/31, 10/21, 10/22, 10/23, 10/46, 10/47, 13/3, 19/10, 19/9, 3/33, 3/34, 3/37, 5/84	Temporary use as construction compound, laydown, construction use and access required to facilitate construction of the authorised development
1/32, 10/18, 10/19, 10/20, 10/3, 10/46, 10/47, 10/5, 10/6, 11/39, 11/40, 13/1, 13/8, 13/10, 13/11, 13/2, 13/4, 13/5, 13/6, 13/7, 15/124,	Temporary use to facilitate access to and highway improvements in relation to the authorised development

15/125, 15/126, 16/4, 17/1, 17/10, 17/2, 17/3, 17/4, 17/5, 17/6, 17/7, 17/8, 17/9, 19/11, 19/12, 20/3, 21/9, 5/105, 5/98, 5/99, 6/4, 7/29, 7/30, 7/31, 7/32, 7/33, 7/34, 8/13, 9/20, 9/25, 9/43, 9/44, 9/45	

SCHEDULE 12

Article 43

APPEALS TO THE SECRETARY OF STATE

1. In this Schedule, "local authority" means the relevant planning authority, the relevant local highway authority, the relevant traffic authority or a street authority.

2.—(1) The undertaker may appeal to the Secretary of State in the event that a local authority—

(a) refuses an application for any approval under this Order required by—

(i) article 10(3) (power to alter layout etc. of streets);

(ii) article 13(4) (temporary closure of streets and public rights of way);

(iii) article 14 (access to works);

(iv) article 16 (traffic regulation measures);

(v) article 20(4) (authority to survey and investigate the land);

(vi) article 29(1) (special category land and replacement special category land); or

(b) grants an approval for any approval required by an article or paragraph mentioned in paragraph (a) subject to conditions;

(c) refuses an application for a permit under a permit scheme, or grants such a permits subject to conditions; or

(d) issues a notice further to sections 60 or 61 of the Control of Pollution Act 1974.

(2) The appeal process applicable under sub-paragraph (1) is as follows—

(a) any appeal by the undertaker must be made within 30 working days of the date of the notice of the decision, or the date by which a decision was due to be made, as the case may be;

(b) the undertaker must submit the appeal documentation (comprising the relevant application to the local authority, a copy (where it has been provided to the undertaker) of the local authority's reason for its decision and the undertaker's reasons as to why the appeal should be granted) to the Secretary of State and must on the same day provide copies of the appeal documentation to the local authority;

(c) as soon as practicable after receiving the appeal documentation, the Secretary of State must appoint a person to consider the appeal ("the appointed person") and must notify the appeal parties (the undertaker and the local authority whose decision is subject to the appeal) of the identity of the appointed person, a start date and the address to which all correspondence for their attention should be sent;

(d) the local authority must submit their written representations to the appointed person in respect of the appeal within 10 working days of the start date;

(e) the appeal parties must ensure that copies of their written representations and any other representations as sent to the appointed person are sent to each other on the day on which they are submitted to the appointed person;

(f) the appeal parties must make any counter-submissions to the appointed person within 10 working days of receipt of written representations under paragraph (d); and

(g) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable but in any event no later than 30 working days from the deadline for receipt of written representations under paragraph (f).

(3) The appointment of the person under sub-paragraph (2)(c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) 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 as soon as

practicable notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(5) Any further information required under sub-paragraph (4) must be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person.

3.—(1) The appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day.

(2) The revised timetable for the appeal must require submission of written representations to the appointed person within 10 working days of the agreed date but must otherwise be in accordance with the process and time limits set out in paragraphs 2(2)(c) to 2(2)(f).

4.—(1) On an appeal under this paragraph, the appointed person may—

(a) allow or dismiss the appeal; or

(b) reverse or vary any part of the decision of the local 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 the appointed person in the first instance.

(2) The appointed person may proceed to a decision of an appeal taking into account such written representations as have been sent within the relevant time limits and in the sole discretion of the appointed person such written representations as have been sent outside the relevant time limits.

(3) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

(4) The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(5) Except where a direction is given under sub-paragraph (6) requiring some or all of the costs of the appointed person to be paid by the local authority, the reasonable costs of the appointed person must be met by the undertaker.

(6) The appointed person may give directions as to the costs of the appeal and as to the parties by whom such costs are to be paid.

(7) 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 Planning Practice Guidance about planning appeals and award costs first published on 3 March 2024 by the Department for Communities and Local Government, as updated from time to time, or any circular or guidance which may from time to time replace it.

SCHEDULE 13

Article 43

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

1. 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 5(2)(b).

Applications made under requirement

2.—(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 3; or

(c) such longer period as may be agreed in writing by the undertaker and the relevant planning authority.

(2) Subject to paragraph 5, 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 and the relevant planning authority does not determine the application within the period set out in sub-paragraph (1)—

(a) and 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

3.—(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

4.—(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 regulations 16(1)(b) and 18A 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 1 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 2 of this Schedule.

Appeals

5.—(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 2(3);

(c) on receipt of a request for further information pursuant to paragraph 3 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**) S.I. 2012/2920 was amended by Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2023/1197.

(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;

(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 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 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 sub-paragraphs (2)(c) to (2)(e) 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 the appointed person 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 Planning Practice Guidance about planning appeals and award costs first published on 3 March 2014, by the Department for Communities and Local Government as updated from time to time or any circular or guidance which may from time to time replace it.

SCHEDULE 14

Article 44

DOCUMENTS AND PLANS TO BE CERTIFIED

Table 11

(1) *Document name*	*(2)* *Document reference*	*(3)* *Revision number*	*(4)* *Date*
access and rights of way plans	2.5	3	February 2025
Anglo American Shared Area Plan	8.56	0	February 2025
application guide	1.2	15	February 2025
book of reference	3.1	7	February 2025
change application report	7.3	0	October 2024
change application report - appendices	7.4	0	October 2024
environmental statement	Non-Technical Summary, 6.1 Volume I, 6.2 Volume II, 6.3 Volume III, 6.4	- - - -	As listed in the application guide
figure 2.15 – important hedgerows to be removed	2.15	4	February 2025
framework construction environmental management plan	5.12	7	February 2025
framework construction traffic management plan	5.16	3	January 2025
framework construction workers travel plan	5.15	1	October 2024
H2 Teesside STDC Agreement Area Plan	8.55	0	February 2025
indicative lighting strategy (construction)	5.12.3	0	March 2024
indicative lighting strategy (operation)	5.8	0	March 2024
indicative surface water drainage plan	2.12	1	October 2024
land plans	2.2	3	February 2025
Natara site plan	8.44.24.1	0	February 2025
nutrient neutrality assessment	5.13	0	March 2024
outline landscape and biodiversity management plan	5.9	3	February 2025
outline site waste	5.12.1	0	March

management plan			2024
outline water management plan	5.12.2	0	March 2024
SABIC Information plan	8.44.15.2	0	February 2025
Sembcorp Protection Corridor protective provisions supporting plans	8.54	0	February 2025
special category land and crown land plans	2.3	3	February 2025
temporary traffic regulation measures plan	2.13	3	February 2025
water framework directive assessment	5.14	0	March 2024
works plans	2.4	4	February 2025

SCHEDULE 15

Requirement 3

DESIGN PARAMETERS

Table 12

Component	*Length (m)*	*Width / diameter (including platforms, ladders and walkways if present) (m)*	*Height (m) (Above Ordnance Datum (AOD))*
Flare Stack	–	4.0 (flare 1.0 and platform 4.0)	108 (max) 73 (min)
Auxiliary Boiler	35	20	18 (max)
Auxiliary Boiler Stack	–	2.0 diameter	78 (min and max)
Start-Up Fired Heater Stack	–	2.0 diameter	53 (max) 43 (min)
Carbon Dioxide Absorber Column	–	5.5 diameter (top section) 8.5 diameter (bottom section)	59 (max)
Other Production Plant	–	–	36 (max)
Flash Vessels	–	–	73 (max)
Air Separation Unit (ASU)	20	8	60 (max)
New electrical substation at Tod Point	–	–	22 (max)
National Grid Tod Point substation extension (northern bay)	–	–	22 (max)
National Grid Tod Point substation extension (southern bay)	–	–	22 (max)

SCHEDULE 16

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this Schedule, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertakers concerned, or unless any other provisions in Schedules 17 to 44 of this Order apply to the utility undertaker concerned.

2. In this Schedule—

"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 an electricity undertaker, 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 gas undertaker, 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 water undertaker—

(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 subject of an agreement to adopt made under section 51A of the Water Industry Act 1991(**a**); and

(d) in the case of a sewerage undertaker—

(i) any drain or works vested in the utility undertaker under the Water Industry Act 1991; and

(ii) any sewer 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 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;

"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;

"utility undertaker" means—

(e) any licence holder within the meaning of Part 1 of the 1989 Act;

(f) a gas transporter within the meaning of Part 1 of the Gas Act 1986;

(g) water undertaker within the meaning of the Water Industry Act 1991; and

(h) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs and by whom it is maintained.

(**a**) 1991 c.56.

3. This Schedule 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 of the 1991 Act.

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13 (temporary closure of streets and public rights of way), a utility undertaker is at liberty at all times to take all necessary access across any such street and to execute an 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.

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.

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 Schedule, 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 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 46 (arbitration).

(5) The utility undertaker in question must, after 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 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 Schedule.

(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.

7.—(1) Where, in accordance with the provisions of this Schedule, 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 46 (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.

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 (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 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 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.

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 required.

(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 Schedule, that value being calculated after removal.

(3) If in accordance with the provisions 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 article 46 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under 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 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 7 years and 6 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, 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.

11. Nothing in this Schedule 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.

SCHEDULE 17

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

1.—(1) For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator, or unless any other provisions in Schedule 16 or Schedules 18 to 44 of this Order apply to the operator.

(2) In this Schedule—

"the 2003 Act" means the Communications Act 2003(**a**);

"electronic communications apparatus" has the same meaning as in the electronic communications code;

"electronic communications code" has the same meaning as in section 106 (application of the electronic communications code) of the 2003 Act;

"electronic communications code network" means—

(a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and

(b) an electronic communications network which the Secretary of State is providing or proposing to provide;

"electronic communications code operator" means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

"operator" means the operator of an electronic communications code network.

2. The exercise of the powers of article 34 (statutory undertakers) is subject to Part 10 (undertakers' works affecting electronic communications apparatus) of the electronic communications code.

3.—(1) Subject to sub-paragraphs (2) to (4), if as a 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,

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, 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.

(**a**) 2003 c.21.

(4) Any difference arising between the undertaker and the operator under this Schedule must be referred to and settled by arbitration under article 46 (arbitration).

4. 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.

5. Nothing in this Schedule 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.

SCHEDULE 18

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF THIRD PARTY APPARATUS

1. For the protection of third parties with apparatus, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the third party, or unless any other provisions in this Schedules 16, 17 or 19 to 44 of this Order apply to the apparatus.

2. In this Schedule—

"affected apparatus" means the apparatus within the Order limits or apparatus which has the benefit of rights (including access) over the Order limits vested in the third party, including cables, mains, pipelines, plant and ancillary apparatus;

"alternative apparatus" means alternative apparatus adequate to enable the third party to carry out its operations in a manner not less efficient than previously;

"restricted works" means any works forming any part of the authorised development that will or may affect the affected apparatus or access to them including—

(a) all works within 6 metres of the affected apparatus;

(b) the crossing of the affected apparatus by other utilities; and

(c) the use of explosives with 400 metres of the affected apparatus,

whether carried out by the undertaker or any third party in connection with the authorised development;

"third party" means a company with apparatus that is affected by 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 affected apparatus;

(v) by way of detailed drawings, every alteration proposed to be made to or close to any such affected 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 the third party to assess the works;

(c) where the restricted works will or may be situated on, over, under or within 6 metres measured in any direction of the affected apparatus, or (wherever situated) impose any load directly upon the affected apparatus or involve embankment works within 6 metres of the affected apparatus, the method statement must also include—

(i) the position of the affected apparatus; and

(ii) by way of detailed drawings, every alteration proposed to be made to the affected apparatus; and

(d) any further particulars provided in response to a request under paragraph 3.

Consent of restricted works under this Schedule

3.—(1) Unless a shorter period is otherwise agreed in writing between the undertaker and the third party, not less than 30 days before commencing the execution of any restricted works, the undertaker must submit to the third party the works details for the restricted works and such further particulars as the third party 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 the third party.

(3) Any approval of the third party required under this paragraph 3 must not be unreasonably withheld or delay but may be given subject to such reasonable requirements as the third party may require to be made for—

(a) the continuing safety and operational viability of the affected apparatus; and

(b) the requirement for the third party 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 affected apparatus.

(4) Any approval of the third party required under this paragraph 3 including any reasonable requirements required by the third party 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 the third party) beginning with the date on which the works details were submitted to the third party under sub-paragraph (1) or the date on which any further particulars requested by the third party under sub-paragraph (1) were submitted to the third party (whichever is the later).

(5) The authorised development must be executed only in accordance with the works details approved by the third party under this paragraph 3 including any reasonable requirements notified to the undertaker in accordance with sub-paragraph (3) and the third party shall be entitled to watch and inspect the execution of those works.

(6) Where there has been a reference to an arbitrator in accordance with paragraph 9 and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions in the decision of the arbitrator under paragraph 9.

(7) If the third party 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 affected apparatus and gives written notice to the undertaker of that requirement, this Order applies as if the removal of the affected apparatus had been required by the undertaker under sub-paragraph (1).

(8) 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 the third party) in no case less than 28 days before commencing the execution of any restricted works, new works details, instead of the works details submitted, and having done so the provisions of this paragraph 3 apply to and in respect of the new works details.

Prohibition of acquisition and interference

4. Where the undertaker takes temporary possession of any land or carries out survey works on land in respect of which the third party has an easement, right, operations, assets or other interests (together "the third party's rights")—

(a) where the third party'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; and

(b) where the third party's rights do provide or reasonably require access in, on or under the Order limits,

the third party 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 coordination of their respective works during the period of temporary possession.

Removal of apparatus/access

5.—(1) If, in the exercise of powers conferred by this Order, the undertaker acquires any interest in any land in which any affected apparatus is placed or over which access to any affected apparatus is enjoyed or requires that affected apparatus is relocated or diverted, that affected apparatus must not be removed under this Schedule, and any right of the third party to maintain that affected 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 the third party 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 affected apparatus placed in that land, the undertaker must give to the third party written notices 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 the third party reasonably needs to remove any of its affected apparatus) the undertaker must, subject to sub-paragraph (3), afford to the third party 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 apparats or part of such apparatus is to be constructed, the third party 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 the third party and the undertaker or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

(5) The third party 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 the third party 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 affected 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 the third party that it desires itself to execute any work, or part of any work, in connection with the construction or removal of affected apparatus in any land controlled by the undertaker, that work, instead of being executed by the third party must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the third party.

Facilities and rights for alternative apparatus

6.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to the third party facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for affected 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 the third party or in default of agreement settled by arbitration in accordance with article 46 (arbitration); 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 the third party than the facilities and rights enjoyed by it in respect of the affected 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 the third party as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Expenses

7.—(1) Subject to the following provisions of this paragraph 7, the undertaker must pay to the third party the reasonable and properly incurred costs and expenses (including reasonable staffing costs if work is carried out in-house) incurred by the third party 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 affected apparatus; and

(ii) the review and assessment of works details in accordance with paragraph 3;

(b) the watching of and inspecting the execution of the restricted works; and

(c) imposing reasonable requirements in accordance with paragraph 3(3).

(2) Prior to incurring any costs or expenses associated with the activities in sub-paragraph (1), the third party 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

8.—(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 the affected apparatus, or there is any interruption in any service provided, or in the supply of any goods, by the third party, the undertaker must—

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

(b) make reasonable compensation to the third party for any other expenses, loss, damages, penalty or costs incurred by the third party, 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 of default of the third party, its officers, employees, servants, contractors or agents; or

(b) any indirect or consequential loss or loss of profits by an operator.

(3) The third party 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 third party 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 8 applies.

(5) If requested to do so by the undertaker, the third party 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 8 for claims reasonably incurred by the third party.

Arbitration

9.—(1) The undertaker and the third party 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 the third party under this Schedule must, unless otherwise agreed in writing between the undertaker and the third party, be referred to and settled by arbitration in accordance with article 46 (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).

SCHEDULE 19

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER

Application

1. For the protection of National Grid as referred to in this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid.

Interpretation

2. In this Schedule—

"acceptable credit provider" means a bank or financial institution with a credit rating that is not lower than: (i) "A-" if the rating is assigned by Standard & Poor's Ratings Group or Fitch Ratings; and "A3" if the rating is assigned by Moody's Investors Services Inc.;

"acceptable insurance" means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained for the duration of the construction period of the authorised works; and (b) after the construction period of the authorised works in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an "acceptable credit provider", such insurance shall include (without limitation):

(a) a waiver of subrogation and an indemnity to principal clause in favour of National Grid;

(b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

"acceptable security" means either—

(a) a bank bond or letter of credit from an acceptable credit provider in favour of National Grid to cover the undertaker's liability to National Grid for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid); or

(b) such other evidence provided to NGET's reasonable satisfaction that the undertaker has a tangible net worth of not less than £50,000,000 (fifty million pounds) (or an equivalent financial measure).

"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 whether or not 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 works" has the same meaning as is given to the term "authorised development" in article 2(1) (interpretation) of this Order and includes any associated development authorised

by the Order and for the purposes of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

"commence" and "commencement" has the same meaning as in article 2(1) (interpretation) of this Order except for the purposes of this Schedule only where it shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

"deed of consent" means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Schedule;

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary 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, shall require the undertaker to submit for National Grid'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;

"Incentive Deduction" means any incentive deduction National Grid Electricity Transmission plc receives under its electricity transmission licence which is caused by an event on its transmission system that causes electricity not to be supplied to a demand customer and which arises as a result of the authorised works;

"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; 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;

"NESO" means as defined in the STC;

"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;

"parent company" means a parent company of the undertaker acceptable to and which shall have been approved by National Grid acting reasonably;

"specified works" means any of the authorised works or activities undertaken in association with the authorised works 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 6(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 6(2) or otherwise; and/or

(c) includes any of the activities that are referred to in development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines";

"STC" means the System Operator Transmission Owner Code prepared by the electricity Transmission Owners and NESO as modified from time to time;

"STC Claims" means any claim made under the STC against National Grid Electricity Transmission plc arising out of or in connection with the de-energisation (whereby no electricity can flow to or from the relevant system through the generator or interconnector's equipment) of a generator or interconnector party solely as a result of the de-energisation of plant and apparatus forming part of National Grid Electricity Transmission plc's transmission system which arises as a result of the authorised works;

"Transmission Owner" means as defined in the STC; and

"undertaker" means the undertaker as defined in article 2(1) of this Order.

On Street Apparatus

3. Except for paragraphs 4 (apparatus of National Grid in affected streets), 8 (retained apparatus: protection), 9 (expenses) and 10 (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 affected streets

4.—(1) Where any street is stopped up under article 10 (power to alter layout etc. of streets), article 11 (street works), article 12 (construction and maintenance of new or altered means of access), if National Grid has any apparatus in the street or accessed via that street National Grid has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Grid, or procure the granting to National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the undertaker or National Grid to require the removal of that apparatus under paragraph 6 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 8.

(2) Notwithstanding the temporary closure or diversion of any highway under the powers of article 13 (temporary closure of streets and public rights of way), National Grid is at liberty at all times to take all necessary access across any such closed highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the closure or diversion was in that highway.

Protective works to buildings

5. 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

Acquisition of land

6.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid otherwise than by agreement.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest

of National Grid or affect the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) Save where otherwise agreed in writing between National Grid and the undertaker, the undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid and/or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by National Grid under paragraph 8 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1)..

Removal of apparatus

7.—(1) If, in the exercise of the 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 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 7(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 may, in its sole discretion, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances 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 shall 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 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 Schedule.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions 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 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 may be referred to arbitration in accordance with paragraph 14 (arbitration) of this Schedule and the arbitrator must 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: protection

9.—(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 assets.

(2) In relation to any 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.

(h) a ground monitoring scheme, where required;

(i) how impressed voltages have been taken into account in the detailed design for the specified works;

(j) a dispersion analysis covering all normal and abnormal pipeline operational scenarios in order to demonstrate that the separation distances between the specified works and the apparatus are acceptable and that any risks posed are As Low As Reasonably Practicable ("ALARP");

(k) how all hazardous areas generated by the specified works will be contained within the site security fencing;

(l) a risk analysis covering full bore rupture and puncture releases showing the distances to the individual risk transects of 1 x 105 per year, 1 x 106 per year and 3 x 107 per year for the specified works in order to demonstrate that the risks posed are acceptable and are ALARP;

(m) an analysis of the specified works located in the "Linkline corridor" running parallel to the existing third party above ground pipelines in order to determine the minimum separation distances required and the proposed mitigation measures to prevent escalation of a situation into a major emergency and to confirm the cumulative risk levels along the security fencing located to the south of the apparatus from all the above ground pipelines (existing and proposed) for the various failure scenarios are acceptable and are ALARP; and

(n) evidence of the operations and maintenance philosophy for the specified works, detailing how those works will be commissioned, depressurised, purged and decommissioned.

(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 up to and including 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-paragraphs (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-paragraphs (6) or (8); and

(b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (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-paragraphs (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-paragraphs (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 (or any relevant part thereof) for which protective works are required and National Grid shall 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-paragraphs (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 1 to 3, 6 and 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(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 works for which a plan has been submitted for specified works (or part thereof), a new plan for such works, instead of the plan previously submitted, and having done so the provisions of this paragraph 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 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

10.—(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 within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably anticipated within the following three months or 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 works 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 6(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; and

(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 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 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 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 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 14 to be necessary, then, if such placing involves cost in the construction of works under 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.

(6) Where reasonably anticipated charges, costs or expenses have been paid by the undertaker pursuant to sub-paragraph (1), if the actual charges, costs or expenses incurred by National Grid are less than the amount already paid by the undertaker National Grid will repay the difference to the undertaker as soon as reasonably practicable.

Indemnity

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works 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 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 works) 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 accompanied by an invoice or claim from National Grid 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 and including STC Claims or an Incentive Deduction 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 or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workmanlike manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the act, neglect or default of National Grid, its officers, servants, contractors or agents;

(b) any authorised works and/or any other works authorised by 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 works yet to be executed and not falling within this sub-section (b) will be subject to the full terms of this Schedule including this paragraph; and

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability, compromise or demand must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) 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.

(6) National Grid must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 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 and if reasonably requested to do so by the undertaker National Grid must provide an explanation of how the claim has been minimised, where relevant.

(7) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Grid or in respect of which National Grid has an easement or wayleave for is apparatus or any other interest to carry out any works within 15 metres of National Grid's apparatus until the following conditions are satisfied—

(a) unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same to the undertaker in writing; and

(b) unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with sub-paragraph (7) of this Schedule, nothing in this Schedule shall prevent National Grid from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

12. Save to the extent provided for to the contrary elsewhere in this Schedule or by agreement in writing between National Grid and the undertaker, nothing in 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.

Cooperation

13.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 6(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 8, the undertaker shall use its best endeavours to coordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid shall use its best endeavours to cooperate 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

14. If in consequence of the agreement reached in accordance with paragraph 6(1) or 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

15. Save for differences or disputes arising under paragraphs 6(2), 6(4), 7(1) and 8 any difference or dispute arising between the undertaker and National Grid under this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 46 (arbitration).

