Net Zero Teesside Project

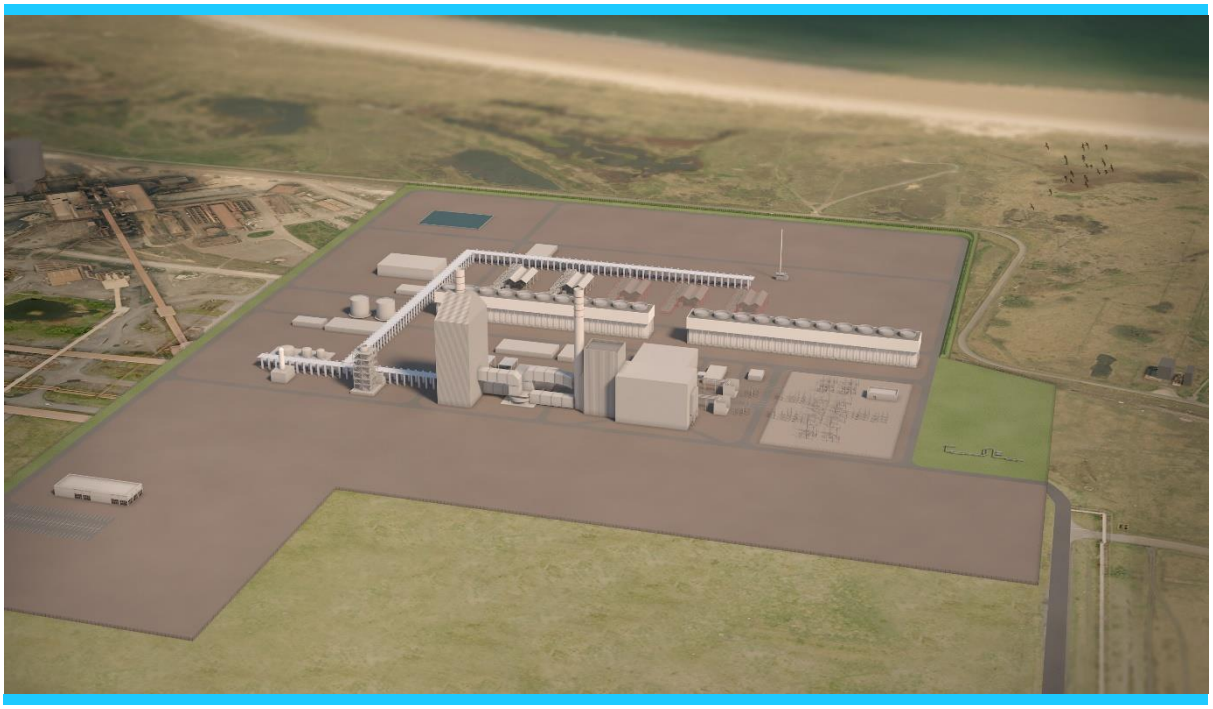
Planning Inspectorate Reference: EN010103

Land at and in the vicinity of the former Redcar Steel Works site, Redcar and in Stockton-on-Tees, Teesside

The Net Zero Teesside Order

Document Reference: 2.1 – Draft Development Consent Order

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 – Regulation 5(2)(b)



Applicants: Net Zero Teesside Power Limited (NZT Power Ltd) & Net Zero North Sea Storage Limited (NZNS Storage Ltd)

Date: August 2022

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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 Net Zero Teesside Order 202*

Made - - - - ***

Coming into force - - ***

CONTENTS

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 and the Infrastructure Planning (Examination Procedure) Rules 2010(**c**). The panel having considered the application with the documents that accompanied the application, and the

(**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.
(**c**) S.I. 2010/103, amended by S.I. 2012/635.

representations made and not withdrawn, has, in accordance with section 83(**a**) of the 2008 Act, submitted a report and recommendation to the Secretary of State.

The Secretary of State having considered the representations made and not withdrawn, the report and recommendation of the [single appointed person] and having taken into account the environmental information in accordance with regulation 4 of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

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

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

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Net Zero Teesside Order 202* and comes into force on 20[x].

Interpretation

2.—(1) In this Order—

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

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

"the 1966 Act" means the Tees and Hartlepools Port Authority Act 1966(**g**);

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

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

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

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

(**a**) Section 83 was amended by the Localism Act 2011 (c.20) section 128(2) and 237, Schedule 13 paragraphs 1, 35(1) to (4) and Schedule 25, Part 20.
(**b**) S.I. 2017/572.
(**c**) Section 132 was amended by section 24(3) of the Growth and Infrastructure Act 2013 (c.27).
(**d**) 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).
(**e**) 1961 c.33.
(**f**) 1965 c.56.
(**g**) 1966 c.xxv.
(**h**) S.I. 1975/693.
(**i**) 1980 c.66.
(**j**) 1981 c.66.
(**k**) 1984 c.27.

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

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

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

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

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

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

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

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

"the 2009 Act" means the Marine and Coastal Access Act 2009(**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 45 (certification of plans etc.) for the purposes of this Order;

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

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

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

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

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

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

"BP Exploration Operating Company Limited" means BP Exploration Operating Company Limited, with Company Registration Number 00305943, whose registered office is at Chertsey Road, Sunbury On Thames, Middlesex TW16 7BP;

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

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

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

"Carbon Sentinel Limited" means Carbon Sentinel Limited, with Company Registration Number 08116471, whose registered office is at 1-3 Strand, London WC2N 5EH;

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

"CCGT" means combined cycle gas turbine;

"CCP" means carbon capture plant;

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

"commence" means—

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

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

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

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

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

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

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

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

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

"electronic transmission" means a communication transmitted—

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

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

"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 45 for the purposes of this Order;

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

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

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

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

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

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

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

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

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

"Interface Agreement" means the agreement dated 14 February 2013 between (1) The Crown Estate Commissioners (2) Carbon Sentinel Limited and (3) Smart Wind Limited, as varied and adhered to by an agreement dated 12 September 2016 between (1) The Crown Estate Commissioners (2) Smart Wind Limited (3) Carbon Sentinel Limited and (4) Orsted Hornsea Project Four Limited and a Deed of Covenant and Adherence dated 10 February 2021 between (1) The Crown Estate Commissioners (2) Orsted Hornsea Project Four Limited (3) Smart Wind Limited (4) Carbon Sentinel Limited and (5) BP Exploration Operating Company Limited, or such other agreement as may be entered into by the parties in substitution for those agreements;

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

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

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

"MMO" means the Marine Management Organisation;

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

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

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

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

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

"Orsted Hornsea Project Four Limited" means Orsted Hornsea Project Four Limited, with Company Registration Number 08584182, whose registered office is at 5 Howick Place, London, England SW1P 1WG;

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

"permitted preliminary works" means works consisting of environmental surveys, geotechnical surveys, surveys of existing infrastructure, and other investigations for the

(**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.

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

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

"project B" means the development described in Schedule [1] (authorised development) except Work Nos. 1, 2 and 4;

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

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

"requirements" means those matters set out in Schedule [2] (requirements) to this Order;

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

"Sembcorp" means Sembcorp Utilities (UK) Limited, with Company Registration Number 04636301, whose registered office is at Sembcorp UK Headquarters, Wilton International, Middlesbrough, Cleveland, TS90 8WS;

"Sembcorp operations" means—

(a) the pipeline corridors (including access routes and laydown spaces associated with such pipelines) so far as within the Order limits owned or operated by Sembcorp;

(b) the number 2 river tunnel between Bran Sands and North Tees crossing the Order limits under the River Tees (together with associated headhouse) operated by Sembcorp; and

(c) other pipes and associated apparatus (including access routes and laydown spaces associated with such pipes and apparatus) operated, managed or co-ordinated by Sembcorp within the Order limits;

"Smart Wind Limited" means Smart Wind Limited, with Company Registration Number 07107382, whose registered office is at 5 Howick Place, London, England SW1P 1WG;

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

"STDC" means South Tees Development Corporation, whose headquarters are at Teesside Airport Business Suite Teesside International Airport Darlington DL2 1NJ;

"STDC area" means the administrative area of STDC;

"statutory undertaker" means any person falling within section 127(8) (statutory undertakers' land) of the 2008 Act;

"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;

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

(**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.

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

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

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

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

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

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

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

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

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

(3) All distances, directions and lengths referred to in this Order, except for the parameters referred to in Table 9 and Table 10 in Part 2 of Schedule [10], Table 11 and Table 12 in Part 2 of Schedule [11] and Table 14 in Schedule [15], are approximate and distances between lines and/or points on a numbered work comprised in the authorised development and shown on the works plans and access and rights of way plans are to be taken to be measured along that work.

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

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

(6) The expression "includes" is to be construed without limitation.

(7) 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;

(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

(**a**) 1971 c.80.

part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

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

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

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

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

PART 2

PRINCIPAL POWERS

Development consent etc. granted by this Order

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

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

(3) Each numbered work must be situated within the corresponding numbered area shown on the works plans.

Maintenance of authorised development

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

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

Operation of authorised development

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

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

Benefit of this Order

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

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

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

Consent to transfer benefit of this Order

8.—(1) Subject to paragraph (4), 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 but excluding the deemed marine licences referred to in paragraph (2) below) and such related statutory rights as may be agreed in writing between the undertaker and the transferee; or

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

(2) The undertaker may with the written consent of the Secretary of State—

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

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

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

(4) Where paragraph (8) applies no consent of the Secretary of State is required for a transfer or lease pursuant to this article.

(5) Where a transfer or grant has been made in accordance with paragraph (1) or (2) references in this Order to the undertaker, except in paragraph (8), include references to the transferee or the lessee.

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

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

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

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

(8) 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(**a**) or section 7 (licensing of public gas transporters)(**b**) of the 1986 Act; or

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

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

(iv) in relation only to a transfer or lease of all or part of Work No. 5A, Teesworks Limited or such other entity as STDC may confirm in writing to the undertaker; 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

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

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

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

(9) Where the consent of the Secretary of State is not required under paragraph (4), the undertaker must notify the Secretary of State in writing before transferring or granting a benefit referred to in paragraph (1) or (2).

(10) The notification referred to in paragraph (9) 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 (9), the date on which the transfer is expected to take effect;

(c) the powers to be transferred or granted;

(d) pursuant to paragraph (6), 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.

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

(12) The notice given under paragraph (9) 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.

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

(14) Where a transfer or grant has been made in accordance with paragraph (1) or (2) and relates to the STDC area, the undertaker must, within 10 working days of the date the transfer or grant took effect, notify STDC.

(15) The notification referred to in paragraph (14) must state—

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

(b) the date on which the transfer took effect;

(c) the powers that have been transferred or granted;

(d) pursuant to paragraph (6), 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.

Amendment and modification of statutory provisions

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

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

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

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

PART 3

STREETS

Power to alter layout etc. of streets

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

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

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

(b) make and maintain passing places.

(3) The powers conferred by paragraph (2) must not be exercised without the consent of the street authority.

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

Street works

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

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

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

(c) place and keep apparatus in the street;

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

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

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

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

Construction and maintenance of new or altered means of access

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) In this article—

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

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

Access to works

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

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

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

Agreements with streets authorities

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Traffic regulation

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

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

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

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

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

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

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

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

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

(4) In this article—

(a) 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**) 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 it reasonably believes it to be necessary to do so to prevent the tree or shrub—

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

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(**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.

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

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

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

Protective works to buildings

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

(2) Protective works may be carried out—

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

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

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

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

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

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

(5) Before exercising—

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

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

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

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

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

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

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

(8) Where—

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

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

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

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

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

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

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

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

Authority to survey and investigate the land

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

(a) survey or investigate the land;

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

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

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

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

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

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

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

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

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

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

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such 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) Before the undertaker carries out any part of the authorised development or works which will or may disturb any human remains in the Order land it must remove those human remains from the Order land, or cause them to be removed, in accordance with the following provisions of this article.