Notices

16. Notwithstanding article 45 (service of notices), any plans submitted to National Grid by the undertaker pursuant to paragraph 8 must be submitted using the LSBUD system (https://lsbud.co.uk/) or to such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

SCHEDULE 20

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF NATIONAL GAS TRANSMISSION PLC AS GAS UNDERTAKER

Application

1. For the protection of National Gas as referred to in this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Gas.

Interpretation

2. In this Schedule—

"acceptable credit provider" means a bank or financial institution with a credit rating that is not lower than: (i) "A-" if the rating is assigned by Standard & Poor's Ratings Group; and "A3" if the rating is assigned by Moody's Investors Services Inc;

"acceptable insurance" means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event), such insurance shall be effected and maintained:

(a) during the construction period of the authorised development; and

(b) after the construction period of the authorised development in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitutes specified works,

and arranged with an insurer whose security/credit rating meets the same requirements as an acceptable credit provider, and such policy shall include (but without limitation):

(a) a waiver of subrogation and an indemnity to principal clause in favour of National Gas; and

(b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a sub-limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

"acceptable security" means:

(a) a bank bond or letter of credit from an acceptable credit provider in favour of National Gas to cover the undertaker's liability to National Gas for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Gas); or

(b) evidence provided to National Gas' satisfaction that the undertaker has a tangible net worth of not less than £100,000,000 (one hundred million pounds) (or an equivalent financial measure). "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;

"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(1) (interpretation) of this Order and includes any associated development authorised by the Order and (unless otherwise specified) for the purposes 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(1) (interpretation) of this Order save that for the purposes of this Schedule only shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment within 15 metres measured in any direction 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;

"Network Code" means the network code prepared by National Gas pursuant to Standard Special Condition A11(3) of its Gas Transporter's Licence, which incorporates the Uniform Network Code, as defined in Standard Special Condition A11(6) of National Gas's Gas Transporters Licence, as both documents are amended from time to time;

"Network Code Claims" means any claim made against National Gas by any person or loss suffered by National Gas under the Network Code arising out of or in connection with any failure by National Gas to make gas available for off take at, or a failure to accept gas tendered for delivery from, any entry point to or exit point from the gas national transmission system as a result of the authorised works or any costs and/or expenses incurred by National Gas as a result of or in connection with, it taking action (including purchase or buy back of capacity) for the purpose of managing constraint or potential constraint on the gas national transmission system which may arise as a result of the authorised works;

"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 7(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 7(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 of 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"); and

"undertaker" means the undertaker as defined in article 2(1) of this Order.

On Street Apparatus

3. Except for paragraphs 4 (apparatus of National Gas in streets subject to temporary closure), 9 (retained apparatus), 10 (expenses) and 11 (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 closure

4. Notwithstanding the temporary closure or diversion of any street under the powers of article 13 (temporary closure of streets and public rights of way), National Gas will be at liberty at all times to take all necessary access across any such closed 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

5. 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.

Acquisition of land

6.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not—

(a) appropriate or acquire or take temporary possession of any land or apparatus; or

(b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Gas,

otherwise than by agreement.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised development (or in such other timeframe as may be agreed between National Gas and the undertaker) that is subject to the requirements of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Gas or affect the provisions of any enactment or agreement regulating the relations between National Gas and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Gas reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Gas and the undertaker acting reasonably and which must be no less favourable on the whole to National Gas unless otherwise agreed by National Gas, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised development.

(3) Save where otherwise agreed in writing between National Gas and the undertaker, the undertaker and National Gas agree that where there is any inconsistency or duplication between the provisions set out in this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such

relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Gas and/or other enactments relied upon by National Gas as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by National Gas under paragraph 12 or any other paragraph of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

7.—(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 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 8(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 other than in 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 may, in its sole discretion, 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 do so.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Schedule must be constructed in such a 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 Schedule.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions 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 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 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 15 (arbitration) 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

9.—(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 1 to 3, 7 and 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(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 30 days before commencing the execution of the specified works (or part thereof), 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 (11) 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 10.

Expenses

10.—(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 anticipated within the following three months or 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 7(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; and

(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 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 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 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 15 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under 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 the benefit.

Indemnity

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by 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 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 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 and including Network Code Claims 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 workmanlike 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 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 2008 Act or article 8 (consent to the 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 paragraph (b) will be subject to the full terms of this Schedule including this paragraph; and/or

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(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 must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering its representations.

(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 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 and, if reasonably requested to do so by the undertaker, National Gas must provide an explanation of how the claim has been minimised.

(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.

(7) The undertaker must not commence construction (and must not permit the commencement of such construction) of the authorised works on any land owned by National Gas or in respect of which National Gas has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Gas' apparatus until the following conditions are satisfied—

(a) unless and until National Gas is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised development from the proposed date of commencement of construction of the authorised development) and National Gas has confirmed the same to the undertaker in writing; and

(b) unless and until National Gas is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Gas that it shall maintain such acceptable insurance for the construction period of the authorised development from the proposed date of commencement of construction of the authorised development) and National Gas has confirmed the same in writing to the undertaker.

Enactments and agreements

12. Save to the extent provided for to the contrary elsewhere in this Schedule or by agreement in writing between National Gas and the undertaker, nothing in this Schedule affects the

provision 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.

Cooperation

13.—(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 7(2) or National Gas makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use its best endeavours to coordinate 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 cooperate 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

14. If, in consequence of the agreement reached in accordance with paragraph 6(1) or 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

15. Save for the differences or disputes arising under paragraphs 7(2), 7(4), 8(1) and 9, any difference or dispute arising between the undertaker and National Gas under this Schedule must, unless otherwise agreed in writing between the undertaker and National Gas, be determined by arbitration in accordance with article 46 (arbitration).

Notices

16. Notwithstanding article 45 (service of notices), any plans submitted to National Gas by the undertaker pursuant to paragraph 9 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

SCHEDULE 21

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF RAILWAY INTERESTS

1. The provisions of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 15 of this Schedule, any other person on whom rights or obligations are conferred by that paragraph.

2.—(1) In 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;

"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 5(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;

"regulatory consents" means any consent or approval required under—

(a) the Railways Act 1993(**a**);

(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;

"specified work" means so much of any of the authorised development as is situated upon, across, under over or within 15 metres of, or may in any way adversely affect, railway

(**a**) 1993 c.43.

property and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 5 (maintenance of authorised development); and

"undertaker" has the same meaning as in article 2 (interpretation) of this Order.

3.—(1) Where under 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) Insofar 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) cooperate 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.

4. 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.

5.—(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 46 (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 ground 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.

6.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 5(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 5;

(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 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.

7. 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.

8. 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 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.

9.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified 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 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 works 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 5, 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 10(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.

10. 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 5(3) or in constructing any protective works under the provisions of paragraph 5(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.

11.—(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 5(1) 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 5(1)) 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 paragraph (a); and

(c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to 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 5(1) 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; and

(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 6.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(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 10(a), any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 46 (arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Engineering and Technology.

12.—(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 costs of doing so.

13. 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.

14. 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.

15.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in 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;

(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 such 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 procedures 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 of 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 such 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 15 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 15 for claims reasonably incurred by Network Rail.

(3) If the undertaker withholds consent pursuant to sub-paragraph (2)(b) it may have sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand, and the undertaker must give Network Rail notice of it having sole conduct at the same time as refusing consent.

(4) 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.

(5) 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 (1) which relates to the relevant costs of that train operator.

(6) The obligation under sub-paragraph (1) 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 (5).

(7) 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.

16. 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 Schedule (including the amount of the relevant costs mentioned in paragraph 15) 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 Schedule (including any claim relating to those relevant costs).

17. In the assessment of any sums payable to Network Rail under 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 Schedule or increasing the sums so payable.

18. 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.

19. 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.

20. 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 44 (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.

21. In relation to any dispute arising between the undertaker and Network Rail under this Schedule, it must, unless otherwise agreed in writing between the undertaker and Network Rail, be referred to and settled by arbitration in accordance with article 46 (arbitration).

SCHEDULE 22

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

1.—(1) The following provisions apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

(2) In this Schedule—

"Agency" means the Environment Agency or, in paragraph 3, where the undertaker has made a request under paragraph 2(1), the team confirmed by the Environment Agency under paragraph 2(2);

"construction" includes execution, placing, altering, replacing, relaying and removal and excavation and "construct" and "constructed" is construed accordingly;

"drainage work" means any main river and includes any land which provides or is expected to provide flood storage capacity for any main river and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

"emergency" means an occurrence which presents a risk of—

(a) serious flooding;

(b) serious detrimental impact on drainage; or

(c) serious harm to the environment.

"fishery" means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, spawning ground, habitat or food of such fish;

"main river" has the same meaning given in section 113 of the Water Resources Act 1991(**a**);

"non-tidal main river" has the meaning given in paragraph 2(1) of Part 1 of Schedule 25 to the Environmental Permitting (England and Wales) Regulations 2016(**b**);

"plans" includes plans, sections, elevations, drawings, specifications, programmes, proposals, calculations, method statements and descriptions;

"remote defence" means any berm, wall or embankment that is constructed for the purposes of preventing or alleviating flooding from, or in connection with, any main river;

"sea defence" means any bank, wall, embankment (any berm, counterwall or cross-wall connected to any such bank, wall or embankment), barrier, tidal sluice and other defence, whether natural or artificial, against the inundation of land by sea water or tidal water, including natural or artificial high ground which forms part of or makes a contribution to the efficiency of the defences of the Agency's area against flooding, but excludes any sea defence works which are for the time being maintained by a coast protection authority under the provisions of the Coast Protection Act 1949(**c**) or by any local authority or any navigation, harbour or conservancy authority;

"specified work" means so much of any work or operation authorised by this Order as is in, on, under, over or within—

(a) 16 metres of the base of a sea defence which is likely to—

(i) endanger the stability of, cause damage or reduce the effectiveness of that sea defence; or

---

(**a**) 1991 c.57. Section 113 was amended by section 100 of and Schedule 24 to Environment Act 1995 (c.25), section 59 of the Water Act 2014 (c.21) and S.I. 2013/755.
(**b**) S.I. 2016/1154.
(**c**) 1949 c.74.

(ii) interfere with the Agency's access to or along that sea defence or the Agency's ability to undertake works to ensure the efficacy of that sea defence;

(b) 8 metres of the base of a remote defence which is likely to—

(i) endanger the stability of, cause damage or reduce the effectiveness of that remote defence; or

(ii) interfere with the Agency's access to or along that remote defence;

(c) 16 metres of a drainage work involving a tidal main river;

(d) 8 metres of a drainage work involving a non-tidal main river;

(e) any distance of a drainage work and is otherwise likely to—

(i) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;

(ii) affect the flow, purity or quality of water in any main river or other surface waters;

(iii) cause obstruction to the free passage of fish or damage to any fishery;

(iv) affect the conservation, distribution or use of water resources; or

(v) affect the conservation value of the main river and habitats in its immediate vicinity;

or which involves—

(f) an activity that includes dredging, raising or taking of any sand, silt, ballast, clay, gravel or other materials from or off the bed or banks of a drainage work (or causing such materials to be dredged, raised or taken), including hydrodynamic dredging or desilting; and

(g) any quarrying or excavation within 16 metres of a drainage work which is likely to cause damage to or endanger the stability of the banks or structure of that drainage work; and

"tidal main river" has the meaning given in paragraph 2(1) of Part 1 of Schedule 25 to the Environmental Permitting (England and Wales) Regulations 2016.

Submission and approval of plans

2.—(1) Before beginning to construct any specified work, the undertaker may submit a request in writing for the Agency to confirm and provide details about which team within the Agency is to receive and approve plans of the specified work.

(2) The Agency must confirm and provide details of which team within the Agency is to receive and approve plans of the specified work within 14 days of the receipt of the undertaker's request submitted under sub-paragraph (1).

(3) Details to be provided by the Agency under sub-paragraph (2) must include a contact name, postal address and email address for the undertaker to use to submit plans of the specified work pursuant to paragraph 3.

3.—(1) Before beginning to construct any specified work, the undertaker must submit to the Agency for approval plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 13.

(3) Any approval of the Agency required under this paragraph—

(a) must not be unreasonably withheld or delayed;

(b) subject to sub-paragraph (5), is deemed to have been refused if it is neither given nor refused within 2 months of the submission of the plans or such later date as is agreed between the Agency and the undertaker and if further particulars have been requested pursuant to sub-paragraph (1) the period between the making of this request and the provision of further particulars in response to it shall not be taken into account in the calculation of the 2 months for the purposes of this sub-paragraph; and

(c) may be given subject to such reasonable requirements as the Agency may have for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or for nature conservation or the prevention of environmental harm in the discharge of its environmental duties.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

(5) In the case of a refusal, the Agency must at the same time provide reasons for the grounds of that refusal.

Construction of protective works

4. Without limiting paragraph 3, the requirements which the Agency may have under that paragraph include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

(a) to safeguard any drainage work against damage; or

(b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

Timing of works and service of notices

5.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 4 must be constructed—

(a) without unreasonable delay in accordance with the plans approved under this Schedule; and

(b) to the reasonable satisfaction of the Agency,

and the Agency is entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If the Agency reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of any specified work to which the protective works relate.

Works not in accordance with this Schedule

6.—(1) If there is any failure by the undertaker to obtain approval or comply with conditions imposed by the Agency in accordance with these protective provisions and where the Agency acting reasonably considers it necessary to avoid any of the risks specified in sub-paragraph (2) the Agency may serve written notice requiring the undertaker to cease all or part of the specified works as may be specified within the notice within the period specified in the notice (which period must be reasonable in the circumstances), and the undertaker must cease constructing the specified works or part thereof until such time as it has obtained the consent or complied with the condition specified within the notice served.

(2) The risks specified in sub-paragraph (1) are—

(a) risk of flooding;

(b) risk of harm to the environment;

(c) risk of detrimental impact on drainage; and

(d) damage to the fishery.

(3) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Schedule, the Agency may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(4) Subject to sub-paragraph (5) if, within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (3) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(5) In the event of any dispute as to whether sub-paragraph (3) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined in accordance with paragraph 13.

Maintenance of works

7.—(1) Subject to sub-paragraph (5), the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may be notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to sub-paragraph (4) if, within a reasonable period, being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 13.

(5) This paragraph does not apply to—

(a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of the Order from doing so; and

(b) any obstruction of a drainage work expressly authorised in the approval of specified works plans and carried out in accordance with the provisions of this Schedule provided that any obstruction is removed as soon as reasonably practicable.

Remediating impaired drainage work

8. If by reason of the construction of any specified work or of the failure of any such work, the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is

otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the impairment or damage and recover any expenditure incurred by the Agency in so doing from the undertaker.

Agency access

9. If by reason of the construction of any specified work or the failure of any such work, the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must notify the Agency immediately and provide suitable alternative means of access that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction occurred and such alternative access must be made available as soon as reasonably practicable after the undertaker becomes aware of such obstruction, except in the case of an emergency in which case the undertaker must provide such alternative means of access on demand.

Free passage of fish

10.—(1) The undertaker must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

(a) the construction of any specified work; or

(b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage within the period specified in the notice.

(3) If, the undertaker fails to take such steps as are described in the notice served under sub-paragraph (2), the Agency may take those steps and any expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) In any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker any expenditure incurred in so doing provided that notice specifying those steps is served on the undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

Indemnity

11. The undertaker indemnifies the Agency in respect of all costs, charges and expenses which the Agency may reasonably incur—

(a) in the examination or approval of plans under this Schedule;

(b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Schedule; and

(c) in carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

12.—(1) The undertaker is responsible for and indemnifies the Agency against all costs and losses, liabilities, claims and demands not otherwise provided for in this Schedule which may be reasonably incurred or suffered by the Agency by reason of, or arising out of—

(a) the construction, operation or maintenance of any specified works comprised within the authorised development or the failure of any such works comprised within them; or

(b) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction, operation or maintenance of the authorised development or dealing with any failure of the authorised development.

(2) For the avoidance of doubt, in sub-paragraph (1)—

(a) "costs" includes—

(i) expenses and charges;

(ii) staff costs and overheads; and

(iii) legal costs;

(b) "losses" includes physical damage;

(c) "claims" and "demands" includes as applicable—

(i) costs (within the meaning of paragraph (a) incurred in connection with any claim or demand; and

(ii) any interest element of sums claimed or demanded; and

(d) "liabilities" includes—

(i) contractual liabilities;

(ii) tortious liabilities (including liabilities for negligence or nuisance);

(iii) liabilities to pay statutory compensation or for breach of statutory duty; and

(iv) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).

(3) The Agency must give to the undertaker reasonable notice of any such claim or demand and must not settle or compromise a claim without the agreement of the undertaker and that agreement must not be unreasonably withheld or delayed.

(4) If the undertaker withholds consent pursuant to sub-paragraph (3) it may have sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand, and the undertaker must give the Agency notice of it having sole conduct at the same time as refusing consent.

(5) The Agency must at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or loss.

(6) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, must not relieve the undertaker from any liability under the provisions of this Schedule.

(7) Nothing in this paragraph imposes any liability on the undertaker with respect to any costs, charges, expenses, damages, claims, demands or losses to the extent that they are attributable to the neglect or default of the Agency, its officers, servants, contractors or agents.

Disputes

13. Any dispute arising between the undertaker and the Agency under this Schedule must, if the parties agree, be determined by arbitration under article 46 (arbitration), but failing that agreement be determined by the Secretary of State for Environment, Food and Rural Affairs or its successor and the Secretary of State for Energy Security and Net Zero or its successor acting jointly on a reference to them by the undertaker or the Agency, after notice in writing by one to the other.

SCHEDULE 23

Article 41

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).

SCHEDULE 24

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF INEOS NITRILES (UK) LIMITED

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

2. In this Schedule—

"INEOS" means INEOS Nitriles (UK) Limited (company number 06238238), whose registered office is at Biz Hub, Belasis Business Centre Coxwold Way, Belasis Business Park, Billingham, TS23 4EA and any successor in title or function to the INEOS operations;

"INEOS operations" means the operations or property within Order limits vested in INEOS, 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(**a**);

"parties" means the undertaker and INEOS, and "party" shall be construed accordingly;

"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;

(d) schedules of work and risk assessments for the proposed work; and

(e) any further particulars provided in response to a request under paragraph 3.

Consent under this Schedule

3. Before commencing any part of the authorised development which may have an effect on the operation or maintenance of the INEOS operations or access to them, access to any land owned by INEOS that is adjacent to the Order limits, 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.

4. No works comprising of any part of the authorised development which would have an effect on the operation or maintenance of the INEOS operations or access to them, access to any land owned by INEOS that is adjacent to the Order limits, 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 3 have been approved by INEOS.

5.—(1) Any approval of INEOS required under paragraph 4 must not be unreasonably withheld or delayed but may be—

(a) reasonably refused if it materially constrains INEOS' vehicular accessways to the River Tees more than the existing access points as at the date of the Order; or

(b) given subject to such reasonable requirements as INEOS may require to be made for—

(i) the continuing safety, or operational activity of the INEOS operations (for the avoidance of doubt where the reasonable requirements relate to such matters, a

(**a**) 1962 c.58. Section 65 was amended by paragraph 8 of Schedule 1 to Gas (Third Party Access and Accounts) Regulations 2000/1937, paragraph 6 of Schedule 2 to Energy Act 2011 (c. 16) and paragraph 5 of Schedule 1 to Storage of Carbon Dioxide (Access to Infrastructure) Regulations 2011/2305.

reasoned explanation will be provided by INEOS to substantiate the need for these requirements);

(ii) the continuing safe operation of infrastructure not belonging to INEOS but within or adjacent to the INEOS operations, including reasonable 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

(iii) the requirement for INEOS to have—

(aa) reasonable emergency access with or without vehicles to the INEOS operations at all times;

(bb) reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation of the INEOS operations; and

(cc) reasonable access with or without vehicles to the River Tees at all times.

(2) Any approval of INEOS required under paragraph 3 including any reasonable requirements required by INEOS under sub-paragraph (1), must be made in writing within a period of 21 days (unless a shorter period is otherwise agreed in writing between the undertaker and INEOS) beginning with the date on which the works details were submitted to INEOS under paragraph 3 or the date on which any further particulars requested by INEOS under paragraph 3 were submitted to INEOS (whichever is the later).

(3) The authorised development must be carried out in accordance with the works details approved under paragraph 4 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 9 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 9.

(5) 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 INEOS) in no case less than 28 days before commencing the execution of any restricted works, new works details, instead of the works details submitted, and having done so the provisions of paragraphs 3 to 5 apply to and in respect of the new works details.

Compliance with requirements, etc. applying to the INEOS operations

6. 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 reasonable 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

7.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of the works referred to in paragraph 3, 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—

(a) 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; or

(b) any indirect or consequential loss or loss of profits by INEOS.

(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 compromises 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 7 applies.

(5) 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).

(6) The undertaker shall only be liable under this paragraph 7 for claims reasonably incurred by INEOS.

Costs

8.—(1) Subject to the following provisions of this paragraph 8, the undertaker must pay to INEOS the reasonable and properly incurred costs and expenses (including reasonable staffing costs if work is carried out in-house) incurred by INEOS 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 affected apparatus; and

(ii) the review and assessment of works details in accordance with paragraph 3;

(b) the watching of and inspecting the execution of the works approved under paragraph 4; and

(c) imposing reasonable requirements in accordance with paragraph 5.

(2) Prior to incurring any costs or expenses associated with the activities in sub-paragraph (1), INEOS 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.

Dispute resolution

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

SCHEDULE 25

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF NAVIGATOR TERMINALS SEAL SANDS LIMITED

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

2. In this Schedule—

"Navigator Terminals" means Navigator Terminals Seal Sands Limited (company number 00829104), whose registered office is Oliver Road, Grays, RM20 3ED and Navigator Terminals North Tees Limited (company number 09889506), whose registered office is Oliver Road, Grays, RM20 3ED and any successor in title or function to the Navigator Terminals operations;

"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(**a**); and

"works details" means—

(a) plans and sections;

(b) details of the proposed method of working and timing of execution of works (including, but not limited to, the details for managing any contamination and contaminated land relevant to the proposed work and arrangements for remediating the said contamination);

(c) details of vehicle access routes for construction and operational traffic;

(d) schedules of work and risk assessments for the proposed work; and

(e) any further particulars provided in response to a request under paragraph 3.

Consent under this Schedule

3. 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, or access to any land owned by Navigator Terminals that is adjacent to the Order limits, 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.

4. 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, or access to any land owned by Navigator Terminals that is adjacent to the Order limits, are to be commenced until the works details in respect of those works submitted under paragraph 3 have been approved by Navigator Terminals.

5. Any approval of Navigator Terminals required under paragraph 4 must not be unreasonably withheld or delayed and a determination shall be provided within 28 days from the day when the last such works details (including any additional details reasonably required within the 28 day period following submission of works details as referred to in paragraph 3 above) are provided

(**a**) 1962 c.58. Section 65 was amended by paragraph 8 of Schedule 1 to Gas (Third Party Access and Accounts) Regulations 2000/1937, paragraph 6 of Schedule 2 to Energy Act 2011 (c.16) and paragraph 5 of Schedule 1 to Storage of Carbon Dioxide (Access to Infrastructure) Regulations 2011/2305.

pursuant to paragraph 3 but may be given subject to such reasonable requirements as Navigator Terminals may require to be made for—

(a) avoiding any material impact on the Navigator Terminals operations (for the avoidance of doubt where the reasonable requirements relate to such matters, a reasoned explanation will be provided by Navigator Terminals to substantiate the need for these requirements); 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.

6.—(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 4 and any requirements imposed on the approval under paragraph 8 and all other statutory and other requirements or regulations.

(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 authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 8.

Costs

7.—(1) Subject to the following provisions of this paragraph 7, the undertaker must pay to Navigator Terminals the reasonable and properly incurred costs and expenses (including reasonable staffing costs if work is carried out in-house) incurred by Navigator Terminals 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 affected apparatus; and

(ii) the review and assessment of works details in accordance with paragraph 3;

(b) the watching of and inspecting the execution of the works approved under paragraph 4; and

(c) imposing reasonable requirements in accordance with paragraph 5.

(2) Prior to incurring any costs or expenses associated with the activities in sub-paragraph (1) Navigator Terminals 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

8.—(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 the Navigator Terminals operations, 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 reasonably incurred by Navigator Terminals in making good such damage or restoring the supply; and

(b) make reasonable 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 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 any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 8 applies.

(5) If requested to do so by the undertaker, Navigator Terminals 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 8 for claims reasonably incurred by Navigator Terminals.

Arbitration

9. Any difference or dispute arising between the undertaker and Navigator Terminals under 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 46 (arbitration).