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

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

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

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

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

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

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

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

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

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

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

(8) If—

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

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

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

(d) it is determined that the remains to which any such notice relates cannot be identified, subject to paragraph (9),

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

(9) If the undertaker is satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be and that the remains in question can be

identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

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

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

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

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

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

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

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

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

(2) This article is subject to article 25 (compulsory acquisition of rights etc.), article 31 (temporary use of land for carrying out the authorised development) and article 43 (Crown rights).

Power to override easements and other rights

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

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

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

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

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

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

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

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

(**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).

(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 Compulsory Purchase (Vesting Declarations) Act 1981)).

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

Compulsory acquisition of rights etc.

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

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

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

(4) In the case of—

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

(b) the Order land specified in column (1) in Table 7 in Schedule [7] and coloured pink on the land plans the undertaker may, as an alternative to acquiring land pursuant to article 22 (compulsory acquisition of land), acquire such wayleaves, easements, 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.

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

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

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

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

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

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

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

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

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

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

Private rights

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

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

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

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights and restrictions over land subject to the compulsory acquisition of rights or imposition of 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 33 (statutory undertakers) applies.

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

(a) any notice given by the undertaker before—

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

(ii) the undertaker's appropriation of it;

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

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

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

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

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

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

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

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

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

Application of the 1981 Act

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

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

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

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

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

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

(6) In section 5B(1) (extension of time limit during challenge) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A" substitute "section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 24 (time limit for exercise of authority to acquire land compulsorily)".

(7) In section 6 (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 29 (modification of Part 1 of the 1965 Act) to the compulsory acquisition of land under this Order).

Acquisition of subsoil and airspace only

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

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

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

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

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

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

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

Modification of Part 1 of the 1965 Act

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

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

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

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

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

(4) In section 22(2) (interests omitted from purchase), for "section 4 of this Act" substitute "article 24 (time limit for exercise of authority to acquire land compulsorily) of the Net Zero Teesside Order 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 Net Zero Teesside 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 31 (temporary use of land for carrying out the authorised development) or article 32 (temporary use of land for maintaining the authorised development) of the Net Zero Teesside Order 202*.".

Rights under or over streets

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

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

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

(a) any subway or underground building; or

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

(4) Subject to paragraph (5) any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss by the exercise of that power, is 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

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

(a) enter on and take possession of—

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

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

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

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

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

(e) carry out or construct any mitigation works.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Temporary use of land for maintaining the authorised development

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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.

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

Statutory undertakers

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

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

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

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

Apparatus and rights of statutory undertakers in streets

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

Recovery of costs of new connections

35.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 33 (statutory undertakers) any person who is the owner or

occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

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

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

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

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

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

(4) In this article—

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

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

Compulsory acquisition of land – incorporation of the mineral code

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

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

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

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

PART 6

MISCELLANEOUS AND GENERAL

Deemed marine licence

37. The marine licences set out in Schedules [10] and [11] are deemed to have been issued under Part 4 of the 2009 Act (marine licensing) for the licensed activities set out in Part 2, and subject to the conditions set out in Part 3, of each licence.

Application of landlord and tenant law

38.—(1) This article applies to—

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

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

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

(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.

Operational land for purposes of the 1990 Act

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

Defence to proceedings in respect of statutory nuisance

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

(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(**b**); 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. Schedule [12] (protective provisions) has effect.

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

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

Saving for Trinity House

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

Crown Rights

43.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any 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 Her 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 Her 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 Her Majesty for the purposes of a government department without the consent in writing of that government department.

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

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

Procedure in relation to certain approvals

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

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

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

(4) Save for applications made pursuant to Schedule [13] (procedure for discharge of requirements) 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.

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

Certification of plans etc.

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

(2) Where the amendment of any plan or document referred to in paragraph (1) is required to reflect the terms of the Secretary of State's decision to make this Order, that plan or document, in

the form amended to the Secretary of State's satisfaction, is the version of the plan or document to be certified under paragraph (1).

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

Service of Notices

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

(a) by post; and

(b) subject to article 3 by electronic transmission.

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

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

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

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

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

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

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

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

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

Arbitration

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

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

Funding for compulsory acquisition compensation

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

(**a**) 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.

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

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

(2) The provisions are—

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

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

(c) article 26 (private rights);

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

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

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

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

(h) article 33 (statutory undertakers).

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

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

Modification of interface agreement (alternative one)

49.—(1) This article only has effect in circumstances where either—

(a) the application for the Hornsea Project Four DCO has been refused; or

(b) where the Hornsea Project Four DCO has been granted, but has expired without the authorised development having been lawfully commenced pursuant to the terms of the Hornsea Project Four DCO.

(2) From the date of this Order, the carbon entity shall have no liability to the wind entity under the terms of the interface agreement due to or arising from the carbon entity's proposed or actual activities in the exclusion area and no claim may be made by, nor award granted to the wind entity for any damages as a result of any alleged antecedent breach of the interface agreement prior to the date of this Order.

(3) Unless otherwise agreed between the entities, the carbon entity will pay to the wind entity [£…] by no later than 1 February 2029, provided that the provisions of this paragraph have not ceased to have effect in accordance with paragraph (4) by that date (in which case no payment shall be due).

(4) Save for paragraph (2), this article shall cease to have effect in the event that prior to the longstop date, either—

(a) the carbon entity notifies the wind entity that the wind entity may carry out activities within the exclusion area; or

(b) the carbon entity has already paid compensation to the wind entity in accordance with paragraph (3) above pursuant to the provisions of the Hornsea Project Four DCO.