SCHEDULE 26

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF AIR PRODUCTS PLC

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

2. In this Schedule—

"Air Products" means Air Products Public Limited Company (company number 00103881), Air Products (BR) Limited (company number 02532156) and Air Products Renewable Energy Limited (company number 08443239) whose registered offices are at Hersham Place Technology Park, Molesey Road, Walton on Thames, Surrey, KT12 4RZ and any successor in title to the apparatus;

"alternative apparatus" means such altered and relocated pipeline(s) adequate to enable Air Products to carry out its operations;

"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

3. This Schedule 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.

4. Regardless of the temporary closure, prohibition, restriction, alteration or diversion of use of streets under the powers conferred by article 13 (temporary closure of streets and public rights of way), 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 closure, prohibition, or restriction, alteration, diversion or use was in that street.

Removal of apparatus

5.—(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 either Air Products' apparatus is relocated or diverted, that apparatus must not be removed under this Schedule, 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, tested and is in operation, and access to it has been provided, to the reasonable satisfaction of Air Products as appropriate 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 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 46 (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 46 (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 Schedule.

(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.

Co-operation

6. The undertaker and Air Products will use reasonable endeavours to resolve any potential conflicts or impacts of the authorised development upon the apparatus and/or the alternative apparatus whilst maintaining use of any apparatus (except as agreed by the undertaker and Air Products for the commissioning and decommissioning of the apparatus) by or for the benefit of Air Products.

Facilities and rights for alternative apparatus

7.—(1) Where, in accordance with the provisions of this Schedule, 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 46.

(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

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

5(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 5(1) to 5(7) apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(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) insofar 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 Air Products the reasonable expenses incurred by it in, or in connection with, the inspection, removal, alteration, reinstatement, testing or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution or pursuance of any such works as are referred to in paragraph 5(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 Schedule, and which is not reused as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions 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 article 46 to be necessary,

then, if such placing involves cost in the construction of works under this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity of 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 5(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.

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works authorised by 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 Air Products, or there is any interruption in the use of such apparatus or property including 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—

(a) 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; or

(b) any indirect or consequential loss or loss of profits by Air Products.

(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 10 applies.

(5) 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).

(6) The undertaker shall only be liable under this paragraph 10 for claims reasonably incurred by Air Products.

Application of Schedule to certain apparatus

11. This Schedule and Schedule 39 cannot both apply to the same apparatus, and to the extent that both Schedules do or may apply, only Schedule 39 applies to that apparatus and to any matter arising in relation to the interaction of that apparatus and the authorised development.

Enactments and agreements

12. Nothing in this Schedule 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.

SCHEDULE 27

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF CF FERTILISERS UK LIMITED

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

2. In 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 office is at Head Office Building, Ince, Chester, Cheshire, CH2 4LB and any successor in title to the CF Fertilisers site;

"CF Fertilisers Operations" means the assets and operations within the Order limits vested in CF Fertilisers;

"CF Fertilisers site" means any of the Order land in which CF Fertilisers owns the freehold interest;

"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;

"restricted works" means any works forming any part of the authorised development that will or may affect the apparatus or access to them including—

(a) all works within 6 metres of the apparatus;

(b) the crossing of the apparatus by other utilities; and

(c) the use of explosives within 400 metres of the apparatus,

whether carried out by the undertaker or any third party in connection with the authorised development;

"works details" means—

(a) plans and sections;

(b) details of the proposed method of working and timing of execution of works;

(c) details of the vehicle access routes for construction and operational traffic; and

(d) any further particulars provided in response to a request under paragraph 7.

Precedence of the 1991 Act in respect of apparatus in streets

3. This Schedule 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 (Streets) of the 1991 Act.

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13 (temporary closure of streets and public rights of way), 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

5.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any operational apparatus is placed or over which access to any operational apparatus is enjoyed or requires that operational apparatus is relocated or diverted, that operational apparatus must not be removed under this Schedule, and any right of CF Fertilisers to maintain that operational 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 operational 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 operational 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 alterative 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 CF Fertilisers and the undertaker or in default of agreement settled by arbitration in accordance with article 46 (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 46 (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 Schedule.

(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

6.—(1) Where, in accordance with the provisions of this Schedule, 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 46; 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.

Consent of restricted works under this Schedule

7.—(1) Not less than 28 days before starting the execution of any restricted works the removal of which has not been required by the undertaker under paragraph 5(1), the undertaker must submit to CF Fertilisers the works details for the restricted 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 restricted works 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 delay but may be given subject to such reasonable requirements as CF Fertilisers may require to be made for the alternation 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 11 and the arbitrator give 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 11.

(6) If CF Fertilisers in accordance with sub-paragraph (3) and in consequence of the restricted works proposed by the undertaker, reasonably requires the removal of any operational apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) to (7) apply as if the removal of the operational apparatus had been required by the undertaker under paragraph 5(1).

(7) Nothing in this paragraph precludes the undertaker from submitting at any time, but in no case less than 28 days before commencing the execution of any restricted 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) insofar as is reasonably practicable in the circumstances.

Notices

8. Any notices to be served on the undertaker or CF Fertilisers must be served in writing on the registered office address and on the General Counsel at CF Fertilisers, Ince, Chester, Cheshire, CH2 4LB.

Expenses and costs

9.—(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 removal, inspection, alteration or protection of any operational 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 5(1).

(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 Schedule, that value being calculated and agreed after removal.

(3) If in accordance with the provisions 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 article 46 (arbitration) to be necessary,

then, if such placing involves cost in the construction of works under this Schedule exceeding which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, of 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.

(4) The provisions of 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.

(5) 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 5(1); 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.

(6) 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.

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works referred to in paragraph 7 to this Schedule any damage is caused to CF Fertilisers' Operations, 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—

(a) 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; or

(b) any indirect or consequential loss or loss of profits by CF Fertilisers.

(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.

(4) 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 10 applies.

(5) 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).

(6) The undertaker shall only be liable under this paragraph 10 for claims reasonably incurred by CF Fertilisers.

Arbitration

11. Any difference or dispute arising between the undertaker and CF Fertilisers under 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 46 (arbitration).

SCHEDULE 28

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF NORTHERN POWERGRID (NORTHEAST) PLC

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

2. In this Schedule—

"alternative apparatus" means alternative and/or replacement 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 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 give access 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;

"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; and

"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 or Northern Powergrid's undertaking within the Order limits.

3. 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.

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13 (temporary closure of streets and public rights of way), 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.

5.—(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 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 which shall include rights to retain and subsequently maintain the apparatus being replaced or diverted for the lifetime of that alternative apparatus, 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 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 16.

(5) Northern Powergrid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with paragraph 16, 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 Schedule.

6.—(1) Where, in accordance with the provisions 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 16.

(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.

7.—(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 5(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 28 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 1 to 6 apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(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 35 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 reasonable practicable subsequently and must comply with sub-paragraph (2) insofar as is reasonable practicable in the circumstances.

8.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northern Powergrid the reasonable and proper 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 5(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 5(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 Schedule, that value being calculated after removal and for the avoidance of doubt, if the apparatus removed under the provisions of this Schedule has nil value, no sum will be deducted from the amount payable under this sub-paragraph (1).

(3) If in accordance with the provisions 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 16 to be necessary, then, if such placing involves cost in the construction or works under 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 save where it is not possible on account of project time limits and/or supply issues to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker, provided that the apparatus is the lowest cost alternative available that fulfils the requirements.

(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 that 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 5(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.

9.—(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 5(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 and 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—

(a) 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; or

(b) any indirect or consequential loss or loss of profits by Northern Powergrid.

(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 9 applies.

(5) 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).

(6) The undertaker shall only be liable under this paragraph 9 for claims reasonably incurred by Northern Powergrid.

10. Nothing in 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.

11. Without prejudice to the generality of the protective provisions in this 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 Schedule without limitation—

(a) in assessing and preparing a design for its apparatus to address and accommodate the proposals of the undertaker under paragraph 8;

(b) costs incurred in fulfilling its obligations in paragraph 5(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.

12. Northern Powergrid and the undertaker must use their reasonable endeavours to agree the amount of any estimates submitted by Northern Powergrid under paragraph 11 within 15 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 parties are unable to agree the amount of an estimate, it will be dealt with in accordance with paragraph 16.

13. 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 11 for the benefit of its statutory undertaking.

14. 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.

15.—(1) 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.

(2) 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.

(3) The undertaker is not responsible for meeting costs or expenses in excess of an agreed estimate other than where agreed under paragraph 14 above or determined in accordance with paragraph 16.

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

17. 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.

SCHEDULE 29

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF ANGLO AMERICAN

1. For the protection of Anglo American the following provisions have effect, unless otherwise agreed in writing between the Parties.

2. The following definitions apply in this Schedule—

"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;

"Anglo American Specified Works" means so much of the Woodsmith Project as is within the Shared Area;

"EA Permit 1" means the environmental permit for the landfill site at Bran Sands given permit number EPR/FB3601 GS (formerly Waste Management Licence EAWML60092);

"EA Permit 2" means the Discharge Permit EPR/NB3498VD;

"expert" means a person appointed pursuant to paragraph 14(b);

"H2T Apparatus" means the pipeline, cables, structures to be owned, occupied or maintained by the undertaker within the Shared Area;

"NWL Facility" means the Northumbrian Water Limited Bran Sands Wastewater Treatment Plant;

"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 comprising the area of land within the Order Limits that overlaps with Anglo American interests pursuant to the Property Documents or otherwise within the limits of deviation of the York Potash Order;

"Shared Area Plan" means the plan which is certified as the H2 Teesside Anglo American Shared Area Plan by the Secretary of State under article 44 (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 and any amended or replacement order approved as part of element (4) of the Woodsmith Project, including York Potash Harbour Facilities (Amendment) Order 2022.

Consent to works in the shared area

3.—(1) Where the consent or agreement of Anglo American is required under the provisions 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) the identity of the contractors carrying out the works 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 required 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 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 Anglo American pursuant to 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 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 (where the conditions proposed or any refusal relate to such matters, a reasoned explanation or other form of evidence will be provided by Anglo American to provide an understanding of the matters raised); and/or

(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 1 or the EA Permit 2 or render compliance with the obligations under, or conditions attached to, the EA Permit 1 or the EA Permit 2—

(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 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 in 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 Anglo American has unreasonably withheld its authorisation or agreement under paragraph 5(1), 6(1) and/or 6(2); or

(b) the undertaker considers that Anglo American has given its authorisation under paragraph 5(1), 6(1) and/or 6(2) subject to unreasonable conditions,

the undertaker may refer the matter to dispute resolution under paragraph 14.

(8) Any notice under sub-paragraph (1) and any request for approval or consent under the provisions of this Schedule must be sent to Anglo American by recorded delivery and addressed to—

(a) Estates Manager, Woodsmith Mine, Sneaton, Whitby, YO22 5BF; and

(b) Company Secretary, Anglo American, 17 Charterhouse Street, London, EC1N 6RA.

(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 (1), 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

4. 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, operation and maintenance of the Woodsmith Project is maintained for Anglo American and its 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 Anglo American obtained pursuant to, and in accordance with, the provisions of paragraph 3.

(2) Where under paragraph 3(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 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 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 3 shall apply to the new Plans.

(4) Where there has been a reference to an expert in accordance with paragraph 14(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 14.

(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 paragraph 3 and this paragraph 5 insofar 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 5, 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

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 Woodsmith Project 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 closure of streets and public rights of way);

(e) article 14 (access to works);

(f) article 16 (traffic regulation matters);

(g) article 17 (discharge of water);

(h) article 18 (felling or lopping of trees and removal of hedgerows); and

(i) article 19 (protective works 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 or airspace only);

(p) article 31 (rights under or over streets);

(q) article 32 (temporary use of land for carrying out the authorised development);

(r) article 33 (temporary use of land for maintaining the authorised development); and

(s) article 34 (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.

Constructability principles

7.—(1) The undertaker in respect of the Specified Works (unless otherwise agreed, or in an emergency relating to potential death or serious injury, or where it would render the Specified Works, H2T Apparatus, Anglo American Specified Works or Anglo American Apparatus unsafe, or put the undertaker in breach of its statutory duties) must in respect of all Shared Areas——

(a) 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;

(b) ensure that works carried out to, or placing of H2T 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;

(c) 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—

(i) 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 (a) 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 7;

(ii) provide a copy to Anglo American any relevant construction quality assurance plan, construction management and execution plan and construction environmental management plan approved under Requirement 15(3) and plans approved under Requirement 15(7) which relate to construction activities in the Shared Area;

(iii) 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

(iv) obtain the agreement of Anglo American to the location of any construction compounds where such areas are not those referred to in table 5-2 "construction programme and management" of chapter 5 of the environmental statement;

(d) update the monthly construction programme approved under paragraph (c)(i) monthly and supply a copy of the updated programme to Anglo American every month;

(e) at all times construct the Specified Works in compliance with the relevant agreed construction programme and construction traffic and access management plan;

(f) 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 Disease and Dangerous Occurrences Regulations applicable from time to time within 24 hours of the duty to report arising;

(g) report to Anglo American of any environmental incidents which occur as a consequence of or are found in association with the carrying out of the Specified Works including the identification of contamination or hazards to construction;

(h) 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;

(i) 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

(j) obtain the prior written consent of Anglo American for the use of any recycled aggregate material within the Shared Area.

(2) Unless otherwise agreed, the undertaker must not do anything within the Shared Areas 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 the event that Anglo American notifies the undertaker in writing that Anglo American will not construct any part of the Anglo American Specified Works ("Anglo American Abandoned Works"), the undertaker can construct, operate and maintain the Specified Works

without regard to and without complying with paragraphs 7(1) to 7(3) insofar as those paragraphs apply to the Anglo American Abandoned Works.

(5) In considering a request for any consent under the provisions 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 paragraph 7(1)(c)(i) (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 8.

Interface Design Process

8.—(1) Prior to the seeking of any consent under 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 acceptance 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 Anglo American.

(5) In considering any request for consent or approval under 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

9. 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 all monitoring boreholes, leachate chambers nor the integrity of landfill that are the subject of the EA Permit 1 or the EA Permit 2, so as not to conflict with the ability of Anglo American to comply with the EA Permit 1 or the EA Permit 2; and

(b) so as not to conflict with the ability of Anglo American to construct all works authorised by the York Potash Order, and to preserve the optionality of Anglo American to proceed with the construction of 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 the Shared Area until such time as Anglo American notify the undertaker in writing.

Maintenance and Operational Principles

10. 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) 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 1 and the EA Permit 2;

(b) 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 1 and the EA Permit 2; and

(c) the operation and maintenance of any overland conveyor located within those Shared Areas is not impaired.

Miscellaneous provisions

11.—(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 Schedule.

(2) The undertaker must pay to Anglo American the reasonable expenses incurred by Anglo American 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 Anglo American Specified Works.

Indemnity

12.—(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 breach of the EA Permit 1 or the EA Permit 2, or the operations of Anglo American, or in the supply of any goods, by Anglo American, 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) indemnify and keep indemnified Anglo American against liability which Anglo American incurs by reason of any breach by the undertaker or its authorised personnel.

(2) 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.

(3) 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.

(4) 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).

(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 Anglo American has not used its reasonable endeavours to mitigate and/or minimise that claim in accordance with sub-paragraph (4).

(6) 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 14 does not relieve the undertaker from any liability under this paragraph.

Dispute Resolution

13. Article 46 (arbitration) does not apply to the provisions of this Schedule.

14. Any difference in relation to the provision in this Schedule must be referred to—

(a) a meeting of Chris Daykin, BP Hydrogen & Carbon Capture and Use or the Vice President for hydrogen and carbon capture, usage and storage in the United Kingdom 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.

15. The fees of the expert appointed pursuant to paragraph 14(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.

16. Where appointed pursuant to paragraph 14(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 that 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.

17. 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 in 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.

18. 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 30

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF SOUTH TEES GROUP

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

2.—(1) In this Schedule—

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

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

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

"apparatus" means apparatus (including cables, mains, pipelines, plant and ancillary apparatus) within the Order limits and which is apparatus belonging to or maintained by a STG entity;

"diversion condition" means that in relation to the relevant diversion work—

(a) in relation to a proposed work which is required for the construction of the authorised development, that it in the reasonable opinion of the undertaker enables the authorised development to be constructed and commissioned;

(b) in relation to a proposed work which is required for the maintenance or operation of the authorised development, that in the reasonable opinion of the undertaker, it enables the authorised development to be constructed (where relevant), maintained, operated and (where relevant) decommissioned;

(c) its cost is reasonable having regard to the nature and scale of the relevant proposed work;

(d) planning permission or development consent is not required, or has been granted, or in the reasonable opinion of the undertaker can be obtained in accordance with the undertaker's programme for the construction of the authorised development;

(e) such other consents, licences or authorisations as are required for the diversion work have been obtained, or in the reasonable opinion of the undertaker can be obtained in accordance with the undertaker's programme for the construction of the authorised development;

(f) the STG entity can grant adequate interest in land or a licence to the undertaker to use, maintain and operate the diversion work for its intended purpose as part of the authorised development and if relevant to carry out the diversion work;

(g) the diversion work—

(i) is already constructed and available for use by the undertaker; or

(ii) where a diversion work is to be carried out, whether by the STG entity or the undertaker, it can be carried out and completed in accordance with and without detriment to the undertaker's programme for the construction of the authorised development;

(h) the diversion work complies with the technical specifications agreed or determined by arbitration pursuant to paragraph 17; and

(i) in relation only to the AIL access route works that the diversion work complies with the red main criteria;

"diversion notice" means a notice from the STG entity to the undertaker under paragraph 18;

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

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

(a) adequate interest in land to allow the undertaker to use and where relevant maintain and operate the diversion work for its intended purpose as part of or in connection with the authorised development; and

(b) where relevant, that the undertaker can carry out the diversion work or that the STG entity must carry out the diversion work, in either case in accordance with the undertaker's programme for the construction of the authorised development;

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

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

(b) article 23 (power to override easements and other rights);

(c) article 25 (compulsory acquisition of rights etc.)

(d) article 26 (private rights);

(e) article 28 (acquisition of subsoil and airspace only);

(f) article 32 (temporary use of land for carrying out the authorised development);

(g) article 33 (temporary use of land for maintaining the authorised development); and

(h) article 34 (statutory undertakers),

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

"information notice" means a notice issued by the undertaker under paragraph 20(c) that additional information is reasonably required before it can decide whether to agree to a diversion work;

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

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

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

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

"red main criteria" means that—

(a) the diversion work must be along a route that connects to plot 13/2 at the same location as the existing road or an alternative location as agreed between the STG entity and the undertaker;

(b) the diversion work must connect into the construction areas required for the construction of the authorised development at a location required by the undertaker acting reasonably;

(c) the diversion work must accommodate cargo of 80 metres in length, with an axle width of 15 metres, with 4 metres of overhang each side, and with a total width of 23 metres;

(d) the diversion work must allow a minimum centre line turning radius of 25 metres and a minimum outer turning radius (to the limit of the vehicle/load) of 55 metres;

(e) the longitudinal slope of the diversion work must not exceed 5% with a maximum of 3% for gradient;

(f) 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 100kN/m2 and sufficient protection provided if it crosses underground facilities;

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

"South Tees Group" means STDC, STDL, SRPL and Teesworks;

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

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

(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 33(2) or otherwise; or

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 33(2) or otherwise.

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

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

"STDC area" means the administrative area of STDC;

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

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

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

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

"works details" means—

(a) plans and sections;

(b) details of the proposed design;

(c) details of the proposed method of working

(d) details of the programme and timing of execution of the works;

(e) details of vehicle access routes for construction and operational traffic; and

(f) any further particulars provided in response to a request under paragraph 3; and

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

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

(a) it is longer in distance than the relevant proposed work it is replacing; or

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

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

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

(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

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

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

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

6. The authorised development must be carried out in accordance with the works details approved under paragraph 3 and any requirements or conditions imposed on the approval under paragraph 5 or where there has been a reference to an arbitrator in accordance with paragraph 37 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.

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

Co-operation

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

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

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

(a) the construction of the authorised development may be undertaken on the STG site concurrently with demolition or site preparation works undertaken by the STG entity;

(b) the construction of the respective authorised developments may be undertaken on the STG site concurrently; or

(c) the construction, operation or maintenance of one of the respective authorised developments would have an effect on the construction, operation or maintenance of the other respective authorised development or access to it.

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

(a) co-operate with each other with a view to ensuring—

(i) the co-ordination of construction programming and the carrying out of the respective authorised developments;

(ii) that access for the purposes of constructing the respective authorised developments is maintained for the undertaker, the STG entity and their respective employees, contractors and sub-contractors; and

(iii) that operation, maintenance and access to the respective authorised developments is maintained for the undertaker and the STG entity; and

(b) use reasonable endeavours to avoid any conflict arising from the carrying out of the respective authorised developments.

Expenses

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

(a) the authorisation of works details in accordance with paragraphs 3 to 6;

(b) the process in relation to proposed works and diversion works set out in paragraphs 13 to 27;

(c) where the relevant diversion work is provided by the STG entity and solely for the use of the undertaker in connection with the authorised development, the construction of a diversion work provided instead of the relevant proposed work;

(d) where the relevant diversion work is provided for the use of the undertaker in connection with the authorised development and for use in connection with or as part of the wider STG site, a proportion of the cost of construction of a diversion work provided instead of the H2T (temporary and permanent works) site access route works or the water connection works, such proportion to be agreed between the undertaker and the STG entity acting reasonably or to be determined by arbitration pursuant to paragraph 37; and

(e) the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in accordance with paragraphs 33 and 34.

(2) Prior to incurring any expenses associated with the activities outlined in this paragraph 11, the STG entity must give prior written notice to the undertaker of the activity or activities to be undertaken and an estimate of the costs to be incurred.

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

Indemnity

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

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

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

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

(a) any damage or interruption to the extent that it is attributable to the act, neglect or default of the STG entity, its officers, employees, servants, contractors or agents; and

(b) any indirect or consequential loss or loss of profits by the STG entity.

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

(4) The STG entity must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 12 applies.

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

(6) The undertaker shall only be liable under this paragraph 12 for claims reasonably incurred by the STG entity.

Provision for diversion work

13. The undertaker must—

(a) as soon as reasonably practicable following the grant of the DCO consent, and prior to commencement of the authorised development—

(i) provide to the STG entity details of its proposed work programme; and

(ii) provide such further particulars relating to the proposed works as the STG entity may on occasion reasonably request, and must provide the details reasonably available to the undertaker that have been requested by the STG entity, other than information that the undertaker reasonably considers is confidential, within a period of 30 days of a request by the STG entity or such longer period as the STG entity and the undertaker may agree; and

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

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

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

(a) the date of issue of the work notice under paragraph 13(b); or

(b) the date of issue of the most recent work notice under paragraph 14,

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

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

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

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

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

(a) after the 28 day period specified in paragraph 16, in the event that the undertaker does not provide the STG entity with the reasonable technical specifications pursuant to paragraph 16; or

(b) after the technical specifications are agreed or determined by arbitration pursuant to paragraph 17.

19. 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.

20. If a diversion notice is issued to the undertaker before the expiry of the period under paragraph 15, the undertaker must notify the STG entity no later than 30 days after the date of receipt of the diversion notice confirming whether the undertaker—

(a) agrees to the diversion work;

(b) does not agree to the diversion work; or

(c) requires additional information to consider whether it agrees to the diversion work (an "information notice").

21. In making the decision under paragraph 20 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.

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

23. Where the undertaker notifies the STG entity under paragraph 20(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.

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

25. If the STG entity submits further information to the undertaker within 30 days of receipt of the information notice, the undertaker must consider the further information and paragraph 20 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 20(c); or

(b) in any case 150 days from the date of the undertaker's work notice under paragraph 13(b) or if relevant 150 days from the date of any revised work notice issued by the undertaker under paragraph 14.

26. If the undertaker issues notice to the STG entity under paragraph 20(b) confirming that it does not agree to the diversion notice, the STG entity may submit a further diversion notice to the undertaker to address the undertaker's reasons for refusal under paragraph 20, 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 20(b); or

(b) in any case 150 days from the date of the undertaker's work notice under paragraph 13(b) or if relevant 150 days from the date of any further work notice issued by the undertaker under paragraph 14.

27. If the undertaker issues a notice under paragraph 20(a) the STG entity and the undertaker must use reasonable endeavours to enter into a diversion works agreement within 30 days of the notice on such terms as may be agreed between them, and where a planning permission is still to be obtained for the diversion work, the STG entity must use reasonable endeavours to obtain the planning permission in order that the diversion work can be carried out without delay to the undertaker's programme for the construction of the authorised development.