(5) In this article—

"activities" has the same meaning as it is defined in the interface agreement;

"carbon entity" means the entity defined as the carbon entity under the interface agreement;

"endurance store" means the geological storage facility in the 'endurance' saline aquifer subject to the United Kingdom Carbon Dioxide Appraisal and Storage Licence CS001;

"endurance store protective provisions plan" means the plan entitled the endurance store protective provisions plan and certified as the endurance store protective provisions plan for the purposes of this Order;

"entity" means the carbon entity or the wind entity as appropriate and "entities" means both of them;

"exclusion area" means any area within the area hatched orange on the endurance store protective provisions plan and delineated in the table of co-ordinates;

"Hornsea Project Four DCO" means the Hornsea Project Four Offshore Wind Farm Development Consent Order (application reference: EN010098);

"longstop date" means the date three (3) years after the coming into force of this Order, or such later date as may be notified to the entities in writing from time to time by the Secretary of State;

"the table of co-ordinates" means the following table—

Exclusion Area	
Latitude	Longitude
54°8'51.929"N	1°0'34.075"E
54°9'13.497"N	1°0'43.850"E
54°10'49.480"N	0°58'21.782"E
54°12'37.143"N	0°58'31.095"E
54°12'17.413"N	1°12'18.263"E
54°10'48.297"N	1°15'35.528"E
54°9'52.770"N	1°13'54.364"E
54°8'17.458"N	1°11'0.989"E
Notification Area	
Latitude	Longitude
54°7'57.201"N	1°0'9.286"E
54°8'51.943"N	1°0'34.082"E
54°8'17.458"N	1°11'0.989"E
54°9'52.770"N	1°13'54.364"E
54°7'57.603"N	1°13'55.408"E

"wind entity" means the entity defined as the wind entity under the interface agreement.

Modification of interface agreement (alternative two)

50.—(1) This article only has effect in circumstances where either—

(a) the application for the Hornsea Project Four DCO has been refused; or

(b) where the Hornsea Project Four DCO has been granted, but has expired without the authorised development having been lawfully commenced pursuant to the terms of the Hornsea Project Four DCO.

(2) From the date of this Order, the carbon entity shall have no liability to the wind entity under the terms of the interface agreement due to or arising from the carbon entity's proposed or actual activities in the exclusion area and no claim may be made by, nor award granted to the wind entity for any damages as a result of any alleged antecedent breach of the interface agreement prior to the date of this Order.

(3) Unless otherwise agreed between the entities and notified to the Secretary of State in writing, the Secretary of State shall within 2 months of this Order coming into force determine and notify

the entities of the compensation to be paid by the carbon entity to the wind entity, such compensation to be paid by no later than 1 February 2029, provided that the provisions of this paragraph have not ceased to have effect in accordance with paragraph (8) by that date (in which case no payment shall be due).

(4) In determining the compensation, the Secretary of State shall balance any impact on the business undertaking of the wind entity from the carbon entity's proposed or actual activities in the exclusion area (and the removal of the carbon entity's liability to the wind entity under the interface agreement) pursuant to this Order with the public interest in preserving the full developable area of the endurance store.

(5) In making a determination of compensation under paragraph (3), the Secretary of State shall take into account relevant submissions made by the entities during the examination of the Hornsea Project Four DCO and such further information (if any) provided by the entities pursuant to paragraph (4) above.

(6) Where the Secretary of State considers that further information is necessary to determine compensation under paragraph (3), he or she may request this from the entities, who shall provide it within the period specified in the request.

(7) Any information provided pursuant to paragraph (6) shall be treated as confidential and commercially sensitive by the Secretary of State (and in the event that it is shared by the Secretary of State with that entity as part of the process of determining compensation), by the non-disclosing entity.

(8) Save for paragraph (2), this article shall cease to have effect in the event that prior to the longstop date, either—

(a) the carbon entity notifies the wind entity that the wind entity may carry out activities within the exclusion area; or

(b) the carbon entity has already paid compensation to the wind entity in accordance with paragraph (3) above pursuant to the provisions of the Hornsea Project Four DCO.

(9) In this article—

"activities" has the same meaning as it is defined in the interface agreement;

"carbon entity" means the entity defined as the carbon entity under the interface agreement;

"compensation" means a sum of money payable to the wind entity in recognition of the removal of the carbon entity's liability under the interface agreement pursuant to the provisions of this Order;

"endurance store" means the geological storage facility in the 'endurance' saline aquifer subject to the United Kingdom Carbon Dioxide Appraisal and Storage Licence CS001;

"endurance store protective provisions plan" means the plan entitled the endurance store protective provisions plan and certified as the endurance store protective provisions plan for the purposes of this Order;

"entity" means the carbon entity or the wind entity as appropriate and "entities" means both of them;

"exclusion area" means any area within the area hatched orange on the endurance store protective provisions plan and delineated in the table of co-ordinates;

"Hornsea Project Four DCO" means the Hornsea Project Four Offshore Wind Farm Development Consent Order (application reference: EN010098);

"longstop date" means the date three (3) years after the coming into force of this Order, or such later date as may be notified to the entities in writing from time to time by the Secretary of State;

"the table of co-ordinates" means the following table—

Exclusion Area	
Latitude	Longitude

54°8'51.929"N	1°0'34.075"E
54°9'13.497"N	1°0'43.850"E
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54°10'48.297"N	1°15'35.528"E
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Notification Area	
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54°8'17.458"N	1°11'0.989"E
54°9'52.770"N	1°13'54.364"E
54°7'57.603"N	1°13'55.408"E

"wind entity" means the entity defined as the wind entity under the interface agreement.

[Signed by authority of

Name
Address Title
Date Department]

SCHEDULES

SCHEDULE 1

Article 2

AUTHORISED DEVELOPMENT

In the Borough of Redcar and Cleveland and the Borough of Stockton and Tees a nationally significant infrastructure project as defined in sections 14(1)(a) and 15, and 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 – an electricity generating station fuelled by natural gas and with a gross output capacity of up to 860 megawatts (MWe) comprising—

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

(i) a gas turbine;

(ii) a steam turbine;

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

(iv) gas and steam turbine buildings;

(v) gas turbine air intake filters;

(vi) selective catalytic reduction equipment;

(vii) HRSG stack;

(viii) a transformer;

(ix) deaerator and feed water pump buildings;

(x) chemical sampling / dosing plant;

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

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

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

(xiv) auxiliary boiler and emissions stack; and

(xv) continuous emissions monitoring system;

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

(i) mechanical draft cooling towers;

(ii) cooling water pumps, plant and buildings;

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

(iv) standby diesel generator and emissions stack;

(v) diesel fuel storage tanks and unloading area;

(vi) fire and raw water storage tanks;

(vii) chemical storage facilities;

(viii) wastewater treatment plant and building; and

(ix) effluent, stormwater and firewater retention ponds;

(c) Work No. 1C – CCP, comprising—

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

(ii) carbon dioxide absorption column and associated stack;

(iii) carbon dioxide stripper and solvent regenerator;

(iv) carbon dioxide conditioning and compression equipment; and

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

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

(i) administration and control buildings; and

(ii) workshop and stores buildings; and

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

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

(ii) pipework, pipe runs and pipe racks;

(iii) firefighting equipment, buildings and distribution pipework;

(iv) lubrication oils storage facilities;

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

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

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

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

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

(ii) cathodic protection posts;

(iii) marker posts; and

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

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

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

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

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

(cc) remotely operated valve and valve bypass;

(dd) an above or below ground pressurisation bridle;

(ee) instrumentation and electrical kiosks; and

(ff) telemetry and communications equipment;

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

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

(bb) isolation valves;

(cc) pipeline inline gauge launching facility;

(dd) instrumentation and electrical kiosks; and

(ee) telemetry and communications equipment; and

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

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

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

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

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

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

(a) Work No. 5A – repair and upgrade of the existing water discharge infrastructure to the Tees Bay; or

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

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

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

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

(a) inlet metering;

(b) compression facilities;

(c) electrical connection and substation;

(d) hydrogen storage; and

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

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

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

(a) Work No. 9A – Teesworks laydown;

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

(c) Work No. 9C – INEOS laydown;

(d) Work No. 9D – Saltholme laydown;

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

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

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

In connection with and in addition to Work Nos. 1 to 10, further development including—

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

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

(c) hardstanding and hard landscaping;

(d) soft landscaping, including embankments and planting;

(e) biodiversity enhancement measures;

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

(g) external lighting, including lighting columns;

(h) gatehouses;

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

(j) site establishment and preparation works, including—

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

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

(iii) remediation works;

(iv) the creation of temporary construction access points;

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

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

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

(i) materials and plant storage and laydown areas;

(ii) generators;

(iii) concrete batching facilities;

(iv) vehicle and cycle parking facilities;

(v) pedestrian and cycle routes and facilities;

(vi) offices and staff welfare facilities;

(vii) security fencing and gates;

(viii) external lighting;

(ix) roadways and haul routes;

(x) wheel wash facilities; and

(xi) signage;

(l) vehicle parking and cycle storage facilities;

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

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

and to the extent that it does not form part of such works, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the works assessed in the environmental statement.

SCHEDULE 2

Article 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 the authorised development must be given to the relevant planning authority no later than fourteen days prior to the date that commissioning is started.

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

Detailed design

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

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

(b) finished floor levels;

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

(d) hard standings; and

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

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

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

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

(c) surface water drainage.

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

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

(b) hard standings; 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 approved by the relevant planning authority (following consultation with Sembcorp and STDC)—

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

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

(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 approved by the relevant planning authority (following consultation with STDC).

(6) No part of the authorised development comprised in Work No. 5 may commence, save for permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority (following consultation with Sembcorp and STDC) - the route and method of construction of any new wastewater water pipelines above mean low water springs, and the method of works of any upgrade or repairs to any existing water discharge pipelines above mean low water springs.

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

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

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

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

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

(b) finished floor levels;

(c) hard standings; and

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

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

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

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

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

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

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

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

(12) Work Nos. 1, 2, 3, 4, 5, 6, 7, 8 and 9 must be carried out in accordance with the approved details unless otherwise agreed with the relevant planning authority.

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

Landscaping and biodiversity protection management and enhancement

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

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

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

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

(c) biodiversity and habitat mitigation and impact avoidance.

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

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

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

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

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

(c) measures to enhance biodiversity and habitats;

(d) an implementation timetable; and

(e) annual landscaping and biodiversity management and maintenance.

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

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

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

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

Public rights of way and access land management

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

(2) The plan must include details of—

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

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

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

External lighting

6.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a scheme for all external lighting to be installed during construction for that part (with the exception of the aviation warning lighting required by virtue of requirement 28) has been submitted to and approved by the relevant planning authority.

(2) No part of the authorised development may be commissioned until a scheme for all permanent external lighting to be installed (with the exception of the aviation warning lighting required by virtue of requirement 28) in that part has been submitted to and approved by the relevant planning authority.

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

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

Highway accesses

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

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

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

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

Means of enclosure

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

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

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

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

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

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

Site security

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

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

Fire prevention

10.—(1) No part of Work Nos. 1 or 7 may commence, save for the permitted preliminary works, until a fire prevention method statement providing details of fire detection measures, fire suppression measures and the location of accesses to all fire appliances in all of the major building structures and storage areas within the relevant part of the authorised development, including measures to contain and treat water used to suppress any fire has, for that part, been submitted to and, after consultation with the Health and Safety Executive and the Cleveland Fire Authority, approved by the relevant planning authority.

(2) The authorised development must be implemented in accordance with the approved details and all relevant fire 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.

Surface and foul water drainage

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

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

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

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

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

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

Flood risk mitigation

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

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

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

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

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

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

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

Contaminated land and groundwater

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

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

(a) a preliminary risk assessment that—

(i) is supported by site investigation scheme; and

(ii) identifies the extent of any contamination;

(b) an appraisal of remediation options and a proposal of the preferred option where the risk assessment indicates that remediation is required in order for the relevant area of land not

to meet the definition of "contaminated land" under Part 2A (contaminated land) of the Environmental Protection Act 1990(**a**);

(c) where the preliminary 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; and

(f) details of any ongoing monitoring.