28.—(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 27 (or such longer period as may be agreed between the parties prior to the expiry of that 30 day period) the STG entity or the undertaker may within 15 days of the end of that period refer the matter to arbitration under paragraph 37.

(2) If a diversion works agreement is not entered into within the 30 day period set out in paragraph 27 (or such longer period as may be agreed between the parties prior to the expiry of that 30 day period) because any planning permission required for the diversion work has still not been obtained, and in the reasonable opinion of the undertaker the planning permission is not likely to be obtained in order to allow the diversion work to be carried out without material delay to the undertaker's programme, the undertaker may issue a notice to the STG entity confirming that it is not entering into the diversion works agreement.

(3) A notice issued by the undertaker under sub-paragraph (2) shall have the same effect as a notice issued by the undertaker under paragraph 26.

29. If a reference is made to arbitration under paragraph 37 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.

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

31. If—

(a) a diversion works agreement is entered into within the 30 day period set out in paragraph 27; or

(b) a reference to arbitration is made in accordance with paragraph 37 and a diversion works agreement is entered into within the 15 day period in paragraph 30,

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

32.—(1) If—

(a) no diversion notice is issued by the STG entity to the undertaker before the expiry of the period under paragraph 15;

(b) a diversion notice is issued by the STG entity to the undertaker, the undertaker issues a notice not agreeing to the diversion work under paragraph 20(b), and no further diversion notice is issued by the STG entity to the undertaker prior to the dates set out in paragraph 26;

(c) a diversion notice is issued by the STG entity to the undertaker, the undertaker issues an information notice, and no further information is provided by the STG entity to the undertaker prior to the dates set out in paragraph 25;

(d) paragraph 27 applies and the STG entity and the undertaker do not enter into a diversion works agreement within the 30 day period set out in that paragraph and no reference to arbitration is made prior to the expiry of the period in paragraph 28;

(e) the arbitrator determines under paragraph 37 that the terms of the diversion works agreement cannot reasonably be in accordance with the diversion condition; or

(f) paragraph 30 applies and the STG entity has not executed and unconditionally released for completion a diversion works agreement within the 10 day period set out in that paragraph,

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

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

Removal of apparatus owned or maintained by a STG entity

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

(2) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the STG entity advance written notice of that requirement, together with plan and section for the work proposed, including the proposed position of the alternative apparatus to be provided or constructed, and in that case (or if in consequence of the exercise of any of the powers conferred by this Order the STG entity reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to the STG entity to its reasonable satisfaction (taking into account paragraph 34(1) below) the necessary facilities and rights—

(a) for the construction of alternative apparatus in other land of, or land secured by the undertaker; and

(b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, the STG entity must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for the STG entity to seek compulsory purchase powers.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Schedule must be constructed in such manner and in such line or situation as may be agreed between the STG entity and the undertaker or settled by arbitration in accordance with paragraph 37.

(5) The STG entity must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with paragraph 37 (arbitration) and the grant to the STG entity of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Schedule.

34.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to or secures for the STG entity facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between

the undertaker and the STG entity or settled by arbitration in accordance with paragraph 37 and which must be no less favourable on the whole to the STG entity than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by the STG entity.

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

(3) If the amount of compensation cannot be agreed, the matter may be referred to arbitration in accordance with paragraph 37 (arbitration) of this Schedule and the arbitrator must make such provision for the payment of appropriate compensation by the undertaker to the STG entity as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Protection of apparatus owned or maintained by a STG entity

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

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and

(f) any intended maintenance regimes.

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

(a) securing its apparatus against interference or risk of damage, and to ensure its continuing safety and operational viability; and

(b) providing or securing for the STG entity proper and convenient means of access to any apparatus.

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

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

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

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

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

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

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

(a) in an emergency without notice; and

(b) in non-emergency circumstances where reasonably necessary, having first given the undertaker at least 28 days prior written notice in order to allow the parties to liaise over timing and coordination of their respective works during the period of temporary possession.

Arbitration

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

Interpretation

38.—(1) Any reference to the STG entity in this Schedule means the freehold owner of the relevant part of the STG site.

(2) The relevant STG entity which is the freehold owner referred to in sub-paragraph (1) must consult with all other STG entities that have an interest in the relevant part of the STG site in relation to any obligations, approvals or other functions which the freeholder has pursuant to this Schedule.

Miscellaneous

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

SCHEDULE 31

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF NORTHUMBRIAN WATER LIMITED

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

2. In this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable NWL to fulfil its statutory functions in no less efficient a manner than previously;

"apparatus" means the following items belonging to or maintained by NWL within the Order limits—

(a) in the case of NWL'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 NWL 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 NWL's sewerage undertaking—

(i) any sewer, drain or disposal works vested in NWL under the Water Industry Act 1991(**a**); 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;

"NWL" 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.

(**a**) 1991 c.56.

Protection strips

3. 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 NWL, 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.

Protection of NWL Apparatus

4. Without prejudice to the generality of the foregoing, 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 (England and Wales) Regulations 2016(**a**) 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 NWL and NWL has given the necessary consent or approval under the relevant provision, such agreement not to be unreasonably withheld or delayed and must be given within 28 days from the date the plan of works proposed has been submitted; and

(c) 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 NWL for—

(i) the continuing safety and operational viability of the apparatus (for the avoidance of doubt where the reasonable requirements relate to such matters, a reasoned explanation will be provided by NWL to substantiate the need for these requirements); and

(ii) the requirement for NWL to secure reasonable access to the apparatus.

5. 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 NWL 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 apparatus.

6. 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 NWL to maintain or use the apparatus no less effectively than was possible before such obstruction.

7. The undertaker, in the case of powers conferred by the Order for the protective work to buildings, must exercise those powers so as not to obstruct or render less convenient the access to any apparatus belonging to NWL without the written consent of NWL.

(**a**) S.I. 2016/1154.

Unmapped sewers / other apparatus

8.—(1) Where the undertaker identifies any apparatus which may belong to or be maintainable by NWL but which does not appear on any statutory map kept for the purpose by NWL, it shall inform NWL of the existence and location of the apparatus as soon as reasonably practicable.

(2) 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 NWL and afforded the same protection as other NWL assets.

Indemnity

9. —(1) Subject to sub-paragraphs (2) and (3), if for any direct reason or in direct consequence of the construction of any of the works by or at the direction of the undertaker referred to in paragraphs 3 to 7 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 NWL, or there is any interruption in any service provided, or in the supply of any goods, by NWL, the undertaker must—

(a) bear and pay the cost reasonably incurred by NWL in making good any damage or restoring the supply; and

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

(2) NWL 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 9 applies. If requested to do so by the undertaker, NWL 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 9 for claims reasonably incurred by NWL.

(3) Any dispute arising between the undertaker and NWL under this Schedule must be referred to and settled by arbitration under article 46 (arbitration).

(4) The fact that any act or thing may have been done by NWL on behalf of the undertaker or in accordance with a plan approved by NWL or in accordance with any requirement of NWL or under its supervision does not, subject to sub-paragraph (5) excuse the undertaker from liability under the provisions of sub-paragraph (1) unless NWL fails to carry out and execute the works properly with due care and attention and in a skilful and professional manner or in a manner that does not accord with the approved plan.

(5) 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 unlawful or unreasonable act, neglect or default of NWL, its officers, employees, servants, contractors or agents.

(6) NWL 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.

Duty to cooperate

10. Where in consequence of the proposed construction of any of the authorised development, the undertaker or NWL requires the removal of apparatus or NWL 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 NWL's undertaking and NWL must use all reasonable endeavours to co-operate with the undertaker for that purpose.

11. Nothing in this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and NWL in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

12. Prior to carrying out any works within the Order limits (as defined in the Order) NWL 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.

SCHEDULE 32

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF THE BREAGH PIPELINE OWNERS

1. 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.

2. In 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(**a**);

"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 E&P (UK) Limited (company number 04376184), whose registered address is at Anchor House, 15-19 Britten Street, London, SW3 3TY 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 3.

Consent under this Schedule

3. 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.

4. 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

(**a**) 1962 c.58. Section 65 was amended by paragraph 8 of Schedule 1 to Gas (Third Party Access and Accounts) Regulations 2000/1937, paragraph 6 of Schedule 2 to Energy Act 2011 (c.16) and paragraph 5 of Schedule 1 to Storage of Carbon Dioxide (Access to Infrastructure) Regulations 2011/2305.

Operations are to be commenced until the works details in respect of those works submitted under paragraph 3 have been approved by the Breagh Pipeline Owners.

5.—(1) Any approval of the Breagh Pipeline Owners required under paragraph 4 must not be unreasonably withheld or delayed and must be given within 28 days from the date the works details are submitted under paragraph 3, 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 (for the avoidance of doubt where the reasonable requirements relate to such matters, a reasoned explanation will be provided by the Breagh Pipeline Owners to substantiate the need for these requirements); 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 Breagh Pipeline Operations.

(3) The authorised development must be carried out in accordance with the works details approved under paragraph 4 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 8 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 8.

Compliance with requirements, etc. applying to the Breagh Pipeline and the Breagh Pipeline Operations

6. 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

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 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, 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 7 applies.

(5) 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).

(6) The undertaker shall only be liable under this paragraph 7 for claims reasonably incurred by the Breagh Pipeline Owners.

Arbitration

8. Any difference or dispute arising between the undertaker and the Breagh Pipeline Owners under 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 46 (arbitration).

SCHEDULE 33

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF CATS NORTH SEA LIMITED

Application

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

Interpretation

2. —(1) In 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 acting in its capacity as operator of the CATS system for and on behalf of the CATS Owners and any successor in title or function to the CATS pipelines;

"CATS Owners" means any company that from time to time owns an interest in the CATS system and, as at the date upon which this Order is made, comprise the following—

(a) CATS;

(b) Kellas CATS Limited (company number 08021886), whose registered address is Suite 17th Floor, 50 Broadway, London, United Kingdom, SW1H 0BL;

(c) Eni UK Limited (company number 00862823), whose registered address is Eni House, 10 Ebury Bridge Road, London, SW1W 8PZ; and

(d) Chrysaor Petroleum Company U.K. Limited (company number 00792712), whose registered address is 151 Buckingham Palace Road, London, England, SW1W 9SZ;

"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 ConocoPhillips 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;

"CATS system" means the facilities commonly known as the Central Area Transmission System gas pipeline and processing plant, as commonly abbreviated and known as the CATS pipeline and CATS processing plant, as the same may exist from time to time including, without limitation, the CATS pipeline;

"function" includes a power or duty;

"ground mitigation scheme" means a scheme setting out the reasonably necessary measures (if any) which are proposed to mitigate a ground subsidence event; "ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus or infrastructure 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, shall require the undertaker to submit for CATS' 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;

"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 and assess the works to be executed;

"protective works" means the underpinning, strengthening and any other works the purpose of which is to prevent damage to or interference with the CATS pipelines that may be caused by the carrying out, maintenance or use of the authorised development.

"specified works" means any of the authorised works or activities undertaken in association with the authorised works which—

(a) will or may be situated within 50 metres in any direction of the CATS system, or

(b) in the case of explosives for blasting, are within 400 metres of any part of the CATS system.

(2) Where this Schedule provides—

(a) that the acknowledgement, approval, agreement, consent or authorisation of CATS or the undertaker is required; or

(b) that any thing must be done to CATS' reasonable satisfaction,

that acknowledgement, approval, agreement, consent, authorisation or intimation of satisfaction shall not be unreasonably withheld or delayed.

(3) When carrying out any function under this Schedule, CATS (and any arbitrator appointed for the purposes of paragraph 14) must at all times have regard to the interests of safety and the efficient and economic execution, construction and operation of the authorised development.

Consent under this Schedule in respect of specified works

3.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to CATS a plan in respect of those works.

(2) The plan to be submitted to CATS 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 and 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 proposed ground monitoring scheme; and

(g) any intended maintenance regimes.

(3) The undertaker must not commence any specified works until the plan submitted under subparagraph (1)—

(a) has been approved by CATS under sub-paragraph (4)(a);

(b) is deemed to have been approved pursuant to sub-paragraph (8) or (9); or

(c) has been approved by an arbitrator following a reference under sub-paragraph (10).

(4) Following submission of a plan under sub-paragraph (1), CATS must within 56 days of the date of receipt thereof notify the undertaker in writing—

(a) that its approval has been granted in respect of all or any part of that plan; or

(b) that its approval has been refused in respect of all or any part of that plan, and the full reasons for its disapproval.

(5) Any approval of CATS given under sub-paragraph (4)(a) may be given subject to such reasonable conditions for any purpose mentioned in sub-paragraph (6) as CATS may notify to the undertaker in writing at the same time as CATS' decision under sub-paragraph (4)(a), with that notice setting out CATS' full reasons for those conditions.

(6) Conditions may only be imposed by CATS pursuant to sub-paragraph (5) to effect such modifications to the plan as may be reasonably necessary for the purpose of—

(a) securing the CATS pipelines against interference or risk of damage;

(b) providing or securing proper and convenient means of access to the CATS pipelines;

(c) the provision of any protective works by the undertaker (whether of a temporary or permanent nature).

(7) Specified works must only be executed in accordance with—

(a) the plan approved or deemed to be approved under sub-paragraph (3); and

(b) unless sub-paragraph (11) applies, any conditions imposed under sub-paragraph (5).

(8) If CATS does not provide any response to the undertaker within the period specified in subparagraph (4) then the plan submitted under sub-paragraph (1) is deemed to be approved on the day next following the last day of that period.

(9) If CATS provides a response under sub-paragraph (4)(b) in respect of part only of the plan submitted under sub-paragraph (1) then the remainder of the submitted plan is deemed to be approved on the day next following the date of the notification under sub-paragraph (4)(b).

(10) If CATS gives notice to the undertaker—

(a) under sub-paragraph (4)(b); or

(b) grants its approval subject to one or more conditions under sub-paragraph (5) to which the undertaker objects,

then the matter will be treated as a dispute to be resolved between the parties and may (if the undertaker so elects) be referred to an arbitrator for determination in accordance with paragraph 14.

(11) Where—

(a) the imposition of a condition has been referred to an arbitrator under sub-paragraph (10); and

(b) the arbitrator determines that the condition in question should not be imposed,

the undertaker is not obliged to comply with that condition.

(12) The undertaker is not required to comply with sub-paragraph (1) prior to the commencement of a specified work which forms part of any emergency works, but in that case it must as soon as is reasonably practicable in the circumstances—

(a) give to CATS notice that it is carrying out works pursuant to this sub-paragraph; and

(b) submit a plan of any specified works carried out as part of those emergency works for approval under this paragraph 4.

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

Approval of revised or replacement plan

4.—(1) Nothing in paragraph 3 precludes the undertaker from submitting at any time or from time to time a revised or replacement plan, instead of any plan previously approved or deemed to have been approved for the purposes of that paragraph.

(2) Subject to sub-paragraph (3), the provisions of paragraph 3 will apply to and in respect of any revised or replacement plan so submitted.

(3) If the specified works to which the plan relates have already been commenced in accordance with a plan previously approved or deemed to be approved under paragraph 3—

(a) the requirement in paragraph 3(1) for the plan to submitted prior to the commencement of the works in question does not apply; and

(b) the revised or replacement plan must instead be submitted as soon as reasonably possible.

Implementation of protective works

5.—(1) This paragraph applies where a condition is imposed for the purpose set out in paragraph 3(6)(c).

(2) The protective works which are the subject of that condition must be completed to CATS' reasonable satisfaction prior to the commencement of the specified works to which they relate.

(3) Where protective works have been completed in accordance with sub-paragraph (2), the undertaker may request that CATS provide an intimation that they have been done to CATS' satisfaction for the purposes of that sub-paragraph.

(4) Following a request under sub-paragraph (3), CATS must within 7 days of the date of receipt thereof give an intimation to the undertaker in writing that the protective works in question—

(a) have been completed to CATS' satisfaction; or

(b) have not been completed to CATS' satisfaction and the reasons for this.

(5) If CATS does not notify the undertaker of its decision within the period specified in subparagraph (4) then the protective works are deemed to have been completed to CATS' satisfaction for the purposes of this paragraph.

(6) If CATS gives notice to the undertaker under sub-paragraph (4)(b) then the matter will be treated as a dispute to be resolved between the parties and may (if the undertaker so elects) be referred to an arbitrator for determination in accordance with paragraph 14..

Compliance with the CATS requirements

6. In undertaking any specified works, the undertaker must comply with such conditions, requirements or regulations as are set out in the CATS requirements.

7. Where formal consent is required under the CATS requirements for works within the wayleave of the CATS pipelines, an approval given or deemed to be given under paragraph 3 constitutes formal consent for the purposes of the CATS requirements.

Monitoring for ground subsidence

8.—(1) This paragraph applies where the plan approved or deemed to be approved under paragraph 3 includes a ground monitoring scheme.

(2) The undertaker shall implement and comply with that ground monitoring scheme.

(3) If a ground subsidence event occurs, the undertaker must as soon as reasonably practicable—

(a) notify CATS; and

(b) submit a ground mitigation scheme for CATS' approval.

(4) Following submission of a ground mitigation scheme under sub-paragraph (3), CATS must within 28 days of the date of receipt thereof notify the undertaker in writing—

(a) that its approval has been granted in respect of all or any part of that scheme; or

(b) that its approval has been refused in respect of all or any part of that scheme, and the full reasons for its disapproval.

(5) If CATS does not provide any response to the undertaker within the period specified in subparagraph (4) then the ground mitigation scheme submitted under sub-paragraph (3) is deemed to be approved on the day next following the last day of that period.

(6) If CATS provides a response under sub-paragraph (4)(b) in respect of part only of the ground mitigation scheme submitted under sub-paragraph (3) then the remainder of the submitted scheme is deemed to be approved on the day next following the date of the notification under subparagraph (4)(b). 6

(7) If CATS gives notice to the undertaker under sub-paragraph (4)(b) then the matter will be treated as a dispute to be resolved between the parties and may (if the undertaker so elects) be referred to an arbitrator for determination in accordance with paragraph 14.

(8) The undertaker must proceed to implement any ground mitigation scheme—

(a) approved by CATS under sub-paragraph (4)(a);

(b) deemed to be approved under sub-paragraph (5) or (6); or

(c) approved by an arbitrator following a reference under sub-paragraph (7).

Monitoring for damage to pipelines

9.— (1) When undertaking any specified works, 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 in accordance with sub-paragraph (3).

(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) Where sub-paragraph (3)(b) applies, the undertaker may request that CATS provide an intimation that the repairs in question have been done to CATS' satisfaction for the purposes of that sub-paragraph.

(6) Following a request under sub-paragraph (5), CATS must within 7 days of the date of receipt thereof give an intimation to the undertaker in writing that the repairs in question—

(a) have been completed to CATS' satisfaction; or

(b) have not been completed to CATS' satisfaction and the reasons for this.

(7) If CATS does not notify the undertaker of its decision within the period specified in subparagraph (6) then the repairs are deemed to have been completed to CATS' satisfaction for the purposes of this paragraph.

(8) If CATS gives notice to the undertaker under sub-paragraph (6)(b) then the matter will be treated as a dispute to be resolved between the parties and may (if the undertaker so elects) be referred to an arbitrator for determination in accordance with paragraph 14.

(9) Following the completion of any specified works, if damage is found to have occurred to any of the CATS pipelines as a result of the relevant works, sub-paragraphs (2) to (8) of this paragraph apply to that damage.

(10) 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 (subject to CATS complying with the requirements of paragraph 12) to recover the reasonable cost of doing so from the undertaker.

(11) CATS is entitled to appoint an independent engineer to watch and inspect the execution of the specified works, and to provide safety advice in accordance with the CATS requirements.

10.— (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 a 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,

save as may be required in order to stop, reduce or mitigate that leakage or escape.

Access

11.—(1) If the access to any of the CATS pipelines is materially obstructed as a result of the carrying out of the authorised development, the undertaker must provide such alternative means of access as will enable CATS to maintain or use the CATS pipelines no less effectively than was possible before such obstruction.

(2) Where the undertaker cannot grant to CATS alternative rights and means of access to the CATS pipelines by virtue of not being in possession of the requisite land rights, the undertaker shall use reasonable endeavours to assist CATS in securing the requisite rights and means of access.

Costs and expenses

12.—(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 reasonably required in consequence of the execution of any specified works, including without limitation—

(a) the grant of any acknowledgement, approval, agreement, consent, authorisation or intimation of satisfaction in accordance with paragraphs 3 to 10;

(b) the engagement of an engineer for the purposes of paragraph 9(11);

(c) any reasonable costs incurred by CATS in engaging and retaining such external experts, consultants and contractors as may be reasonably necessary for the discharge of CATS' functions under this Schedule; 7

(d) the carrying out of protective works, plus either the cost of maintaining and renewing any permanent protective works or, if the undertaker so elects, a capitalised sum to cover the cost of maintaining and renewing any permanent protective works; and

(e) the survey, inspection and monitoring of any land, apparatus or infrastructure associated with the CATS pipelines or the installation or removal of any temporary works.

(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) Subject to sub-paragraphs (4) and (5), if by reason or in consequence of the construction of any of the specified works 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 within a reasonable time 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.

(4) Nothing in this paragraph 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 CATS, its officers, employees, servants, contractors or agents; or

(b) any indirect or consequential loss or loss of profits by CATS.

(5) CATS must give the undertaker reasonable notice of any such fees, costs, charges, expenses, loss, claim, demand or penalty 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.

(6) CATS must use its reasonable endeavours to mitigate in whole or in part and to minimise any fees, costs, charges, expenses, loss, claim, demand or penalty to which this paragraph applies.

(7) If requested to do so by the undertaker, CATS must provide an explanation of how the fees, costs, charges, expenses, loss, claim, demand or penalty in question has been minimised or details to substantiate any sum claimed pursuant to this paragraph.

(8) The undertaker shall only be liable under this paragraph for sums reasonably incurred by CATS.

Insurance

13.—(1) Prior to commencing construction of any part of the authorised development on the insured land, the undertaker must request CATS' approval in respect of the policy of acceptable insurance which the undertaker proposes to effect.

(2) Where the undertaker proposes to change the terms of a policy of acceptable insurance approved for the purposes of this paragraph then it must request CATS' approval of the proposed revisions to the acceptable insurance that the undertaker proposes prior to effecting such revisions.

(3) Where a request is submitted to CATS pursuant to sub-paragraph (1) or (2) then CATS must give notice as to the undertaker as to whether its approval of the proposed policy of

acceptable insurance is granted or refused within the period of 7 days commencing on the day next following the date upon which the request was submitted.

(4) If CATS does not give notice under sub-paragraph (3) within that period then the proposed policy of acceptable insurance is deemed to be approved.

(5) If CATS gives notice under sub-paragraph (3) that its approval is refused then—

(a) that notice must also include—

(i) CATS full reasons for such refusal; and

(ii) any reasonable alterations to the proposed policy of acceptable insurance which CATS considers would overcome those reasons;

(b) the question of whether the policy of acceptable insurance proposed by the undertaker should be approved for the purposes of this paragraph may be referred by the undertaker to an arbitrator for determination under paragraph 14.

(6) The undertaker (or any contractor carrying out works on behalf of the undertaker) must maintain the policy of acceptable insurance approved or deemed to be approved under this paragraph—

(a) during the construction of any specified works on the insured land; and

(b) after the completion of such construction, for the period of any use and maintenance of those works.

(7) In this paragraph

"acceptable insurance" means a policy of general third party liability insurance effected and maintained by the undertaker with a reputable insurer which includes—

(a) a waiver of subrogation and an indemnity to principal clause in favour of CATS;

(b) a combined property damage and bodily injury limit of indemnity of not less than one hundred million pounds sterling per occurrence or series of occurrences arising out of one event; and

(c) cover in respect of pollution liability for third party property damage and third party bodily damage arising from any pollution or contamination event with a sub-limit of indemnity of not less than—

(i) ten million pounds sterling per occurrence or series of occurrences arising out of one event; and

(ii) twenty million pounds sterling in aggregate;

"insured land" means any land owned by CATS or the CATS owners or in respect of which CATS has an easement or wayleave for apparatus or infrastructure associated with the CATS system.

Arbitration

14. —(1) Any difference or dispute arising between the undertaker and CATS under this Schedule must, unless otherwise agreed in writing between the undertaker and CATS, be referred to and settled by arbitration in accordance with this paragraph.