(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.

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

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

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

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

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

(a) approved by the relevant planning authority 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 then an approval under sub-paragraph (1) is required.

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

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

undertaker that it is satisfied that the relevant part of the Order land is fit for the authorised development on the basis of that report.

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

Archaeology

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

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

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

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

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

(a) in accordance with the approved scheme; and

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

Protected species

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

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

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

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

Construction environmental management plan

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

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

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

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

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

(c) a soil management plan;

(d) a sediment control plan;

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

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

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

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

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

Protection of highway surfaces

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

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

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

Construction traffic management plan

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

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

(3) The plan submitted and approved must include—

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

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

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

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

(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.

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

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

Construction workers travel plan

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

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

(3) The plan submitted and approved must include—

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

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

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

(d) a monitoring and review regime; and

(e) the profile of activity across the day.

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

Construction hours

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

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

(b) 0700 to 1300 hours on a Saturday.

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

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

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

(c) are associated with an emergency.

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

(a) associated with an emergency; or

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

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

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

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

Control of noise - construction

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

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

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

(b) the method of noise measurement;

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

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

(e) the noise control measures to be employed.

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

Control of noise - operation

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

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

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

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

Piling and penetrative foundation design

23.—(1) No part of the authorised development comprised within Work Nos. 1 or 7 may commence, save for the permitted preliminary works, until a written piling and penetrative foundation design method statement, informed by a risk assessment and which is consistent with the piling mitigation measures in paragraph 10.8 of Chapter 10 of the environmental statement and the principles set out in chapter 11 of the environmental statement and any construction

environmental management plan submitted under requirement 16(1) for that part, has been submitted to and, after consultation with the Environment Agency, Natural England, Sembcorp and STDC, approved by the relevant planning authority.

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

Waste management on site - construction wastes

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

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

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

Restoration of land used temporarily for construction

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

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

Combined heat and power

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

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

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

(4) The CHP review submitted and approved must—

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

(b) include a list of actions (if any) that the undertaker is reasonably to take (without material additional cost to the undertaker) to increase the potential for the export of heat from the authorised development.

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

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

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

Aviation warning lighting

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

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

Air safety

28. No part of Work Nos. 1 or 7 may commence, save for the permitted preliminary works, until details of the information that is required by the Defence Geographic Centre of the Ministry of Defence to chart the site for aviation purposes for that part have been submitted to and approved by the relevant planning authority.

Local liaison group

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

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

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

(4) The local liaison group must—

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

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

Employment, skills and training plan

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

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

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

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

Carbon dioxide capture transfer and storage

31.—(1) No part of the authorised development 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;

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

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

(2) The undertaker must not (save where the benefit of the Order has been transferred pursuant to article 8) without the consent of the Secretary of State—

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

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

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

Decommissioning

32.—(1) Within 12 months of the date that any part of the authorised development 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 Sembcorp)—

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

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

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

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

(b) confirmed in writing that it is satisfied as to the evidence submitted for that part pursuant to sub-paragraph (1)(b).

(3) Where the relevant planning authority notifies the undertaker that the information submitted pursuant to sub-paragraph (1) is not approved, the undertaker must within a period of 2 months from the notice (or such other period as may be agreed with the relevant planning authority) make a further submission pursuant to sub-paragraph 1 to the relevant planning authority.

(4) The plan submitted pursuant to sub-paragraph (1)(a) must include details of—

(a) the buildings to be demolished;

(b) the means of removal of the materials resulting from the decommissioning works;

(c) the phasing of the demolition and removal works;

(d) any restoration works to restore the land to a condition agreed with the relevant planning authority;

(e) the phasing of any restoration works;

(f) a timetable for the implementation of the scheme; and

(g) traffic management arrangements during any demolition, removal and remediation works.

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

(5) The plan submitted pursuant to sub-paragraph (1)(a) must be implemented as approved unless otherwise agreed with the relevant planning authority.

Requirement for written approval

33. Where under any of the above requirements the approval or agreement of the relevant planning authority or another person is required, that approval or agreement must be provided in writing.

Approved details and amendments to them

34.—(1) All details submitted for the approval of the relevant planning authority under these requirements must reflect the principles set out in the documents certified under article 45 (certification of plans etc.).

(2) With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority, the approved details are to be taken to include any amendments that may subsequently be approved by the relevant planning authority.

Amendments agreed by the relevant planning authority

35.—(1) Where the words "unless otherwise agreed by the relevant planning authority" appear in the 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

36. Where a requirement specifies that the relevant planning authority must consult STDC that only applies to the extent that the matters submitted for approval relate to any part of the authorised development which is within the STDC area or in the relevant planning authority's opinion could affect the STDC area.

Consultation with Sembcorp Utilities (UK) Limited

37.—(1) Where a requirement specifies that the relevant planning authority must consult Sembcorp that only applies to the extent that the matters submitted for approval relate to any part of the authorised development which in the relevant planning authority's opinion could affect Sembcorp's operations.

(2) The undertaker and Sembcorp must provide information to the relevant planning authority on the location and nature of Sembcorp's operations following a request by the relevant planning authority.

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 12 have effect".

2. After Schedule 11 insert new Schedule 12—

"SCHEDULE 12

FOR THE PROTECTION OF NET ZERO TEESSIDE POWER LIMITED AND NET ZERO NORTH SEA STORAGE LIMITED

1. The provisions of this Part apply for the protection of Net Zero Teesside unless otherwise agreed in writing between the undertaker and Net Zero Teesside.

2. In this Part—

"apparatus" means the pipeline, cables, structures or other infrastructure owned, occupied or maintained by Net Zero Teesside or its successor in title within the shared area;

"construction" includes execution, placing, altering, replacing, reconstruction, relaying, maintenance, extensions, enlargement and removal and "construct" and "constructed" must be construed accordingly;

"Net Zero Teesside" means an undertaker with the benefit of all or part of the Net Zero Teesside Order for the time being;

"Net Zero Teesside Order" means the Net Zero Teesside Order 202*;

"Net Zero Teesside specified works" means so much of any works or operations authorised by the Net Zero Teesside Order (or authorised by any planning permission intended to operate in conjunction with the Net Zero Teesside Order) as is within the shared area;

"plans" includes sections, drawings, specifications, designs, 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;

"the respective authorised developments" means the developments authorised by this Order (or authorised by any planning permission intended to operate in conjunction with this Order) and the Net Zero Teesside Order (or authorised by any planning permission intended to operate in conjunction with the Net Zero Teesside Order) respectively;

"shared area" has the same meaning as defined in Part [17] of Schedule [12] to the Net Zero Teesside Order; and

"York Potash specified works" means so much of any works or operations authorised by this Order (or authorised by any planning permission intended to operate in conjunction with this Order) as is within the shared area.

Consent under this Part

3. The consent of Net Zero Teesside under this Part is not required where the Net Zero Teesside Order has expired without the authorised development having been commenced pursuant to requirement 1 of Schedule [2] to the Net Zero Teesside Order.

4. Where conditions are included in any consent granted by Net Zero Teesside pursuant to this Part, 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 Net Zero Teesside.

5. Wherever in this Part provision is made with respect to the approval or consent of Net Zero Teesside, that approval or consent must be in writing (and subject to such reasonable terms and conditions as Net Zero Teesside may require), but must not be unreasonably withheld or delayed.

6. In the event that Net Zero Teesside does not respond in writing to a request for approval or consent within 28 days of receipt of such a request, Net Zero Teesside is deemed to have given its consent, without any terms or conditions.

Co-operation

7. Insofar as the construction of the Net Zero Teesside specified works is or may be undertaken concurrently with the York Potash specified works, the undertaker must—

(a) co-operate with Net Zero Teesside with a view to ensuring—

(i) the co-ordination of construction programming and the carrying out of works; and

(ii) that access for the purposes of constructing the respective authorised developments is maintained for the undertaker and Net Zero Teesside and their respective employees, contractors and sub-contractors; and

(b) use reasonable endeavours to avoid any conflict arising from the carrying out of the respective authorised developments.

Regulation of powers over the shared area

8. The undertaker must not exercise the powers granted under this Order so as to hinder or prevent the construction, use or maintenance of the Net Zero Teesside specified works without the prior written consent of Net Zero Teesside.

Regulation of works within the shared area

10.—(1) The undertaker must not carry out any York Potash specified works without the consent of Net Zero Teesside.

(2) Subject to obtaining consent pursuant to sub-paragraph (1) and before beginning to construct any York Potash specified works, the undertaker must submit plans of the York Potash specified works to Net Zero Teesside and must submit such further particulars available to it that Net Zero Teesside may reasonably require.

(3) Any York Potash specified works must be constructed without unreasonable delay in accordance with the plans approved in writing by Net Zero Teesside.

(4) Any approval of Net Zero Teesside required under this paragraph may be made subject to such reasonable conditions as may be required for the protection or alteration of or access to any Net Zero Teesside specified works.

(5) Where Net Zero Teesside 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 Net Zero Teesside's reasonable satisfaction.

(6) 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 York Potash specified works, new plans instead of the plans previously submitted, and the provisions of this paragraph shall apply to and in respect of the new plans.

11.—(1) The undertaker must give to Net Zero Teesside not less than 28 days' written notice of its intention to commence the construction of the York Potash specified works and, not more than 14 days after completion of their construction, must give Net Zero Teesside written notice of the completion.

(2) The undertaker is not required to comply with paragraph 33 or sub-paragraph (1) in a case of emergency, but in that case it must give to Net Zero Teesside 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 paragraph 33 in so far as is reasonably practicable in the circumstances.

12. The undertaker must at all reasonable times during construction of the York Potash specified works allow Net Zero Teesside and its officers, employees, servants, contractors and agents access to the York Potash specified works and all reasonable facilities for inspection of the York Potash specified works.

13.—(1) 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 Net Zero Teesside requiring the undertaker to do so, remove the temporary works in, on, under, over, or within the shared area.

(2) If the undertaker fails to remove the temporary works within a reasonable period of receipt of a notice pursuant to sub-paragraph (1), Net Zero Teesside may remove the temporary works and may recover the reasonable costs of doing so from the undertaker.

14. The undertaker must not exercise the powers conferred by this Order or undertake the York Potash specified works to prevent or interfere with the access by Net Zero Teesside to the Net Zero Teesside specified works.

15. If in consequence of the exercise of the powers conferred by this Order or the undertaking of the York Potash specified works the access to any Net Zero Teesside specified works is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable Net Zero Teesside to maintain or use the apparatus no less effectively than was possible before the obstruction.

16. To ensure its compliance with this Part, the undertaker must before carrying out any York Potash specified works request up-to-date written confirmation from Net Zero Teesside of the location of any apparatus.

Miscellaneous provisions

17. The undertaker and Net Zero Teesside must each act in good faith and use reasonable endeavours to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this Part.

18. The undertaker must pay to Net Zero Teesside the reasonable expenses incurred by Net Zero Teesside in connection with the approval of plans, inspection of any York Potash specified works or the alteration or protection of any apparatus.

19.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any York Potash specified works, any damage is caused to any apparatus or Net Zero Teesside specified works or there is any interruption in any service provided, or in the supply of any goods, by Net Zero Teesside, or Net Zero Teesside becomes liable to pay any amount to any third party, the undertaker must—

(a) bear and pay the cost reasonably incurred by Net Zero Teesside in making good such damage or restoring the service or supply; and

(b) compensate Net Zero Teesside for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Net Zero

Teesside, by reason or in consequence of any such damage or interruption or Net Zero Teesside becoming liable to any third party as aforesaid.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Net Zero Teesside, its officers, employees, servants, contractors or agents.

(3) Net Zero Teesside must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made, unless payment is required in connection with a statutory compensation scheme without first consulting the undertaker and considering its representations.