(2) Article 46 (arbitration) applies to such arbitration subject to the following provisions.

(3) Subject to sub-paragraph (5), the fees of the arbitrator are payable by the parties in such proportions as the arbitrator may determine or, in the absence of such determination, equally.

(4) The arbitrator must—

(a) invite the parties to make a submission in writing and copied to the other party to be received by the arbitrator within 14 days of the arbitrator's appointment;

(b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submissions under paragraph (a);

(c) issue a decision within 21 days of receipt of—

(i) the submissions under sub-paragraph (b); or

(ii) if no submissions are submitted under that paragraph, the submissions under paragraph (a); and

(d) give reasons for the arbitrator's decision.

(5) If the arbitrator does not issue the decision within the time required by sub-paragraph (4)(c) then—

(a) the arbitrator is not entitled to any payment in respect of their fees; and

(b) the matter in question shall immediately be referred to a new arbitrator in which case—

(i) the parties shall immediately upon the new arbitrator's appointment provide the new arbitrator with copies of the written submissions and comments previously provided under sub-paragraphs (4)(a) and (4)(b);

(ii) no further submissions or comments may be requested by or provided to the new arbitrator in addition to those provided pursuant to sub-paragraph (i); and

(iii) the new arbitrator shall then proceed to comply with sub-paragraphs (4)(c) and (4)(d).

SCHEDULE 34

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF SABIC PETROCHEMICALS UK LIMITED

Benefit of protective provisions

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

(2) Except to the extent as may be otherwise agreed in writing between the undertaker and SABIC, where the benefit of this Order is transferred or granted to another person under article 8 (consent to transfer benefit of this Order)—

(a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between SABIC and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to SABIC 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 SABIC Protective Provisions"; and

(b) whether entered into before or after the making of this Order.

Interpretation

2.—(1) In this Schedule—

"access roads" means the access roads within the Order limits—

(a) giving access to pipelines or the protected crossing; or

(b) within or giving access to the Wilton Complex, the North Tees facilities and the Brinefields;

"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 the identified powers, any apparatus in the protected land which would be affected by the exercise of that power;

"alternative apparatus" means new apparatus to be provided by the undertaker to replace existing apparatus which the undertaker intends to remove, such new apparatus to be to a specification and standard which will serve SABIC in a manner which is no less effective or efficient than previously;

"apparatus" means pipelines, cables and drains owned or operated by SABIC 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 cathodic protection, 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**);

"Brinefields" means the land tinted and edged blue on the certified plan;

"certified plan" means the plans showing the Brinefields, the North Tees Facilities, the pipeline corridor, the protected crossing and the Wilton Complex which are certified as the 2 Information Plan by the Secretary of State under article 44 (certification of plans etc) for the purposes of this Schedule;

"construction access plan" means a plan identifying how access will be maintained to apparatus the protected crossing, and to and within the Wilton Complex, the North Tees Facilities and the Brinefields 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 to apparatus including in relation to a pipeline leakage and the weakening of the mechanical strength of a pipeline;

"engineer" means an independent engineer appointed by SABIC for the purposes of this Order;

"identified powers" means the powers conferred by the following provisions of this Order—

(a) article 11 (street works);

(b) article 12 (construction and maintenance of new or altered means of access);

(c) article 13 (temporary closure of streets and public rights of way);

(d) article 14 (access to works);

(e) article 17 (discharge of water);

(f) article 20 (authority to survey and investigate the land);

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

(h) article 23 (power to override easements and other rights);

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

(j) article 26 (private rights);

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

(l) article 31 (rights under or over streets);

(m) article 32 (temporary use of land for carrying out the authorised development); and

---

(**a**) 1962 c.58. Section 65 was amended by paragraph 8 of Schedule 1 to Gas (Third Party Access and Accounts) Regulations 2000/1937, paragraph 6 of Schedule 2 to Energy Act 2011 (c.16) and paragraph 5 to Storage of Carbon Dioxide (Access to Infrastructure) Regulations 2011/2305.

(n) article 33 (temporary use of land for maintaining the authorised development);

"major works" means works by SABIC requiring the closure, diversion or regulation of any roads serving the apparatus, the protected crossing and the Wilton Complex, the North Tees Facilities and the Brinefields;

"North Tees Facilities" means the land tinted and edged mauve on the certified plan;

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

"owner" means in relation to the access roads, any person—

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

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

"pipeline corridor" means the land tinted and edged green on the certified plan;

"pipeline" 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 the 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;

(d) the precise location of any easement widths or rights (where it is reasonably possible to establish this);

"protected crossing" means the tunnel which carries pipelines under the River Tees known as Tunnel 2 which is shown cross-hatched and edged brown on the certified plan;

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

(a) the access roads;

(b) the pipeline corridor;

(c) the protected crossing;

(d) the Wilton Complex;

(e) the North Tees Facilities; and

(f) the Brinefields;

"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—

(a) SABIC UK Petrochemicals Limited (company number 03767075) whose registered office is at Wilton Centre, Wilton, Redcar, Cleveland, TS10 4RF; and

(b) SABIC Tees Holdings Limited (company number 06009440) whose registered office is at Wilton Centre, Wilton, Redcar, Cleveland, TS10 4RF,

and any successor in title to SABIC's rights and interests in the protected land;

"specified person" means Company Secretary, SABIC UK Petrochemicals Limited, Wilton Centre, Redcar, Cleveland, TS10 4RF or such other person or address within the United Kingdom as they may notify to the undertaker in writing;

"temporary crossing point" means a point where construction traffic will cross over a pipeline and, unless the pipeline is under a carriageway of adequate standard of construction, any proposed reinforcement of that crossing;

"Wilton Complex" means the land tinted and edged pink on the certified plan;

"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 any proposed temporary crossing points;

(c) details of how the undertaker proposes to indicate the location of the easement widths taken from the actual location of the pipelines shown on the pipeline survey during construction of the authorised development, including any fencing or signage;

(d) details of methods and locations of any piling proposed to be undertaken under paragraph 11;

(e) details of methods of excavation and any zones of influence the undertaker has calculated under paragraph 12;

(f) details of methods and locations of any compaction of backfill proposed to be undertaken under paragraph 13;

(g) details of the location of any pipelines affected by the oversailing provisions in paragraph 14, including details of the proposed clearance;

(h) 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;

(i) details of the undertaker and their principal contractors' management of change procedures;

(j) 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;

(k) details of the electrical design of the authorised works in sufficient detail to allow an independent specialist to assess whether AC interference from the authorised development may cause damage to the pipeline;

(l) 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;

(m) 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;

(n) details of the emergency response plan as prepared in consultation with local emergency services and the pipeline operators;

(o) details of the assessment and monitoring work to be undertaken both prior to the construction of the authorised development and during the operation of the authorised development to ascertain any change or damage to the pipeline cathodic protection system; and

(p) any further particulars provided in accordance with paragraph 4(2).

(2) Where this Schedule provides that the acknowledgement, approval, agreement, consent or authorisation of SABIC or the specified persons is required for any thing (or that any thing must be done to SABIC's reasonable satisfaction—

(a) that acknowledgement, approval, agreement, consent or authorisation (or intimation that the matter in question has been done to SABIC's reasonable satisfaction) shall not be unreasonably withheld or delayed; and

(b) the grant or issue of such acknowledgement, approval, agreement, consent or authorisation (or intimation) by any one or more of the entities which constitute SABIC or the persons who constitute the specified persons as defined in sub-paragraph (1) (as the

case may be) shall constitute approval, agreement, consent or authorisation on behalf of all of them.

Pipeline survey

3.—(1) Before commencing any part of the authorised development in the pipeline corridor or which may affect the 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 and carried out in accordance with all relevant national standards and codes.

(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 the protected crossing

4.—(1) Before commencing any part of a relevant work the undertaker must submit to SABIC the works details in respect of any affected asset.

(2) The undertaker must as soon as reasonably practicable provide such further particulars as SABIC may, within 45 days from the receipt of the works details under sub-paragraph (1), reasonably require.

(3) Where the undertaker submits works details under sub-paragraph (1) or further particulars under sub-paragraph (2), the specified persons shall immediately provide the undertaker with a written acknowledgement of receipt in respect of those works details or further particulars (as the case may be).

5. 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 4 have been authorised by SABIC; or

(b) the works details supplied in respect of that relevant work under paragraph 4 have been authorised by an arbitrator under paragraph 7(4); or

(c) authorisation is deemed to have been given in accordance with paragraph 7(1).

6.—(1) Any authorisation by SABIC required under paragraph 5(a) 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 5 and any conditions imposed on the authorisation under paragraph 6(1).

(3) Where there has been a reference to an arbitor in accordance with paragraphs 7(2) and 31 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 7(3).

7.—(1) In the event that—

(a) no response has been received to the submission of the works details under paragraph 4 within 45 days of the undertaker obtaining a written acknowledgement of receipt from a specified person under paragraph 4(3) and no further particulars have been requested under paragraph 4(2); or

(b) authorisation has not been given within 30 days of the undertaker obtaining a written acknowledgement of receipt from a specified person of the further particulars supplied under paragraph 4(2),

approval of the works details is to be deemed to be given and the relevant works may commence.

(2) If the undertaker considers that—

(a) any further particulars requested by SABIC under paragraph 4(2) are not reasonably required;

(b) SABIC has unreasonably withheld its authorisation under paragraph 6(1); or

(c) SABIC has given its authorisation under paragraph 6(1) subject to unreasonable conditions,

the undertaker may refer the matter to an arbitrator for determination under paragraph 31.

(3) Where the matter is referred to arbitration under sub-paragraph (2)(a)—

(a) the arbitrator is to determine whether or not the further particulars must be provided by the undertaker; and

(b) the undertaker is not required to provide them unless directed so to do by the arbitrator.

(4) Where the matter is referred to arbitration under sub-paragraph (2)(b) or (2)(c) 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 paragraphs 6(1)(a) and 6(1)(b).

Notice of works

8. 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

9.—(1) Before carrying out a relevant work the undertaker must—

(a) provide SABIC with baseline data which will be used in the cathodic protection assessment of any existing pipeline; and

(b) carry out a pipeline settlement and stress analysis to demonstrate any potential pipeline movement will not present an integrity risk to the affected asset.

(2) The pipelines must be located by hand digging prior to the use of mechanical excavation provided that any excavation outside of 2 metres of the centreline of a pipeline may be dug by mechanical means.

10. No explosives are to be used within the protected land.

11.—(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 4.

12.—(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 under paragraph 4.

(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 4.

13.—(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 4.

(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 to an arbitrator for determination under paragraph 31.

14.—(1) A minimum clearance of 500 millimetres in respect of above ground apparatus and 600 millimetres in respect of buried apparatus 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 affected assets

15.—(1) When carrying out the relevant work the undertaker must monitor the relevant affected assets 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, any cathodic protection 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 SABIC 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 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.

16.—(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

17.—(1) Subject to sub-paragraph (2), in undertaking any works in relation to the protected land or exercising any rights relating to or affecting SABIC as an owner 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 8; or

(b) determined by the arbitrator following a determination under paragraph 31 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

18.—(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.

19.—(1) In preparing a construction access plan under paragraph 18 the undertaker must—

(a) establish the programme for SABIC's major works in the pipeline corridor, the Wilton Complex, the North Tees Facilities and the Brinefields 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) where it proposes to restrict or extinguish SABIC's access to the protected land, any pipeline, the Wilton Complex, the North Tees Facilities or the Brinefields first provide an

alternative or replacement means of access (together with facilities and rights to enable SABIC lawfully to use that access) which is not materially less advantageous to SABIC.

(2) Where a reference is made to an arbitrator under paragraph 31 in relation to any disagreement about a construction access plan, in addition to the criteria set out in paragraph 31(5) the appointed 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 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.

20.—(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 AN arbitoR for determination under paragraph 31, 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.

Mitigation in respect of SABIC apparatus, etc.

21.—(1) The undertaker must not in the exercise of the identified powers acquire, appropriate, extinguish, suspend or override any rights of SABIC in the protected land if the authorised development can reasonably and practicably be carried out without such acquisition, appropriation, extinguishment, suspension or override.

(2) The undertaker must in the exercise of the identified powers at all times act so as to minimise, as far as reasonably practicable, any detrimental effects on SABIC, including any disruption to access and supplies of utilities and other services that are required by them in order to carry out their operations.

22.—(1) SABIC's 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 facilities and rights for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and replacement of the alternative apparatus have been granted to SABIC.

(2) If alternative apparatus is to be provided under sub-paragraph (1)—

(a) the undertaker must give to SABIC written notice, with specification of the proposed alternative apparatus, together with plans and sections showing its situation and location

(b) paragraphs 4 to 20 of this Schedule shall apply as if the details of that alternative apparatus and the carrying out of the works to provide and construct the alternative

apparatus constituted the carrying out of a relevant work, subject to the following amendments—

(i) in paragraph 8 the notice period of "not less than 28 days" will be replaced with a period of "not less than 3 calendar months unless otherwise agreed with SABIC"; and

(ii) in paragraph 6(1) there shall be added immediately before paragraph 6(1)(a) a new paragraph (aa) as follows—

"(aa) without prejudice to paragraph (a), the timing of the works to construct and bring into operation the alternative apparatus so as to reduce so far as reasonably possible the detrimental effects on SABIC's operations;"

(3) the undertaker will have special regard to its obligations under paragraph 21(2).

(4) Any alternative apparatus to be constructed under this Schedule must be constructed in such manner and in such line or situation as may be authorised or deemed to be authorised under paragraph 5.

(5) Where under sub-paragraph (1) facilities and rights must be granted to SABIC those facilities and rights must be on such terms and conditions as may be agreed between the undertaker and SABIC or in default of agreement determined by an arbitrator under paragraph 31, and such terms must be no less favourable as a whole than the terms and conditions which applied to the apparatus to be removed.

(6) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, or 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 SABIC in respect of the apparatus to be removed, the arbitrator must make such provision for the payment of compensation by the undertaker to SABIC as appears to the arbitrator to be reasonable, having regard to all the circumstances of the particular case.

Insurance

23.—(1) Before carrying out any part of the authorised development on the protected land, 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 against the undertaker's liabilities under paragraph 25 in accordance with the terms and level of cover as may be agreed in writing between the undertaker and SABIC or, in the case of dispute, in accordance with the terms and level of cover determined by an arbitrator under paragraph 31, 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 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 or at such level as may otherwise be determined by an arbitrator under paragraph 31.

24. If SABIC has a dispute about the proposed insurance (including the terms or level of cover) to be provided under paragraph 23—

(a) SABIC may refer the matter to an arbitrator for determination under paragraph 31; 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 31 is on-going, following which the undertaker must adjust the insurance policy if necessary to accord with the determination.

Costs

25.—(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 3(3), authorisation of works details submitted by the undertaker under paragraph 4 and the imposition of conditions under paragraph 6;

(b) the engagement of an engineer and their observation of the authorised works affecting the pipelines and the provision of safety advice under paragraph 8;

(c) responding to the consultation on piling under paragraph 11;

(d) considering the effectiveness of any compacting which has taken place under paragraph 13, including considering and evaluating compacting testing results and the details of further compaction works under that paragraph;

(e) the repair and testing of affected assets under paragraph 15;

(f) considering and responding to consultation in relation to the construction access plan under paragraph 18 and providing details of their programme for major works to the undertaker under paragraph 19;

(g) dealing with any request for consent, approval or agreement by the undertaker under paragraph 22; and

(h) considering the adequacy of the terms and level of cover of any insurance policy proposed or put in place by the undertaker under paragraph 23,

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 the following provisions of this paragraph, 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 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—

(a) 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; or

(b) any indirect or consequential loss or loss of profits by SABIC.

(4) SABIC must give the undertaker reasonable notice of any claim or demand under this paragraph 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 Schedule 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 Schedule.

(6) In the assessment of any sums payable to SABIC under 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, 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 Schedule 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 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 this paragraph. 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

26. 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 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.

27. The undertaker must give written notice to SABIC if any application is proposed to be made by the undertaker for the Secretary of State's consent under article 8 (consent to transfer benefit of this Order), and any such notice must be given no later than 28 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.

28. 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 44 (certification of plans etc.) in electronic form.

29. 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.

30. Where SABIC has provided an email address for service in respect of the specified person, sub-paragraph (1)(a) of article 45 (service of notices) will not apply to the service of any notice under this Schedule, which must instead by effected by electronic means.

Arbitration

31.—(1) Article 46 (arbitration) applies to this Schedule subject to the following provisions of this paragraph.

(2) Subject to sub-paragraph (4), the fees of the arbitrator are payable by the parties in such proportions as the arbitrator may determine or, in the absence of such determination, equally.

(3) The arbitrator must—

(a) invite the parties to make a submission in writing and copied to the other party to be received by the arbitrator within 21 days of the arbitrator's appointment;

(b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submissions under paragraph (a);

(c) issue a decision within 42 days of receipt of—

(i) the submissions under paragraph (b); or

(ii) if no submissions are submitted under that paragraph, the submissions under paragraph (a); and

(d) give reasons for the arbitrator's decision.

(4) If the arbitrator does not issue the decision within the time required by sub-paragraph (3)(c) then—

(a) the arbitrator is not entitled to any payment in respect of their fees; and

(b) the matter in question shall immediately be referred to a new arbitrator in which case—

(i) the parties shall immediately upon the new arbitrator's appointment provide the new arbitrator with copies of the written submissions and comments previously provided under sub-paragraphs (3)(a) and (3)(b);

(ii) no further submissions or comments may be requested by or provided to the new arbitrator in addition to those provided pursuant to sub-paragraph (i); and

(iii) the new arbitrator shall then proceed to comply with sub-paragraphs (3)(c) and (3)(d).

(5) An arbitrator appointed for the purposes of this Schedule must consider where relevant—

(a) the development outcome sought by the undertaker;

(b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;

(c) the nature of the power sought to be exercised by the undertaker;

(d) the effect that the consent in question would have on SABIC's operations and the operations of the UK ethylene production and supply industry;

(e) the likely duration and financial and economic consequences of any cessation of or interruption of ethylene production and supply including the costs associated with the restoration of production;

(f) the ability of SABIC to undertake its operations or development in a timely and cost-effective manner, including any statutory or regulatory duties, requirements or obligations;

(g) whether this Order provides any alternative powers by which the undertaker could reasonably achieve the development outcome sought in a manner that would reduce or eliminate adverse effects on SABIC and the UK ethylene production and supply industry;

(h) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party; and

(i) any other important and relevant considerations.

SCHEDULE 35

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF PD TEESPORT LIMITED

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

2. In this Schedule—

"Emergency Access Road" means any part of the emergency access road at Seal Sands located off the A178 Tees Road to the north of Greatham Creek affected by this Order including land comprising land plots 9/1, 10/17, 10/29, 10/30, 10/31, 10/32 and 33;

"PD Teesport" means PD Teesport Limited (company number 02636007) and any successor in title or function to the PD Teesport operations;

"PD Teesport operations" means the port operations or property (including all freehold, leasehold, easements, wayleaves, licences and other rights) vested in PD Teesport Limited (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 Seal Sands Road;

"Redcar Bulk Terminal Access" means any part of the access to Recar Bulk Terminal affected by this Order including land comprising land plots 13/1, 13/4, 13/5, 13/6, 13/7, 13/10 and 13/17;

"Seal Sands Road" means any part of Seal Sands Road within the Order limits;

"Tees Dock Roundabout Roads" means any part of both public and private parts of Tees Dock road, Tees Dock Roundabout and a private road running from the Tees Dock roundabout between the BOC Middlesborough site and the railway line affected by this Order including land comprising land plots 16/1, 16/2, 16/3, 16/5;

"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 7.

Regulation of powers

3. 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.

4. Any approval of PD Teesport required under paragraph 3 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 (for the avoidance of doubt where the reasonable requirements relate to such matters, a reasoned explanation or other form of evidence will be provided by PD Teesport to substantiate the need for these requirements);

(b) ensuring that there is no commercial loss to PD Teesport (for the avoidance of doubt where the reasonable requirements relate to such matters, a reasoned explanation or other form of evidence will be provided by PD Teesport to substantiate the need for these requirements); 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.

Consent under this Schedule

5. Before commencing any part of the authorised development which may have an effect on the operation or maintenance or be located in proximity to 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.

6. No works comprising any part of the authorised development which may have an effect on the operation or maintenance or be located in proximity to the PD Teesport operations or access to them are to be commenced until the works details in respect of those works submitted under paragraph 5 have been approved by PD Teesport, such approval to be provided no later than 21 days from the later of the details of the proposed works being provided or the provision of the last such further particulars as may have been requested by PD Teesport in respect of the works.

7. Any approval of PD Teesport required under paragraph 6 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 (for the avoidance of doubt where the reasonable requirements relate to such matters, a reasoned explanation or other form of evidence will be provided by PD Teesport to substantiate the need for these requirements); and

(b) the requirement for PD Teesport to have uninterrupted and unimpeded access (including river access) to PD Teesport operations at all times.

8. The authorised development must be carried out in accordance with the works details approved under paragraph 6 and any requirements imposed on the approval under paragraph 7.

9. Where there has been a reference to an expert in accordance with paragraph 14 and the expert 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 expert under paragraph 14.

10. The undertaker will pay the reasonable costs of PD Teesport incurred in dealing with any approvals, review of documentation, supervision, auditing, safety assessments, engineering advice, lawyers' and other professional fees associated with compliance with any matters set out in these protective provisions within 14 days of a statement of such costs being provided in writing to the undertaker. Regulation of powers in relation to accesses.

11. The undertaker must not exercise the powers granted under this Order so as to obstruct or hinder access or egress for any person across the following areas:

(a) Seal Sands Road;

(b) Tees Dock Roundabout Roads;

(c) The Emergency Access Road; and

(d) Redcar Bulk Terminal Access.

Indemnity

12.—(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 5, 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.

(4) 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 12 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 12 for claims reasonably incurred by PD Teesport.

Dispute Resolution

13.—(1) Any difference in relation to the provisions in this part of this schedule must be referred to:-

(a) A meeting between a senior representative of PD Teesport and a senior representative of the undertaker 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 PD Teesport 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.

(2) 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.

(3) 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 paragraph (a) above;

(c) issue a decision within 42 days of receipt of the submissions submitted pursuant to paragraph (a) above; and (d) give reasons for the decision.

(4) The expert must consider:-

(a) whether under the Order, the Undertaker's outcomes could be achieved in any alternative manner without PD Teesport's operations or own works being materially compromised; and

(b) any other important and relevant considerations.

(5) Any determination by the expert is final and binding except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to the courts of England and Wales.

SCHEDULE 36

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF REDCAR BULK TERMINAL LIMITED

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

2. In this Schedule—

"apparatus" means any mains, pipes, cables or other apparatus within the Order limits to provide gas, water, waste, electricity and/or electronic communications to the RBT site and /or land within the vicinity of the RBT site which is relied on or used for 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, NZT and RBT's leaseholders, sub-tenants and licensees to access the RBT operations and RBT site in a manner no less efficiently than previously by means of RBT's existing road and rail accesses;

"alternative apparatus" means appropriate alternative apparatus which enables gas, water, waste, electricity and electronic communications supply which is relied on or used for the RBT operations to be provided in a manner no less efficiently than previously by existing apparatus;

"NZT" means the Net Zero Teesside project currently operated by Net Zero Teesside Power Limited and Net Zero North Sea Storage Limited, acting pursuant to the NZT Order;

"NZT Order" means The Net Zero Teesside Order 2024;

"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, its leaseholders, sub-tenants and licensees carried out upon or partly upon the RBT site, including RBT's obligations to third parties such as (but not limited to) NZT;

"the RBT site" means land and property within the Order limits, vested in RBT;

"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) which must 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 requirement for any offloading procedures; and

(f) any further particulars provided in response to a request under paragraph 4.

Interference with apparatus and access

3.—(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 closure of streets and public rights of way), 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) The undertaker shall not interfere with any road or rail accesses which RBT benefits from until the undertaker has consulted in writing with RBT on full details of adequate management measures (including details of access routes for vehicles to undertake) which must be put in place to ensure that road and rail traffic is still able to access the RBT operations and the RBT site.

(6) 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 Schedule

4.—(1) 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; or

(c) any part of the authorised development which may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 3 or otherwise (excluding any proposed works or activities which have been approved under other protective provisions included in the Order or in accordance with a related agreement),

the undertaker must submit to RBT the works details and plans for the proposed works or activities and such further particulars as RBT may, not less than 21 days from the day on which the works details are submitted under this paragraph, reasonably require.

(2) Where the proposed works or activities have been approved under other protective provisions included in the Order or in accordance with a related agreement, the undertaker must provide a copy of the approved works details and plans for the proposed works or activities to RBT prior to those works commencing.

5. 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 4 have been approved by RBT.

6. Any approval of RBT required under paragraph 5 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as RBT may require to be made including for—

(a) the continuing safety and operational viability of the RBT operations;

(b) the avoidance of commercial losses to the RBT operations;

(c) the requirement for RBT, NZT and RBT's leaseholders, sub-tenants and licensees to have reasonable access to the RBT site at all times; and

(d) the preservation of RBT's ability to comply with contractual and legal obligations given, imposed or otherwise existing prior to the date of this Order including obligations under or in connection with the NZT Order.

7. Without limiting paragraph 6, it is not reasonable for RBT to give approval pursuant to paragraph 6 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 save to the extent required by obligations entered into or existing prior to the date of the Order.

8.—(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 5 and any requirements imposed on the approval under paragraph 6.

(2) Where there has been a reference to an arbitrator in accordance with paragraph 14 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 14.

Co-operation

9. 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 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, NZT and RBT's leaseholders, sub-tenants and licensees 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).

10. 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 4 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

11.—(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 4 or by the use of the RBT site by the

undertaker (including as a result of any offloading procedures) any damage is caused to the RBT site (including the wharf, roadways, any buildings, plant or machinery on the RBT site) or to the RBT operations, or there is any interruption or disruption 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 such service or making good any interruption or disruption 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 disruption 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 third party claim or demand that has been made against it in respect of the matters in sub-paragraphs (1)(a) and (1)(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 provided that if withholding such consent, the undertaker shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(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 11 applies where it is within RBT's reasonable ability to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of RBT's control.

(5) If reasonably 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).

Transfer of benefit of Order

12. Within 28 days after the date of any transfer or grant under article 8 (consent to transfer benefit of Order), the undertaker who made the transfer or grant must serve notice on RBT containing the name and address of the transferee or lessee, the extent of the transfer or grant and, in the case of a grant, the period for which it is granted and the extent of benefits and rights granted.

Notices

13. Regardless of article 45 (service of notices) a notice required to be served on RBT under this Schedule must be served also on RBT marked for the attention of Peter Rowson, Managing Director, Redcar Bulk Terminal, Lackenby Main Office, Lackenby, Middlesbrough, TS6 7RP and copied to Simon Melhuish-Hancock, UK General Counsel, SSI at Redcar Bulk Terminal, Lackenby Main Office, Lackenby, Middlesbrough, TS6 7RP in the manner provided by article 45 (service of notices).

Arbitration

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

SCHEDULE 37

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF TEESSIDE GAS & LIQUIDS PROCESSING, TEESSIDE GAS PROCESSING PLANT LIMITED & NORTHERN GAS PROCESSING LIMITED

1. 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.

2. In this Schedule—

"alternative access agreement" means a contractually binding agreement providing the undertaker with an alternative access to plots 9/6, 9/7, 9/8, 9/9 and 9/10, utilising land outside of plots 9/3 and 9/2;

"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 of 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 6 to 11 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 Schedule;

"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(**a**);

"NSMP property" means all property owned and/or enjoyed by an NSMP entity with 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 work 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, contractor, 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 Nos. 2A, 2C or 10A.1 of the authorised development or access in connection with those works numbers, on plots 9/2, 9/3, 9/4, 9/5, 9/48, 9/49, 9/50, 10/48 or 11/137, and access in connection with works on plots 9/6, 9/7, 9/8, 9/9 and 9/10;

"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 9/3, 9/4, 9/5 and 9/48 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 plots 9/2, 9/3, 9/4, 9/5 and 9/48 and access in connection with works on plots 9/6, 9/7, 9/8, 9/9 and 9/10 and Seal Sands Road (including but not limited to plans 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

(**a**) 1962 c. 58. Section 65 was amended by paragraph 8 of Schedule 1 to Gas (Third Party Access and Accounts) Regulations 2000/1937, paragraph 6 of Schedule 2 to Energy Act 2011 (c.16) and paragraph 5 of Schedule 1 to Storage of Carbon Dioxide (Access to Infrastructure) Regulations 2011/2305.

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.

3. 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 6 to 11 below.

4.—(1) 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 12 to 16 below and prior to the changes being implemented.

(2) 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.

(3) 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.

5. 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

6. This Part A sets out the approval process to be followed in respect of the consultation and agreement of the design package.

7. The undertaker shall submit the design package to the NSMP entity for consultation, review and approval.

8.—(1) 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 20 business days of receipt by the NSMP entity of the design package.

(2) As part of that consultation the parties agree to adhere to the following—

(a) the NSMP entity must, within 20 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 20 business days of the undertaker providing any further information pursuant to paragraph (a)(iii) above or providing material reasons why any changes requested by the NSMP entity (as part of its response pursuant to paragraph (a)(ii) or (a)(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 cannot be reached before the relevant period pursuant to paragraph (a) or (b) above (or such alternative timescales as are agreed between the parties), the matter will be treated as a dispute to be resolved in accordance with paragraph 28 of this Schedule unless otherwise agreed by the parties.

9. In the event the NSMP entity does not provide any response to the undertaker in accordance with the timescale set out in paragraph 8(2)(a) or 8(2)(b) the NSMP entity shall be deemed to have given their approval to the design package.

10. 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.

11. 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 Schedule shall apply as though references to "design package" were to "traffic management plan".

Part B – Change Approval Process

12. 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.

13. The undertaker shall submit any such change require 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.

14.—(1) 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.

(2) 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 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 paragraph (a)(iii) above, or providing material reasons why any changes requested by the NSMP entity (as part of its response pursuant to paragraph (a)(ii) or (a)(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 paragraph (a) or (b) above (or such alternative timescales as are agreed between the parties) the matter will be treated as a dispute to be resolved in accordance with paragraph 28 of this Schedule.

15. In the event the NSMP entity does not provide a response to the undertaker in accordance with the timescales set out in paragraph 14(2)(a) or 14(2)(b) above, the NSMP entity shall be deemed to have given their approval to the change request.

16. 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

17. Any approval of the NSMP entity required under Part A or Part B of this Schedule must not (subject to paragraphs 18 and 19 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 18 to 21 of this Schedule; and

(b) with respect to relevant works package B, the approval principles set out at paragraphs 22 and 23 of this Schedule.

Approval Principles: Relevant Works Package A

18.—(1) 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.

(2) 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 9/2, 9/3 and 9/4.

19. Subject to paragraph 20 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 9/2. 9/3 and 9/4 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 5/46, 9/1, 9/2, 9/3, 9/4 and 9/5 as strictly required for construction of Work No. 2A within plot 9/5; or

(ii) over plots 5/46, 9/1, 9/2 and 9/3 as strictly required for the implementation of Work Nos. 2A, 2B and 10A.1 on plots 9/6, 9/7, 9/8, 9/9 and 9/10,

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 9/5 for materials required for the construction of Work No. 2A within plot 9/5; or

(e) which requires the stopping up of Seal Sands Road or the private road (parts of which runs through plots 9/2, 9/3 and 9/4) either temporarily or permanently.

20. It will be unreasonable for the NSMP entity to withhold approval under paragraphs 19(a) and 19(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.

21. 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

22. 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.

23. The undertaker and the NSMP entity must, in carrying out their obligations in relation to the approval of the design package for the 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 22.

Compliance with requirements, etc. applying to the NSMP operations

24. 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.

25. 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.

26. 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

27.—(1) Subject to sub-paragraphs (2) and (3), if by any reason or in consequence of the construction of any of the works referred to in paragraph 3 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 applies.

Arbitration

28. Any difference or despite arising between the undertaker and the NSMP entity under 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 46 (arbitration).

Access to plots 9/6, 9/7, 9/8, 9/9 or 9/10

29. The undertaker must not use plots 9/4, 9/5 or 9/48 to access plots 9/6, 9/7, 9/8, 9/9 or 9/10.

30. The undertaker must not use plots 9/2, 9/3 or 9/48 to access plots 9/6, 9/7, 9/8, 9/9 or 9/10 if an alternate access agreement has been concluded.

31. Where an alternative access agreement has been concluded, reference to plots 9/6, 9/7, 9/8, 9/9 or 9/10 in the definitions of “relevant works package A” and “traffic management plan” is taken to be deleted.

SCHEDULE 38

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF NORTHERN GAS NETWORKS LIMITED

Application

1. For this 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

2. In 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 apparatus.

3. Except for paragraphs 4 (apparatus of statutory undertaker in stopped up streets), 7 (retained apparatus: protection), 8 (expenses) and 9 (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

4. Notwithstanding the temporary closure or diversion of any street under the powers conferred by article 13 (temporary closure of streets and public rights of way), 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.

Removal or diversion of apparatus

5.—(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 Schedule 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 46 (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 46 (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 8 (expenses) and 9 (indemnity) of this Schedule apply to removal or diversions works under this paragraph 5, 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

6.—(1) Where, in accordance with the provisions of this Schedule, 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 46 (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 at greater cost.

(3) If the amount of compensation cannot be agreed, the matter must be settled by arbitration in accordance with article 46 (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

7.—(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 5(2) or otherwise or by Northern Gas Networks under paragraph 5(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 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-paragraph (1) or (2) apply until Northern Gas Networks has given written approval of the plan so submitted.

(4) Any approval of Northern Gas Networks 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 producing or securing proper and convenient means of access to any apparatus.

(6) Works executed under this Order to which this paragraph 7 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

8.—(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 Schedule, including without limitation—

(a) any costs reasonably incurred or compensation properly paid by Northern Gas Networks in connection with the acquisition of rights or the exercise of statutory powers for such apparatus, including without limitation in the event that Northern Gas Networks elects to use compulsory purchase powers to acquire any necessary rights under paragraph 5(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 inconsequence 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 Schedule 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 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 closed 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 to 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 Schedule.

(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 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

9.—(1) Subject to sub-paragraphs (2), (3) and (4), and without detracting from paragraph 8 above, if by reason or in consequence of the construction of any works referred to and approved under this Schedule, 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 the due care and attention and in a skilful and workmanlike 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 9 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

10. Nothing in this Schedule 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

11. Where in consequence of the proposed construction of any of the works under this Schedule, the undertaker or Northern Gas Networks requires the removal of apparatus in accordance with the provisions of this Schedule, 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

12. 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

13. Any difference or dispute arising between the undertaker and Northern Gas Networks under this Schedule must, unless otherwise agreed in writing between the undertaker and

Northern Gas Networks, be determined by arbitration in accordance with the article 46 (arbitration).

Works falling outside of development authorised by the Order

14.—(1) 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.

(2) 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 permissions, permitted development rights or statutory powers (including those of compulsory acquisition) available to it).

Cathodic protection testing

15. 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.

SCHEDULE 39

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF LIGHTHOUSE GREEN FUELS LIMITED

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

2. In this Schedule—

"Lighthouse Green Fuels" means Lighthouse Green Fuels Limited (company number 10773515) whose registered office is at 1 to 6 Lombard Street, London, England, EC3V 9AA and any successor in title or function to the apparatus;

"alternative apparatus" means such alternative or relocated mains, pipes, cables or other apparatus adequate to enable Lighthouse Green Fuels to carry out its operations;

"apparatus" means any mains, pipes, cables or other apparatus serving, belonging to, or maintained by Lighthouse Green Fuels excluding any such mains, pipes, cable or other apparatus constructed in connection with the Tees Valley Project;

"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

"Tees Valley Project" means the proposed waste-to-sustainable aviation fuel facility with onsite generating station capacity of up to 150 MW on the land comprised in and registered under title numbers CE218940 and CE213339.

Precedence of the 1991 Act in respect of apparatus in streets

3. This Schedule does not apply to apparatus in respect of which the relations between the undertaker and Lighthouse Green Fuels are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

4. Regardless of the temporary closure, prohibition, restriction, alteration or diversion of use of streets under the powers conferred by article 13 (temporary closure of streets and public rights of way), Lighthouse Green Fuels are 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 closure, prohibition, or restriction, alteration, diversion or use was in that street.

Removal of apparatus

5.—(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 either Lighthouse Green Fuels' apparatus is relocated or diverted, that apparatus must not be removed under this Schedule, and any right of Lighthouse Green Fuels to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed, tested and is in operation, and access to it has been provided, to the reasonable satisfaction of Lighthouse Green Fuels as appropriate 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 Lighthouse Green Fuels 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, Lighthouse Green Fuels reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Lighthouse Green Fuels 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, Lighthouse Green Fuels 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 Lighthouse Green Fuels and the undertaker or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

(5) Lighthouse Green Fuels 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 Lighthouse Green Fuels of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to Lighthouse Green Fuels 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 Lighthouse Green Fuels, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Lighthouse Green Fuels.

(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.

Co-operation

6. The undertaker and Lighthouse Green Fuels will use reasonable endeavours to resolve any potential conflicts or impacts of the authorised development upon the apparatus and/or the alternative apparatus whilst maintaining use of any apparatus (except as agreed by the undertaker and Lighthouse Green Fuels for the commissioning and decommissioning of the apparatus) by or for the benefit of Lighthouse Green Fuels.

Facilities and rights for alternative apparatus

7.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to Lighthouse Green Fuels 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 Lighthouse Green Fuels or in default of agreement settled by arbitration in accordance with article 46 (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 Lighthouse Green Fuels 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 Lighthouse Green Fuels 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 5(2), the undertaker must submit to Lighthouse Green Fuels 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 Lighthouse Green Fuels for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Lighthouse Green Fuels is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Lighthouse Green Fuels 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 Lighthouse Green Fuels 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 5(1) to 5(7) apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(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 Lighthouse Green Fuels 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) insofar 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 Lighthouse Green Fuels the reasonable expenses incurred by it in, or in connection with, the inspection, removal, alteration, reinstatement, testing or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution or pursuance of any such works as are referred to in paragraph 5(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 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 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 article 46 to be necessary,

then, if such placing involves cost in the construction of works under 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 Lighthouse Green Fuels 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 5(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 Lighthouse Green Fuels 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 Lighthouse Green Fuels 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 authorised by 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 Lighthouse Green Fuels, or there is any interruption in the use of such apparatus or property including any service provided, or in the supply of any goods, by Lighthouse Green Fuels, the undertaker must—

(a) bear and pay the reasonable costs incurred by Lighthouse Green Fuels in restoring such use, making good such damage or restoring the supply; and

(b) make reasonable compensation to Lighthouse Green Fuels for any other expenses, loss, damages, penalty or costs incurred by Lighthouse Green Fuels, 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 Lighthouse Green Fuels, its officers, employees, servants, contractors or agents; or

(b) any indirect or consequential loss or loss of profits by Lighthouse Green Fuels.

(3) Lighthouse Green Fuels 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) Lighthouse Green Fuels 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 9 applies.

(5) If requested to do so by the undertaker, Lighthouse Green Fuels 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 9 for claims reasonably incurred by Lighthouse Green Fuels.

Enactments and agreements

11. Nothing in this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Lighthouse Green Fuels in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Application of Schedule to certain apparatus

12. This Schedule and Schedule 26 cannot both apply to the same apparatus, and to the extent that both Schedules do or may apply, only this Schedule applies to that apparatus and to any matter arising in relation to the interaction of that apparatus and the authorised development.

Access to Huntsman Drive

13. Lighthouse Green Fuel's access along Huntsman Drive will not be prevented as a result of the construction or operation of the authorised development unless in the event of an emergency.

Interaction with the Tees Valley Project

14.—(1) The undertaker must use reasonable endeavours to avoid any conflict arising between the carrying out, maintenance and operation of the authorised development and the Tees Valley Project.

(2) For the purposes of sub-paragraph (1)—

(a) "conflict" does not include any overlap in the land to be occupied or developed by the undertaker and the Tees Valley Project or any overlap in the Order limits and application of compulsory powers under this Order and any order granted for the Tees Valley Project, or any difference between anything required by a requirement of any order granted after the date of the making of this Order for the construction and operation of the Tees Valley Project and the provisions of this Order;

(b) "reasonable endeavours" means—

(i) undertaking consultation with Lighthouse Green Fuels on detailed design and programming of works for the authorised development so that the plans as submitted for approval under the requirements do not unreasonably impeded or interfere with the construction and operation of the Tees Valley Project;

(ii) having regard to the anticipated programme of works for the Tees Valley Project and any reasonable requirements of Lighthouse Green Fuels;

(iii) providing a point of contact for continuing liaison and coordination throughout the construction and operation of the authorised development;

(iv) before submitting any documents or plans to be approved pursuant to a requirement in the Order, providing those documents or plans to Lighthouse Green Fuels that it reasonably requires for information purposes and take reasonable account of any comments made by Lighthouse Green Fuels on those documents or plans, provided that such comments are received by the undertaker within 28 days of Lighthouse Green Fuels receiving the documents or plans; and

(v) complying with sub-paragraph (3),

but does not include the undertaker being required to seek any amendment to or variation of this Order or delay programme critical works once the authorised development has commenced.

(3) The undertaker must cooperate with Lighthouse Green Fuels so as to reasonably ensure the coordination of construction programming, land assembly, and the carrying out of works in connection with the authorised development and the Tees Valley Project.

SCHEDULE 40

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF VENATOR MATERIALS UK LIMITED

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

Definitions

2. In this Schedule—

"Venator" means Venator Materials UK Limited (company number 00832447) whose registered office is at Titanium House, Hanzard Drive, Wynyard Park, Stockton on Tees, TS22 5FD and any successor in title or function to the Venator operations;

"Venator operations" means the operations and assets within the Order land vested in Venator and any group company within the meaning of section 1261 of the Companies Act 2006 including, but not limited to, the freehold interest in the Venator Greatham Works; and

"works details" means—

(a) plans and sections, including the routing of any proposed pipeline;

(b) details of the proposed method of working and timing of execution of works; and

(c) any further particulars provided in response to a request under paragraph 3(1).

Consent under this Schedule

3.—(1) Before commencing any part of the authorised development which would have an effect on the operation or maintenance of the Venator operations or access to them, the undertaker must submit to Venator the works details for the proposed work and such further particulars as Venator may reasonably require for the approval by Venator.

(2) No works comprising any part of the authorised development which would have an effect on the operation or maintenance of the Venator operations or access to them are to be commenced until the works details in respect of those works submitted under sub-paragraph (1) have been approved by Venator.

(3) Any approval of Venator required under sub-paragraph (2) must not be unreasonably withheld or delayed and shall be provided within 28 days from the day the works details are provided pursuant to sub-paragraph (2) but may be given subject to such reasonable requirements as Venator may require to be made for—

(a) the continuing safety and operational viability of the Venator operations; or

(b) the requirement for Venator 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 Venator operations.

(4) 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 sub-paragraph (2) and any requirements imposed on the approval under sub-paragraph (3) and all other statutory and other requirements or regulations.

(5) Where there has been a reference to an arbitrator in accordance with paragraph 5 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 5.

Indemnity

4.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the authorised development or the works referred to in paragraph 3(2), any damage is caused to the Venator operations, or there is any interruption in any service provided, or in the supply of any goods, by Venator, the undertaker must—

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

(b) make reasonable compensation to Venator for any other expenses, loss, damages, penalty or costs incurred by Venator, 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—

(a) the act, neglect or default of Venator, its officers, employees, servants, contractors or agents; or

(b) any indirect or consequential loss or loss of profits by Venator.

(3) Venator 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) Venator 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 4 applies.

(5) If requested to do so by the undertaker, Venator 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 Venator.

Arbitration

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

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

6. 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.

7. In this Schedule—

"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; 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 under this Schedule

8.—(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 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, 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.

Boreholes

9. 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

10. 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

11.—(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

12. 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

13. 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.

SCHEDULE 42

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF THE SEMBCORP PROTECTION CORRIDOR

Extent of this Schedule

1.—(1) The provisions of this Schedule 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) Articles 43(5) and 43(6) (procedure in relation to certain approvals) do not apply to any consent, agreement or approval required or contemplated by any of the provisions of this Schedule.

Interpretation of this Schedule

2. In 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;

(iii) with apparatus in, on or under the Sembcorp Protection Corridor;

(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 (company number 04636301), whose registered office is at Sembcorp UK Headquarters, Wilton International, Middlesbrough, Cleveland, TS90 8WS and any successors in title or function to the Sembcorp operations in, under or over the Sembcorp Protection Corridor;

"Sembcorp operations" means—

(c) 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);

(d) 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

(e) 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 for the purposes of this Order the area 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 44 (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 Schedules 15 to 45 of this Order;

"Wilton Complex" means the industrial and manufacturing plant shown outlined in blue on the Sembcorp Protection Corridor protective provisions supporting plans;

"works details" means—

(f) plans and sections;

(g) details of the proposed method of working and timing of execution of works;

(h) details of vehicle access routes for construction and operational traffic; and

(i) any further particulars provided in response to a request under paragraph 6.

Separate approvals by third party owners or operators

3.—(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 Schedule relates, this does not remove any obligation on the undertaker to seek consent from Sembcorp pursuant to this Schedule in respect of that matter.

(1) 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 Schedule, 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

4.—(1) If, in the 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.

(1) 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.

(2) 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 Sembcorp and the undertaker or in default of agreement settled by an arbitrator appointed under paragraph 15.

(3) 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 15, 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(a), 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 Schedule subject to any reasonable directions given to or requirements imposed on that owner or operator by Sembcorp.

(4) 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.

(5) If the 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.

(6) 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

5.—(1) Where, in accordance with this Schedule, 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 15, such terms to be no less favourable as a whole than the terms and conditions which applied to the apparatus to be removed.

(**a**) S.I. 1996/825.

(1) 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.

(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 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 Schedule in connection with Sembcorp operations

6. 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.

7. The works referred to in paragraph 6 must not be commenced until the works details in respect of those works submitted under that paragraph have been approved by Sembcorp.

8. Any approval of Sembcorp required under paragraph 7 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 (for the avoidance of doubt where the reasonable requirements relate to such matters, a reasoned explanation will be provided by Sembcorp to substantiate the need for these requirements); and

(b) the requirement for Sembcorp to have reasonable access to the Sembcorp operations at all times.

9.—(1) The authorised development must be carried out in accordance with the works details approved under paragraph 7 and any requirements imposed on the approval under paragraph 8.

(1) Where there has been a reference to an arbitrator in accordance with paragraph 15 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 15.

Insurance

10.—(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.

(1) 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.

(2) 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.

(3) 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 15.

Expenses

11.—(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 Schedule 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 Schedule;

(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 requirement referred to in paragraph 7 and 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 Schedule, that value being calculated after removal.

(5) If in accordance with 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 an arbitrator under paragraph 15 to be necessary, then, if such placing involves cost in the construction of works under 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 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 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

12.—(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 4 (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 12 applies where it is within the reasonable ability and control to do so.

(5) 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).

(6) The undertaker shall only be liable under this paragraph 12 for claims reasonably incurred by the owner or operator in question or by Sembcorp (as the case may be).

Participation in community groups

13.—(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 coordinated by Sembcorp.

(1) 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 coordinated by Sembcorp with local residents.

(2) The undertaker must cooperate 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.

(3) 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 the start and completion of commissioning

14.—(1) Notice of the intended start of commissioning of the authorised development must be given to Sembcorp no later than 14 days prior to the date that commissioning is started.

(2) Notice of the intended date of final commissioning of each of Work Nos. 2A, 6A.1, 6B.1, 8 and 10A.1 must be given to Sembcorp no later than 14 days prior to the date of final commissioning.

Arbitration

15. Any difference or dispute arising between the undertaker and an owner or operator or Sembcorp (as the case may be) under 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 46 (arbitration).

Additional agreement

16. 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 February 2025 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 Schedule

SCHEDULE 43

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF NET ZERO TEESSIDE POWER LIMITED

Interpretation

1. For the protection of NZT, the following provisions have effect, unless otherwise agreed in writing between the Parties.

2. The following definitions apply in this Schedule—

"acceptable insurance" means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than a sum to be notified to the undertaker by NZT and agreed in writing between the parties. Evidence of that insurance must be provided to NZT on request. Such insurance shall be maintained:

(a) during the construction period of the authorised works; and

(b) after the construction period of the authorised works in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the requirements as agreed by the undertaker and NZT, such insurance shall include (without limitation):

(i) a waiver of subrogation and an indemnity to principal clause in favour of NZT

(ii) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than a sum to be notified to the undertaker by NZT and agreed in writing between the parties;

"H2T Apparatus" means the pipeline, cables, structures which are or are to be owned, occupied or maintained by the undertaker within the Shared Area for the purposes of the authorised development;

"NZT Apparatus" means the pipeline, cables, structures to be owned, occupied or maintained by NZT within the Shared Area;

"NZT Order" means The Net Zero Teesside Order 2024;

"NZT Project" means the construction, operation or maintenance of Project A as is defined by the NZT Order;

"NZT Project Site" means—

(a) land on which any NZT Apparatus is situated; and

(b) land on which NZT Apparatus is anticipated to be situated which is necessary for the construction, use or maintenance of the NZT Project (insofar as the same has been notified by NZT in writing to the undertaker);

"NZT Specified Works" means so much for the NZT Project as is within the Shared Area;

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

"Parties" means NZT and the undertaker;

"Plans" includes so far as is reasonably relevant: 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 by the undertaker of any land for purposes of the Shared Area Works;

"Secretary of State" means the Secretary of State for Energy Security and Net Zero or any successor in function;

"Shared Area" means land included within both the NZT Project Site and the authorised development; and

"Shared Area Works" means any part of the authorised development taking place within the Shared Area.

Consent to works in the shared area

3.—(1) Subject to sub-paragraph (8), the undertaker must not except with the prior written agreement of NZT under this paragraph carry out any Shared Area Works or any part of it.

(2) Prior to the commencement of any Shared Area Works, or any part of it, the undertaker must submit to NZT Plans of the relevant Shared Area Works (or part of it) and such further particulars available to it as NZT may request within 21 days of receipt of the Plans reasonably requested.

(3) 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. as set out in Schedule 1 (authorised development) any powers under the Order 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 under the Order to be used or works to be carried out; and

(e) the named point of contact for the undertaker for discussion in relation to the information supplied and the consenting process.

(4) Nothing in this paragraph 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 Shared Area Works, new Plans in respect of that Shared Area Works in substitution of the Plans previously submitted, and the provisions of this paragraph shall apply to the new Plans.

(5) Any Shared Area Works must not be constructed except in accordance with such Plans as are approved in writing by NZT.

(6) Any approval of NZT required under this Schedule –

(a) must not be unreasonably withheld or delayed;

(b) in the case of a refusal must be accompanied by a statement of grounds or refusal; and

(c) may be given subject to such reasonable requirements as NZT may have in connection with the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the NZT Project or otherwise for the protection of the NZT Apparatus,

provided always that in relation to a refusal under sub-paragraph (b) or any requirements requested pursuant to sub-paragraph (c) the undertaker shall be permitted to refer such matters to expert determination in accordance with paragraph 10.

(7) Where conditions are included in any consent granted by NZT pursuant to 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 NZT or by an expert to which such conditions are referred under sub-paragraph (6).

(8) NZT must employ reasonable endeavours to respond to the submission of any Plans as soon as is reasonably practicable but in any event within a period of 56 days from the date of submission of the Plans. If NZT require further particulars, such particulars must be requested by NZT no later than 21 days from the submission of Plans and thereafter NZT must employ reasonable endeavours to respond to the submission as soon as is reasonably practicable and no later than within 56 days from receipt of the further particulars and if by the expiry of the further

56 day period NZT has failed to notify the undertaker of its decision NZT is deemed to have given its consent, approval or agreement without any terms or conditions.

(9) Any notice under sub-paragraph (1) and any request for approval or consent under the provisions of this Schedule must be sent to NZT by recorded delivery and addressed to the Owners Representative.

Interaction with the NZT Project

4.—(1) Without limiting any other provision of this Schedule, the undertaker must use reasonable endeavours to avoid any conflict arising between the carrying out of the authorised development and the NZT Project. For the purposes of this paragraph, "reasonable endeavours" means –

(a) undertaking consultation on the detailed design and programming of the Shared Area Works and all works associated with or ancillary to the Shared Area Works to ensure that the design and programme for the Shared Area Works does not unreasonably impede or interfere with the NZT Project;

(b) having regard to the proposed programme of works for the NZT Project as may be made available to the undertaker by NZT and facilitating a co-ordinated approach to the programme, land assembly, and the carrying out of the Shared Area Works and the NZT Project;

(c) providing a point of contact for continuing liaison and co-ordination throughout the construction and operation of the authorised development; and

(d) keeping NZT informed on the programme of works for the authorised development.

(2) Prior to the seeking of any consent under this Schedule, the undertaker must invite NZT to participate in a design and constructability review for that part of the Shared Area Works 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.

Regulation of Shared Area Works

5.—(1) Where under paragraph 3(6) NZT 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 NZT.

(2) The undertaker must give to NZT not less than 28 days' written notice of its intention to commence the construction of any of the Shared Area Works and, not more than 14 days after completion of their construction, must give NZT written notice of the completion and NZT will be entitled by its offer to watch and inspect the construction of such works.

(3) The undertaker is not required to comply with paragraph 3(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 NZT 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 insofar as is reasonably practicable in the circumstances.

(4) The undertaker must at all reasonable times during construction of the Shared Area Works allow NZT and its officers, employees, servants, contractors and agents access to the Shared Area Works and all reasonable facilities for inspection of the Shared Area Works.

(5) 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 NZT requiring the undertaker to do so, remove the temporary works in, on, under, over, or within the Shared Area.

(6) If the undertaker fails to remove the temporary works within a reasonable period of receipt of a notice pursuant to sub-paragraph (9), NZT may remove the temporary works and may recover the reasonable costs of doing so from the undertaker.

(7) If in consequence of the exercise of the powers conferred by the Order or the carrying out of the Shared Area 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 NZT to construct, maintain or operate he NZT Project no less effectively than was possible before the obstruction.

(8) To ensure its compliance with this paragraph 5, the undertaker must before carrying out any of the Shared Area Works request up-to-date written confirmation from NZT of the location of any part of the NZT Specified Works.

(9) If any part of the Shared Area Works is constructed otherwise than in accordance with paragraph 3(5) above NZT may by notice in writing identify the extent to which the Shared Area Works do not comply with the approved details and request the undertaker at the undertaker's own expense carry out remedial works so as to comply with the requirements of paragraph 3(5) of this Schedule or such alternative works as may be agreed with NZT or as otherwise may be agreed between the parties.

(10) Subject to sub-paragraph (11), if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (9) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, NZT may execute the works specified in the notice and any reasonable expenditure incurred by NZT in so doing will be recoverable from the undertaker.

(11) In the event of any dispute as to whether sub-paragraph (10) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, NZT will not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (10) until the dispute has been finally determined in accordance with paragraph 10.

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 NZT.

(2) The undertaker must not exercise the powers under any of the articles of the Order below, over land for the purposes of the Shared Area Works or in respect of the Shared Area Works otherwise than with the prior written consent of NZT.

(3) The articles referred to in sub-paragraph (2) above are—

(a) article 4 (development consent etc. granted by the Order);

(b) article 5 (maintenance of authorised development);

(c) article 11 (street works);

(d) article 12 (construction and maintenance of new or altered means of access);

(e) article 13 (temporary closure of streets and public rights of way);

(f) article 14 (access to works);

(g) article 17 (discharge of water);

(h) article 19 (protective works to buildings);

(i) article 20 (authority to survey and investigate land);

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

(k) article 23 (power to override easements and other rights);

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

(m) article 32 (temporary use of land for carrying out the authorised development); and

(n) article 33 (temporary use of land for maintaining the authorised development).

(4) In the event that NZT 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 NZT in any plots shown on the land plans or in the NZT Project Site, 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 H2T Apparatus, the Shared Area 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 Shared Area 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 NZT;

(b) ensure that works carried out to, or placing of H2T Apparatus beneath, roads along which construction or maintenance access is required by NZT 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 Shared Area Works in any part of any Shared Area—

(i) where requested in writing by NZT within 21 days of receipt of the Plans submitted pursuant to paragraph 3(2), submit a construction programme and a construction traffic and access management plan in respect of that area to NZT for approval (noting that a single construction traffic and access management plan may be completed for one or more parts of the Shared Area Works and may be subject to review if agreed between the Parties); and

(ii) where applicable and where requested in writing by NZT within 21 days of receipt of the Plans submitted pursuant to paragraph 3(2), confirm to NZT 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 Shared Area Works in compliance with the relevant approved construction traffic and access management plan;

(e) notify NZT of any incidences which occur as a result of, or in connection with, the Shared Area 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;

(f) where requested in writing by NZT within 21 days of receipt of post-completion notice pursuant to paragraph 5(2), provide comprehensive, as built, drawings of the Shared Area Works (including, for the avoidance of doubt, buried pipelines) within three months of the completion of each of the Shared Area Works;

(2) In considering a request for any consent under the provisions of this Schedule, NZT must not request an additional construction traffic and access management plan if such a plan has already been approved pursuant to subparagraph (1)(c) (as relevant in respect of a traffic and access management plan).

Expenses

8.—(1) Save where otherwise agreed in writing between NZT and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to NZT within 30 days of receipt of an itemised invoice or claim from NZT all charges, costs and expenses reasonably

anticipated within the following three months or reasonably and properly incurred by NZT 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 works including without limitation—

(a) 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;

(b) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(c) the approval of Plans;

(d) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(e) 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 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 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 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 dispute resolution in accordance with paragraph 10 to be necessary, then, if such placing involves cost in the construction of works under 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 NZT by virtue of subparagraph (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 NZT 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 NZT 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.

(6) Where reasonably anticipated charges, costs or expenses have been paid by the undertaker pursuant to sub-paragraph (1), if the actual charges, costs or expenses incurred by NZT are less than the amount already paid by the undertaker NZT will repay the difference to the undertaker as soon as reasonably practicable.

Indemnity

9.—(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 works 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 him) in the course of carrying out such works, including without limitation works carried out by the undertaker under 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 works) or property of NZT, or there is any interruption in any service provided, or in the supply of any goods, by NZT, or NZT becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand accompanied by an invoice or claim from NZT the cost reasonably and properly incurred by NZT in making good such damage or restoring the supply; and

(b) indemnify NZT for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from NZT, by reason or in consequence of any such damage or interruption or NZT becoming liable to any third party other than arising from any default of NZT.

(2) The fact that any act or thing may have been done by NZT on behalf of the undertaker or in accordance with a Plan approved by NZT or in accordance with any requirement of NZT or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this subparagraph (1) unless NZT 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) shall impose 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 NZT, its officers, servants, contractors or agents;

(b) any authorised works and/or any other works authorised by this Schedule carried out by NZT as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 8 (benefit of the Order) subject to the proviso that once such works become apparatus ("new apparatus") any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Schedule including this paragraph; and/or

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable;

(4) NZT must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) NZT 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.

(6) NZT must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within NZT'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 NZT's control and if reasonably requested to do so by the undertaker NZT must provide an explanation of how the claim has been minimised, where relevant or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1).

Miscellaneous provisions

10. NZT 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.

Dispute resolution

11.—(1) Article 46 (arbitration) of this Order does not apply to provisions of this Schedule.

(2) Any difference in relation to the provisions in this Schedule must be referred to—

(a) a meeting of the Owners Representative 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 NZT and the undertaker or, in the absence of agreement identified by the President of the Law Society, 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) Where appointed pursuant to sub-paragraph (2)(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) 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 NZT and the undertaker;

(b) the ability of NZT 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, NZT'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 Law Society.).

SCHEDULE 44

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF NET ZERO NORTH SEA STORAGE LIMITED

Interpretation

1. For the protection of NEP, the following provisions have effect, unless otherwise agreed in writing between the Parties.

2. The following definitions apply in this Schedule—

"acceptable insurance" means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than a sum to be notified to the undertaker by NEP and agreed in writing between the parties. Evidence of that insurance must be provided to NEP on request. Such insurance shall be maintained—

(a) during the construction period of the authorised works; and

(b) after the construction period of the authorised works in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the requirements as agreed by the undertaker and NEP, such insurance shall include (without limitation):

(i) a waiver of subrogation and an indemnity to principal clause in favour of NEP

(ii) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than a sum to be notified to the undertaker by NEP and agreed in writing between the parties;

"H2T Apparatus" means the pipeline, cables, structures which are or are to be owned, occupied or maintained by the undertaker within the Shared Area for the purposes of the authorised development;

"NEP Apparatus" means the pipeline, cables, structures to be owned, occupied or maintained by NEP within the Shared Area;

"NZT Order" means The Net Zero Teesside Order 2024;

"NEP Project" means the construction, operation or maintenance of Project B as is defined by the NZT Order;

"NEP Project Site" means—

(a) land on which any NEP Apparatus is situated; and

(b) land on which NEP Apparatus is anticipated to be situated which is necessary for the construction, use or maintenance of the NEP Project (insofar as the same has been notified by NEP in writing to the undertaker);

"NEP Specified Works" means so much of the NEP Project as is within the Shared Area;

"NEP" 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;

"Parties" means NEP and the undertaker;

"Plans" includes so far as is reasonably relevant: 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 by the undertaker of any land for purposes of the Shared Area Works;

"Secretary of State" means the Secretary of State for Energy Security and Net Zero or any successor in function;

"Shared Area" means land included within both the NEP Project Site and the authorised development; and

"Shared Area Works" means any part of the authorised development taking place within the Shared Area.

Consent to works in the shared area

3.—(1) Subject to sub-paragraph (8), the undertaker must not except with the prior written agreement of NEP under this paragraph carry out any Shared Area Works or any part of it.

(2) Prior to the commencement of any Shared Area Works, or any part of it, the undertaker must submit to NEP Plans of the relevant Shared Area Works (or part of it) and such further particulars available to it as NEP may request within 21 days of receipt of the Plans reasonably requested.

(3) 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. as set out in Schedule 1 (authorised development) any powers under the Order 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 under the Order to be used or works to be carried out; and

(e) the named point of contact for the undertaker for discussion in relation to the information supplied and the consenting process.

(4) Nothing in this paragraph 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 Shared Area Works, new Plans in respect of that Shared Area Works in substitution of the Plans previously submitted, and the provisions of this paragraph shall apply to the new Plans.

(5) Any Shared Area Works must not be constructed except in accordance with such Plans as are approved in writing by NEP.

(6) Any approval of NEP required under this Schedule –

(a) must not be unreasonably withheld or delayed;

(b) in the case of a refusal must be accompanied by a statement of grounds or refusal; and

(c) may be given subject to such reasonable requirements as NEP may have in connection with the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the NEP Project or otherwise for the protection of the NEP Apparatus,

provided always that in relation to a refusal under sub-paragraph (b) or any requirements requested pursuant to sub-paragraph (c) the undertaker shall be permitted to refer such matters to expert determination in accordance with paragraph 10.

(7) Where conditions are included in any consent granted by NEP pursuant to 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 NEP or by an expert to which such conditions are referred under sub-paragraph (6).

(8) NEP must employ reasonable endeavours to respond to the submission of any Plans as soon as is reasonably practicable but in any event within a period of 56 days from the date of submission of the Plans. If NEP require further particulars, such particulars must be requested by NEP no later than 21 days from the submission of Plans and thereafter NEP must employ reasonable endeavours to respond to the submission as soon as is reasonably practicable and no later than within 56 days from receipt of the further particulars and if by the expiry of the further

56 day period NEP has failed to notify the undertaker of its decision NEP is deemed to have given its consent, approval or agreement without any terms or conditions.

(9) Any notice under sub-paragraph (1) and any request for approval or consent under the provisions of this Schedule must be sent to NEP by recorded delivery and addressed to the Managing Director.

Interaction with the NEP Project

4.—(1) Without limiting any other provision of this Schedule, the undertaker must use reasonable endeavours to avoid any conflict arising between the carrying out of the authorised development and the NEP Project. For the purposes of this paragraph, "reasonable endeavours" means –

(a) undertaking consultation on the detailed design and programming of the Shared Area Works and all works associated with or ancillary to the Shared Area Works to ensure that the design and programme for the Shared Area Works does not unreasonably impede or interfere with the NEP Project;

(b) having regard to the proposed programme of works for the NEP Project as may be made available to the undertaker by NEP and facilitating a co-ordinated approach to the programme, land assembly, and the carrying out of the Shared Area Works and the NEP Project;

(c) providing a point of contact for continuing liaison and co-ordination throughout the construction and operation of the authorised development; and

(d) keeping NEP informed on the programme of works for the authorised development.

(2) Prior to the seeking of any consent under this Schedule, the undertaker must invite NEP to participate in a design and constructability review for that part of the Shared Area Works 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.

Regulation of Shared Area Works

5.—(1) Where under paragraph 3(6) NEP 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 NEP.

(2) The undertaker must give to NEP not less than 28 days' written notice of its intention to commence the construction of any of the Shared Area Works and, not more than 14 days after completion of their construction, must give NEP written notice of the completion and NEP will be entitled by its offer to watch and inspect the construction of such works.

(3) The undertaker is not required to comply with paragraph 3(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 NEP 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 insofar as is reasonably practicable in the circumstances.

(4) The undertaker must at all reasonable times during construction of the Shared Area Works allow NEP and its officers, employees, servants, contractors and agents access to the Shared Area Works and all reasonable facilities for inspection of the Shared Area Works.

(5) 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 NEP requiring the undertaker to do so, remove the temporary works in, on, under, over, or within the Shared Area.

(6) If the undertaker fails to remove the temporary works within a reasonable period of receipt of a notice pursuant to sub-paragraph (9), NEP may remove the temporary works and may recover the reasonable costs of doing so from the undertaker.

(7) If in consequence of the exercise of the powers conferred by the Order or the carrying out of the Shared Area Works the access to any of the NEP Specified Works is materially obstructed, the undertaker must provide such alternative means of access to the NEP Specified Works as will enable NEP to construct, maintain or operate he NEP Project no less effectively than was possible before the obstruction.

(8) To ensure its compliance with this paragraph 5, the undertaker must before carrying out any of the Shared Area Works request up-to-date written confirmation from NEP of the location of any part of the NEP Specified Works.

(9) If any part of the Shared Area Works is constructed otherwise than in accordance with paragraph 3(5) above NEP may by notice in writing identify the extent to which the Shared Area Works do not comply with the approved details and request the undertaker at the undertaker's own expense carry out remedial works so as to comply with the requirements of paragraph 3(5) of this Schedule or such alternative works as may be agreed with NEP or as otherwise may be agreed between the parties.

(10) Subject to sub-paragraph (11), if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (9) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, NEP may execute the works specified in the notice and any reasonable expenditure incurred by NEP in so doing will be recoverable from the undertaker.

(11) In the event of any dispute as to whether sub-paragraph (10) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, NEP will not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (10) until the dispute has been finally determined in accordance with paragraph 10.

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 NEP Specified Works without the prior written consent of NEP.

(2) The undertaker must not exercise the powers under any of the articles of the Order below, over land for the purposes of the Shared Area Works or in respect of the Shared Area Works otherwise than with the prior written consent of NEP.

(3) The articles referred to in sub-paragraph (2) above are—

(a) article 4 (development consent etc. granted by the Order);

(b) article 5 (maintenance of authorised development);

(c) article 11 (street works);

(d) article 12 (construction and maintenance of new or altered means of access);

(e) article 13 (temporary closure of streets and public rights of way);

(f) article 14 (access to works);

(g) article 17 (discharge of water);

(h) article 19 (protective works to buildings);

(i) article 20 (authority to survey and investigate land);

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

(k) article 23 (power to override easements and other rights);

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

(m) article 32 (temporary use of land for carrying out the authorised development); and

(n) article 33 (temporary use of land for maintaining the authorised development).

(4) In the event that NEP 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 NEP in any plots shown on the land plans or in the NEP Project Site, 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 H2T Apparatus, the Shared Area Works, the NEP Specified Works or NEP 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 Shared Area Works in such a way that will not prevent or interfere with the continued construction of the NEP Specified Works, or the maintenance or operation of the NEP Apparatus unless the action leading to such prevention or interference has the prior written consent of NEP;

(b) ensure that works carried out to, or placing of H2T Apparatus beneath, roads along which construction or maintenance access is required by NEP in respect of any NEP Apparatus will be of adequate specification to bear the loads;

(c) prior to the carrying out of any of the Shared Area Works in any part of any Shared Area—

(i) where requested in writing by NEP within 21 days of receipt of the Plans submitted pursuant to paragraph 3(2), submit a construction programme and a construction traffic and access management plan in respect of that area to NEP for approval (noting that a single construction traffic and access management plan may be completed for one or more parts of the Shared Area Works and may be subject to review if agreed between the Parties); and

(ii) where applicable and where requested in writing by NEP within 21 days of receipt of the Plans submitted pursuant to paragraph 3(2), confirm to NEP 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 Shared Area Works in compliance with the relevant approved construction traffic and access management plan;

(e) notify NEP of any incidences which occur as a result of, or in connection with, the Shared Area 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;

(f) where requested in writing by NEP within 21 days of receipt of post-completion notice pursuant to paragraph 5(2), provide comprehensive, as built, drawings of the Shared Area Works (including, for the avoidance of doubt, buried pipelines) within three months of the completion of each of the Shared Area Works;

(2) In considering a request for any consent under the provisions of this Schedule, NEP must not request an additional construction traffic and access management plan if such a plan has already been approved pursuant to subparagraph (1)(c) (as relevant in respect of a traffic and access management plan).

Expenses

8.—(1) Save where otherwise agreed in writing between NEP and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to NEP within 30 days of receipt of an itemised invoice or claim from NEP all charges, costs and expenses reasonably

anticipated within the following three months or reasonably and properly incurred by NEP 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 works including without limitation—

(a) 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;

(b) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(c) the approval of Plans;

(d) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(e) 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 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 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 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 dispute resolution in accordance with paragraph 10 to be necessary, then, if such placing involves cost in the construction of works under 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 NEP by virtue of subparagraph (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 NEP 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 NEP 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.

(6) Where reasonably anticipated charges, costs or expenses have been paid by the undertaker pursuant to sub-paragraph (1), if the actual charges, costs or expenses incurred by NEP are less than the amount already paid by the undertaker NEP will repay the difference to the undertaker as soon as reasonably practicable.

Indemnity

9.—(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 works 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 him) in the course of carrying out such works, including without limitation works carried out by the undertaker under 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 works) or property of NEP, or there is any interruption in any service provided, or in the supply of any goods, by NEP, or NEP becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand accompanied by an invoice or claim from NEP the cost reasonably and properly incurred by NEP in making good such damage or restoring the supply; and

(b) indemnify NEP for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from NEP, by reason or in consequence of any such damage or interruption or NEP becoming liable to any third party other than arising from any default of NEP.

(2) The fact that any act or thing may have been done by NEP on behalf of the undertaker or in accordance with a Plan approved by NEP or in accordance with any requirement of NEP or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this subparagraph (1) unless NEP 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) shall impose 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 NEP, its officers, servants, contractors or agents;

(b) any authorised works and/or any other works authorised by this Schedule carried out by NEP as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 8 (benefit of the Order) subject to the proviso that once such works become apparatus ("new apparatus") any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Schedule including this paragraph; and/or

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable;

(4) NEP must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) NEP 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.

(6) NEP must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within NEP'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 NEP's control and if reasonably requested to do so by the undertaker NEP must provide an explanation of how the claim has been minimised, where relevant or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1).

Miscellaneous provisions

10. NEP 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.

Dispute resolution

11.—(1) Article 46 (arbitration) of this Order does not apply to provisions of this Schedule.

(2) Any difference in relation to the provisions in this Schedule must be referred to—

(a) a meeting of the Managing Director 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 NEP and the undertaker or, in the absence of agreement identified by the President of the Law Society, 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) Where appointed pursuant to sub-paragraph (2)(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) 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 NEP and the undertaker;

(b) the ability of NEP 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, NEP's or the undertaker's outcomes could be achieved in any alternative manner without the NEP 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 Law Society.).

SCHEDULE 45

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF NATARA GLOBAL LIMITED

1. This Schedule has effect for the protection of Natara unless otherwise agreed in writing between the undertaker and Natara.

2. In this Schedule—

"black land" means the land edged and cross-hatched black on the Natara site plan;

"blue land" means the land tinted blue on the Natara site plan;

"construction management and logistics plan" means a plan prepared by or on behalf of the undertaker which sets out in relation to the Natara land—

(a) the construction programme, including—

(i) the profile activity across the day;

(ii) the periods when the yellow land will be in use; and

(iii) the proposed arrangements for delivery, erection, transfer and removal of any crane;

(b) details of construction traffic entering the Natara land including—

(i) vehicle types and numbers;

(ii) any pedestrian movements on the Natara land including frequency and numbers;

(iii) means of access to and egress from the yellow land, including any temporary means of access or footbridges to be provided by the undertaker;

(iv) access routes through the Natara land; and

(v) the times and periods during which access to the Natara land is required;

(c) details of any construction plant, machinery, equipment, materials or other items which will be brought onto the Natara land, including—

(i) where they will be located within the yellow land;

(ii) the periods during which they will be on the Natara land;

(iii) the method of operation;

(iv) the proposed arrangements for delivery, erection, operation, transfer and removal of any crane;

(v) the proposed method of operation of such crane, including any proposed oversailing of the Natara land; and

(vi) a risk assessment in respect of the matters specified in sub-paragraphs (c)(iv) and (c)(v);

(d) the proposed timing, scope and methodology of any pre-construction surveys of the Natara land, including—

(i) a survey of condition;

(ii) environmental surveys;

(iii) geotechnical surveys;

(iv) surveys of existing infrastructure; and

(v) other investigations for the purpose of assessing ground conditions on the Natara land;

(e) any site preparation or clearance measures proposed on the Natara land, including—

(i) vegetation removal;

(ii) temporary protection of the surface of any street;

(iii) measures for the protection of Natara's buildings, plant and equipment;

(iv) any temporary removal of street furniture, fencing or other obstructions;

(v) any alteration of the position of services and utilities, whether temporary or permanent; and

(vi) how the undertaker's working areas will be demarcated, including any fencing or markings proposed;

(f) proposed external lighting, including any temporary lighting arrangements or alterations;

(g) proposed health and safety management arrangements, including in respect of—

(i) personnel management;

(ii) the content and timing of any site safety briefings applicable to the Natara land;

(iii) the use of personal protective equipment;

(iv) the safe and efficient operation of the undertaker's plant, machinery and equipment;

(v) the location and specification of any safety or security fencing during construction;

(vi) the handling of any hazardous or inflammable materials or substances; and (vii) site security;

(h) proposals for the storage and disposal of waste arising as a result of the authorised development;

(i) the provision of alternative access routes or other arrangements as are reasonably necessary to ensure that Natara's access to the Natara land during the construction and operation of the authorised development is not materially prejudiced;

"Natara" means Natara Global Limited (company registration number 14641931) whose registered office address is located at Zinc Works Road, North Gare, Seaton Carew, Hartlepool, TS25 2DT;

"Natara land" means plots 2/12, 2/13, 2/14, 2/15, 2/16, 2/23 and 2/24;

"Natara site plan" means the plan which is certified as the Natara site plan by the Secretary of State under article 44 (certification of plans etc) for the purposes of this Order;

"waiting" has the same meaning as in section 2(2)(c) of the 1984 Act; and

"yellow land" means the land tinted yellow on the Natara site plan.

General duties of Natara and the undertaker

3.—(1) Where this Schedule provides—

(a) that the acknowledgement, approval, agreement, consent or authorisation of Natara or the undertaker is required; or

(b) that any thing must be done to Natara's reasonable satisfaction, that acknowledgement, approval, agreement, consent, authorisation or intimation that the matter in question has been done to Natara's satisfaction shall not be unreasonably withheld or delayed.

(2) The undertaker must in carrying out the authorised development at all times act so as to minimise, as far as reasonably practicable, any detrimental effects on Natara, including any disruption to access, supplies and other services that are required by Natara in order to carry out its operations.

(3) The undertaker and Natara shall use their reasonable endeavours to secure the amicable resolution of any difference, dispute or matter deemed to be in dispute arising between them out of or in connection with this Order in accordance with provisions of paragraph 10.

Review of draft construction management and logistics plan

4.—(1) At least 12 weeks prior to taking entry to or possession of the Natara land, the undertaker must submit a draft construction management and logistics plan to Natara for review.

(2) Following the submission of the draft construction management and logistics plan under subparagraph (1), the undertaker and Natara shall use reasonable endeavours to hold a joint site meeting on the Natara land within the period of six weeks commencing on the day next after the date of submission under sub-paragraph (1).

(3) Any joint site meeting held for the purposes of sub-paragraph (2) may be attended by representatives of both Natara and the undertaker, together with such professional and technical advisors as each of them may require.

(4) The prohibition in paragraph 5(2) does not apply to any joint site meeting held for the purposes of sub-paragraph (2).

(5) The undertaker must—

(a) have due and proper regard to any comments or representations made by Natara in respect of the draft construction management and logistics plan submitted under subparagraph (1), including any—

(i) written representations; or

(ii) oral comments provided at any joint site meeting held for the purposes of subparagraph (2); and

(b) take such comments and representations into account in preparing any construction management and logistics plan submitted under paragraph 5(1).

Approval of construction management and logistics plan

5.—(1) At least 6 weeks prior to taking entry to or possession of the Natara land, the undertaker must submit a construction management and logistics plan to Natara for its approval.

(2) No entry to or possession of the Natara land may be taken for the purposes of the authorised development until a construction management and logistics plan submitted under sub-paragraph (1)—

(a) has been approved by Natara under sub-paragraph (3)(a);

(b) is deemed to have been approved under sub-paragraph (4); or

(c) has been approved by an arbitrator following a reference under sub-paragraph (5).

(3) Following submission of a construction management and logistics plan under sub-paragraph (1), Natara must within 28 days of the date of receipt thereof notify the undertaker in writing—

(a) of its approval of all or any part of that construction management and logistics plan; or

(b) of its disapproval of all or any part of that construction management and logistics plan and the reasons for its disapproval.

(4) If Natara does not notify the undertaker of its decision within the period specified in subparagraph (3) then the construction management and logistics plan submitted under sub-paragraph (1) is deemed to be approved on the day next following the last day of that period.

(5) If Natara provides a response under sub-paragraph (3)(b) in respect of part only of that construction management and logistics plan then Natara shall be deemed to have approved the remainder of that construction management and logistics plan on the day next following the date of the notification under sub-paragraph (3)(b).

(6) If Natara gives notice to the undertaker under sub-paragraph (3)(b) then the matter will be treated as a dispute to be resolved between the parties and may (if the undertaker so elects) be referred for determination in accordance with paragraph 10.

(7) The authorised development must be executed only in accordance with the construction management and logistics plan—

(a) approved by Natara under sub-paragraph (3);

(b) deemed to be approved under sub-paragraph (4) or (5); or

(c) approved following a reference to an arbitrator in accordance with sub-paragraph (6).

Restrictions on certain activities

6. During the construction and operation of the authorised development—

(a) no part of the Natara land is to be used by the undertaker—

(i) for the waiting of vehicles; or

(ii) for the storage of materials;

(b) where the undertaker exercises the powers in articles 32 and 33 of this Order in relation to the Natara land, those powers—

(i) may only be exercised in respect of the blue land and the yellow land; and

(ii) must not be exercised in respect of any other part of the Natara land;

(c) any vehicles brought onto the Natara land by the undertaker must not stop on any part of the blue land except—

(i) in an emergency;

(ii) in accordance with a construction management and logistics plan approved under paragraph 5; or

(iii) to comply with any reasonable direction given by Natara.

7. Where the undertaker submits a draft construction management and logistics plan under paragraph 4 or a construction management and logistics plan under paragraph 5, that plan must ensure that—

(a) no more than two cranes are present on Natara land simultaneously;

(b) any crane brought onto the yellow land in accordance with the plan— (i) is located and operated only within the black land; and (ii) does not oversail any land owned or occupied by Natara other than the blue land or the yellow land;

(c) the blue land is only used for the purpose of accessing the yellow land;

(d) access is not take over the blue land where a reasonably practicable alternative means of access is available, including any temporary access or footbridge provided by the undertaker; and

(e) there is no reduction in the number of car parking spaces available on the Natara land below the number set out in the report submitted under paragraph 8(3).

Reinstatement of the Natara land

8.—(1) This paragraph applies where a construction management and logistics plan approved or deemed to be approved under paragraph 5. contains a requirement for the undertaker to carry out a pre-construction survey of condition.

(2) Where this paragraph applies, the undertaker must carry out the pre-construction survey of condition in accordance with the approved timing, scope and methodology.

(3) A report containing the findings of the pre-construction survey of condition completed in accordance with sub-paragraph (2) must be prepared by the undertaker and submitted to Natara before commencing any activities comprising part of the authorised development on the Natara land.

(4) Upon completion of those parts of the authorised development in respect of which entry to and possession of the Natara land was taken, the undertaker must—

(a) carry out a post-construction survey of condition in accordance with the same scope and methodology as the pre-construction survey of condition; and

(b) prepare a report containing—

(i) the findings of that post-construction survey of condition so as to enable a like-forlike comparison to be made to the findings of the pre-construction survey of condition; and

(ii) particulars of any works which are required in order to reinstate the Natara land to the condition set out in the report submitted under sub-paragraph (3), together with a programme and methodology for their implementation.

(5) The undertaker must submit a copy of the report prepared under sub-paragraph (4)(b) to Natara for its approval.

(6) Following submission of a report under sub-paragraph (5), Natara must within 14 days of the date of receipt thereof notify the undertaker in writing—

(a) of its approval of all or any part of that report; or

(b) of its disapproval of all or any part of that report and the reasons for its disapproval.

(7) If Natara does not notify the undertaker of its decision within the period specified in subparagraph (6) then the report submitted under sub-paragraph (5) is deemed to be approved on the day next following the last day of that period.

(8) If Natara provides a response under sub-paragraph (6)(b) in respect of part only of that report then Natara shall be deemed to have approved the remainder of that report on the day next following the date of the notification under sub-paragraph (6)(b).

(9) If Natara gives notice to the undertaker under sub-paragraph (6)(b) then the matter will be treated as a dispute to be resolved between the parties and may (if the undertaker so elects) be referred for determination in accordance with paragraph 10.

(10) The undertaker must implement any works to which sub-paragraph (4)(b)(ii) applies in accordance with the particulars set out in the report—

(a) approved by Natara under sub-paragraph (6);

(b) deemed to be approved under sub-paragraph (7) or (8); or (c) approved following a reference to an arbitrator in accordance with sub-paragraph (9).

Costs and compensation

9.—(1) Subject to sub-paragraphs (2) and (6) to (8), the undertaker must pay to Natara the reasonable and properly incurred costs and expenses (including reasonable staffing costs if work is carried out in-house) incurred by Natara in, or in connection with, the discharge of any function by Natara under this Schedule, including in respect of—

(a) the review of a draft construction management and logistics plan submitted under paragraph 4(1);

(b) attendance at any joint site meeting held for the purposes of paragraph 4(2);

(c) the provision of comments or representations to the undertaker in terms of paragraph 4(5);

(d) the review and approval of a construction management and logistics plan submitted under paragraph 5(1); and

(e) the review and approval of a report submitted under paragraph 8(5).

(2) Prior to incurring any costs or expenses associated with the activities in sub-paragraph (1), Natara 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.

(3) Subject to sub-paragraphs (4) to (8), if by reason or in consequence of the construction of the authorised development, any damage is caused to Natara, or there is any interruption in any service provided, or in the supply of any goods, by Natara, the undertaker must—

(a) at Natara's election either—

(i) bear and pay the cost reasonably incurred by Natara in making good such damage or restoring the supply; or

(ii) make good such damage to Natara's reasonable satisfaction; and

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

(4) Nothing in sub-paragraph (3) 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 of default of Natara, its officers, employees, servants, contractors or agents; or

(b) any indirect or consequential loss or loss of profits by Natara.

(5) Natara 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.

(6) If the undertaker takes sole conduct pursuant to sub-paragraph (5) then it must have due and proper regard to any comments or representations made by Natara in respect of the settlement, compromise or proceedings in question.

(7) Natara must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which this paragraph applies.

(8) If requested to do so by the undertaker, Natara must provide an explanation of how the claim or costs have been minimised or details to substantiate any cost or compensation claimed pursuant to this paragraph.

(9) The undertaker shall only be liable under this paragraph for claims or costs reasonably incurred by Natara.

(10) Where the undertaker has made good damage following an election by Natara under subparagraph (3)(a), the undertaker may request that Natara provide an intimation that the matter in question has been done to Natara's satisfaction for the purposes of sub-paragraph (3)(a)(ii).

(11) Following a request under sub-paragraph (10), Natara must within 7 days of the date of receipt thereof give an intimation to the undertaker in writing that the matter in question—

(a) has been done to Natara's satisfaction; or

(b) has not been done to Natara's satisfaction and the reasons for this.

(12) If Natara does not notify the undertaker of its decision within the period specified in subparagraph (11) then the matter in question is deemed to have been done to Natara's satisfaction.

(13) If Natara gives notice to the undertaker under sub-paragraph (11)(b) then the matter will be treated as a dispute to be resolved between the parties and may (if the undertaker so elects) be referred for determination in accordance with paragraph 10.

Dispute resolution

10.—(1) Any difference, dispute or matter deemed to be in dispute arising between the undertaker and Natara (including as to the amount of any payment pursuant to paragraph 9) must, unless otherwise agreed between the undertaker and Natara, be referred and determined in accordance with this paragraph.

(1) Subject to the provisions of this Schedule, including sub-paragraphs (3) to (14) of this paragraph, the difference, dispute or matter referred shall be determined only in accordance with the Scheme.

(2) The Scheme shall apply as if—

(a) this Schedule constituted a "construction contract"; and

(b) the undertaker and Natara were the parties to that contract.

(3) For the purposes of paragraph 2(1)(b) of the Scheme, the Law Society of Scotland shall be the specified nominating body.

(4) Any party to which the notice of adjudication is given under paragraph 1 of the Scheme shall provide to the referring party a notice in response within five days setting out—

(a) a proposed remedy for the difference, dispute or matter referred;

(b) a date for a meeting to be held within five days of the date of the notice of response; or

(c) a summary document for the dispute including any relevant correspondence or documents.

(5) If a notice is given pursuant to sub-paragraph (5)(a) and the referring party agrees to the proposed remedy then the difference, dispute or matter referred shall be determined on that basis and the parties shall implement that remedy.

(6) If a notice is given pursuant to sub-paragraph (5)(b)—

(a) copies of that notice and the notice of adjudication shall immediately be provided to a director or manager within each party who has the authority on behalf of that party to resolve the difference, dispute or matter referred;

(b) the persons to whom the documents are provided pursuant to sub-paragraph (a) shall use reasonable endeavours to meet within five days of the date on which the notice under subparagraph (5)(b) was given; and

(c) if the persons to whom the documents are provided pursuant to sub-paragraph (a) agree a remedy within the five day period specified in sub-paragraph (b) (whether or not a meeting is actually held) then the difference, dispute or matter referred shall be determined on that basis and the parties shall implement that remedy.

(7) Where sub-paragraph (7) applies—

(a) the meeting referred to in sub-paragraph 7(b) may (where relevant) take the form of a joint site meeting on the Natara land; and

(b) the words "seven days" in paragraph 7(1) of the Scheme shall be deemed to read "fourteen days".

(8) If a notice is given pursuant to sub-paragraph (5)(c) then a copy of that notice shall be provided to the adjudicator at the same time as the referral notice is provided to him under paragraph 7(1) of the Scheme.

(9) For the purposes of paragraphs 9(4), 11(1) and 25 of the Scheme—

(a) the adjudicator may determine how the payment is to be apportioned in which case the undertaker and Natara—

(i) are severally liable for only the sums apportioned to them in that determination; and

(ii) are not jointly and severally liable for any sum which remains outstanding following the making of any such determination;

(b) where the adjudicator makes no such determination, the undertaker and Natara shall be severally liable for one half each of the payment in question.

(10) In paragraph 22 of the Scheme, for the words "If requested by one of the parties to the dispute", substitute "At the same time as delivering copies of his decision pursuant to paragraph 19(3)".

(11) Subject to sub-paragraph (13)—

(a) for the purposes of paragraph 23(2) of the Scheme the undertaker and Natara shall accept the decision of the adjudicator delivered under paragraph 19(3) of the Scheme as finally determining the difference, dispute or matter referred; and

(b) the jurisdiction of the adjudicator, the scope of the adjudication, the decision of the adjudicator and any action taken by the adjudicator shall not be challenged or questioned by the undertaker or Natara in any proceedings whatsoever.

(12) If the undertaker or Natara is aggrieved by the decision of the adjudicator then they may, at any time within the appropriate period, appeal against the decision to His Majesty in Council in which case—

(a) permission to appeal is not required; and

(b) the Judicial Committee Act 1833(a) shall apply in relation to the adjudicator as it applies in relation to such courts as are mentioned in section 3 of that Act.

(13) In sub-paragraph (13), the "appropriate period" means the period of twenty-eight days starting on the day next following the date upon which copies of the decision are delivered pursuant to paragraph 19(3) of the Scheme.

(14) The decision of the adjudicator may be enforced by way of a TCC claim within the meaning of and brought under Part 60 of the Civil Procedure Rules 1998(b).

(15) In this paragraph, references to the "Scheme" are references to Part I of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998(c).

(16) Article 46 (arbitration) of this Order does not apply to any difference or dispute to which this paragraph applies.

SCHEDULE 46 Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF BOC LIMITED

Application

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

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

Interpretation

2.—(1) In this Schedule—

"alternative apparatus" means alternative apparatus adequate to serve the operator 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; and

"operator" means BOC Limited (company number 00337663), whose registered office is at Forge, 43 Church Street West, Woking, Surrey, England, GU21 6HT or any successor as a gas or water transporter within the meaning of Part 1 of the 1986 Act insofar as relates to apparatus of the operator that lies within the Order limits as at the date upon which this Order is made.

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

(3) Any consent, approval or agreement of the operator under this Schedule must not be unreasonably withheld or delayed.

Removal of apparatus

3.—(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 of the operator is placed, the apparatus must not be removed, and any right of the operator 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 the operator.

(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 of the operator placed in the land, it must give to the operator 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 operator 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) The operator must, after the alternative apparatus to be provided or constructed has been agreed or determined by an arbitrator under paragraph 10, and after the grant to the operator of

any such facilities and rights as 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(a), 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 Schedule.

(4) Notwithstanding sub-paragraph (3), if the undertaker givens notice to the operator 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 operator, must be executed by the undertaker without unnecessary delay to an appropriate standard and in a safe manner.

(5) If works are executed by the undertaker in accordance with sub-paragraph (4), the operator must be notified of the timing of the works and afforded facilities to watch, monitor and inspect the execution of the works.

(6) 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 any apparatus of the operator without the written consent of the operator.

Alternative apparatus

4.—(1) Where, in accordance with this Schedule, the undertaker affords to the operator 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 the operator or, in default of agreement, determined by arbitration under paragraph 10, 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 the operator in respect of the apparatus to be removed, the arbitrator must make such provision for the payment of compensation by the undertaker to the operator as appears to the arbitrator to be reasonable, having regard to all the circumstances of the particular case.

Insurance

5.—(1) Before carrying out any works forming part of the authorised development on, in or over any land within which apparatus of the operator is located, the undertaker (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 between the undertaker and the operator, and evidence of that insurance must be provided to the operator on request.

---

a (a) S.I. 1996/825

(2) Not less than 30 days before carrying out any works forming part of the authorised development on, in or over any land within which apparatus of the operator is located or before proposing to change the terms of the insurance policy, the undertaker must notify the operator 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 land in which apparatus of the operator is located during the operation of the authorised development at such levels as may be agreed between the undertaker and the operator.

(4) Any dispute between the undertaker and the operator regarding the terms, cover or insured level of the insurance policy shall be resolved by arbitration in accordance with paragraph 10.

Expenses

6.—(1) Subject to the provisions of this paragraph, the undertaker must pay to the operator the reasonable expenses incurred by the operator under this Schedule 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 Schedule;

(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; and

(f) 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 operator that it has incurred such expenses.

(2) Where reasonable and practicable, the operator 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 operator 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 Schedule, that value being calculated after removal.

(5) If in accordance with 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 an arbitrator under paragraph 10 to be necessary, then, if such placing involves cost in the construction of works under 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 the operator 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 pipe or 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 the operator by virtue of sub-paragraph (1) must, if it confers a financial benefit on it by deferment of the time for renewal of the apparatus in the ordinary course of that operator's business practice, be reduced by the amount that represents that benefit.

Indemnity

7.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of the authorised development (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 apparatus of the operator, or there is any interruption in any service provided, or in the supply of any goods, to or by the operator, or the operator becomes liable to pay any amount to any third party, the undertaker must—

(a) bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the service, supply and/or operations; and

(b) make reasonable compensation to the operator 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 any third party owner or operator) 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— (a) 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); or (b) any indirect or consequential loss or loss of profits of any person.

(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 any proceedings necessary to resist the claim or demand.

(4) The person to who 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 7 applies where it is within its reasonable ability and control so to do.

(5) 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).

(6) The undertaker shall only be liable under this paragraph 7 for claims reasonably incurred by the person in question

Notice of start of commissioning

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

Deemed consent

9.—(1) Any consent, approval or agreement of the operator under this Schedule must not be unreasonably withheld or delayed.

(1) With prejudice to the generality of sub-paragraph (1) and subject to the following provisions of this paragraph, where the undertaker makes any request for consent, approval or agreement of the operator under this Schedule, the operator must within 45 days of the date of receipt of that request give notice to the undertaker as to whether its consent, approval or agreement is—

(a) granted, in whole or in part; or

(b) refused, in whole or in part.

(2) Any consent, approval or agreement of the operator under this Schedule may be given subject to such reasonable requirements as the operator may notify to the undertaker in writing for the continuing safe operation of the operator's apparatus. Any such requirements must be set out in full in the notice of the operator's decision under sub-paragraph (2)(a) and that notice must set out the operator's full reasons for those requirements.

(3) If the operator does not give notice of its decision in response to the undertaker's request within the period specified in sub-paragraph (2) then the operator shall be deemed to have granted its consent, approval or agreement in respect of that request on the day next following the last day of that period.

(4) If the operator gives notice under sub-paragraph (2)(b) in respect of party only of the undertaker's request then the operator shall be deemed to have granted its consent, approval or agreement in respect of the remainder of that request on the day next following the date of the notice under sub-paragraph (2)(b).

(5) If the operator gives notice to the undertaker under sub-paragraph (2)(b) or (3) then the matter will be treated as a dispute to be resolved between the parties and may (if the undertaker so elects) be referred to an arbitrator in accordance with paragraph 10.

(6) Where a dispute is referred to an arbitrator in accordance with sub-paragraph (6), the arbitrator may grant or refuse consent, approval or agreement in respect of the request, save that the arbitrator may not—

(a) refuse consent, approval or agreement in respect of any part of the request to which a notice given by the operator pursuant to sub-paragraph (2)(a) applies;

(b) refuse consent, approval or agreement in respect of any part of the request to which subparagraph (5) applies; or

(c) grant consent, approval or agreement subject to any requirement other than one which was set out in a notice given by the operator pursuant to sub-paragraph (3).

(7) The authorised development must be executed only in accordance with the consent, approval or agreement—

(a) granted or deemed to have been granted by the operator under this paragraph, including any requirements set out in a notice in accordance with sub-paragraph (3) which are not removed following a reference to an arbitrator under sub-paragraph (6); or

(b) granted following a reference to an arbitrator in accordance with sub-paragraph (6).

Arbitration

10. Any difference or dispute arising between the undertaker and the operator under this Schedule (including as to the amount of any sum which may be payable by the undertaker pursuant to paragraph 6 or 7) must, unless otherwise agreed between the undertaker and the operator, be referred to and settled by arbitration in accordance with article 46 (arbitration

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises H2 Teesside Limited to construct, operate and maintain a hydrogen production facility and pipeline network. 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 book of reference mentioned in this Order and certified in accordance with article 44 (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.