(4) Net Zero Teesside 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 42 applies. If requested to do so by the undertaker, Net Zero Teesside 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 42 for claims reasonably incurred by Net Zero Teesside.

(5) The fact that any work or thing has been executed or done with the consent of Net Zero Teesside and in accordance with any conditions or restrictions prescribed by Net Zero Teesside or in accordance with any plans approved by Net Zero Teesside or to its satisfaction or in accordance with any directions or award of any arbitrator does not relieve the undertaker from any liability under this Part.

Arbitration

20. Any difference or dispute arising between the undertaker and Net Zero Teesside under this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and Net Zero Teesside, be referred to and settled by arbitration in accordance with article 47 (arbitration).”.

SCHEDULE 4 Articles 10, 11 and 14

STREETS SUBJECT TO STREET WORKS

Table 1

(1) *Area*	*(2)* *Street subject to street works*	*(3)* *Description of the street works*
In the District of Stockton-on-Tees	A1185	Works for the improvement of the access at the point marked P on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	A178	Works for the improvement of the access at the point marked R on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	A178	Works for the improvement of the access at the point marked S on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	A178	Works for the improvement of the access at the point marked U on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	A178	Works for the improvement of the access at the point marked V on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	Seal Sands Road	Works for the improvement of the access at the point marked Y on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	Cowpen Bewley Road	Works for the improvement of the access at the point marked L on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	Cowpen Bewley Road	Works for the improvement of the access at the point marked M on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	Cowpen Bewley Road	Works for the improvement of the access at the point marked N on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	Nelson Avenue	Works for the improvement of the access at the point marked H on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	Nelson Avenue	Works for the improvement of the access at the point marked I on sheet 7 of the access and rights of way plans
In the District of Stockton-on-	B1275	Works for the improvement of

Tees		the access at the point marked E on sheet 7 of the access and rights of way plans

SCHEDULE 5

Article 12

ACCESS

PART 1

THOSE PARTS OF THE ACCESSES TO BE MAINTAINED BY THE HIGHWAY AUTHORITY

Table 2

(1) *Area*	*(2)* *Street*	*(3)* *Description of relevant part of access*
In the District of Stockton-on-Tees	A178 / unnamed private track	That part of the access cross-hatched in blue at the point marked R on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	A178 / unnamed private track	That part of the access cross-hatched in blue at the point marked U on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	A178 / unnamed private track	That part of the access cross-hatched in blue at the point marked V on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	A178 / unnamed private track	That part of the access cross-hatched in blue at the point marked S on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	A1185 / unnamed private track	That part of the access in the area cross hatched in blue at the point marked P on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	Seal Sands Road / unnamed private track	That part of the access in the area cross hatched in blue at the point marked Y on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	Cowpen Bewley Road / unnamed private track	That part of the access cross-hatched in blue at the point marked L on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	Cowpen Bewley Road / unnamed private track	That part of the access cross-hatched in blue at the point marked M on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	Cowpen Bewley Road / unnamed private track	That part of the access cross-hatched in blue at the point marked N on sheet 7 of the access and rights of way plans

In the District of Stockton-on-Tees	Nelson Avenue / unnamed private track	That part of the access in the area cross hatched in blue at the point marked H on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	Nelson Avenue / unnamed private track	That part of the access in the area cross hatched in blue at the point marked I on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	B1275 / unnamed private track	That part of the access cross-hatched in blue at the point marked E on sheet 7 of the access and rights of way plans

PART 2

THOSE PARTS OF THE ACCESSES TO BE MAINTAINED BY THE STREET AUTHORITY

Table 3

(1) *Area*	*(2)* *Street*	*(3)* *Description of relevant part of access*
In the District of Redcar and Cleveland	Tees Dock Road / unnamed private road	That part of the access in the area cross hatched in red at the point marked BO on sheet 4 of the access and rights of way plans
In the District of Stockton-on-Tees	A178 / unnamed private track	That part of the access in the area cross hatched in red at the point marked R on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	A178 / unnamed private track	That part of the access in the area cross hatched in red at the point marked U on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	A178 / unnamed private track	That part of the access in the area cross hatched in red at the point marked V on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	A178 / unnamed private track	That part of the access in the area cross hatched in red at the point marked S on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	A1185 / unnamed private track	That part of the access in the area cross hatched in red at the point marked P on sheet 7 of the access and rights of way plans

In the District of Stockton-on-Tees	Seal Sands Road / unnamed private track	That part of the access in the area cross hatched in red at the point marked Y on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	Cowpen Bewley Road / unnamed private track	That part of the access in the area cross hatched in red at the point marked L on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	Cowpen Bewley Road / unnamed private track	That part of the access in the area cross hatched in red at the point marked M on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	Cowpen Bewley Road / unnamed private track	That part of the access in the area cross hatched in red at the point marked N on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	Nelson Avenue / unnamed private track	That part of the access in the area cross hatched in red at the point marked H on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	Nelson Avenue / unnamed private track	That part of the access in the area cross hatched in red at the point marked I on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	B1275 / unnamed private track	That part of the access in the area cross hatched in red at the point marked E on sheet 7 of the access and rights of way plans

SCHEDULE 6

Article 13

TEMPORARY STOPPING UP OF STREETS, PUBLIC RIGHTS OF WAY AND ACCESS LAND

PART 1

THOSE PARTS OF THE STREET TO BE TEMPORARILY STOPPED UP

Table 4

(1) *Area*	*(2)* *Streets subject to temporary stopping up of use*	*(3)* *Extent of temporary stopping up of use of street*
In the District of Stockton-on-Tees	A178	Temporarily stop up, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked Q and T on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	Cowpen Bewley Road	Temporarily stop up, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked K and O on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	B1275	Temporarily stop up, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked D and F on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	Nelson Avenue	Temporarily stop up, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked J and G on sheet 7 of the access and rights of way plans

PART 2

THOSE PUBLIC RIGHTS OF WAY TO BE TEMPORARILY STOPPED UP

Table 5

(1) *Area*	*(2)* *Public right of way subject to temporary prohibition or restriction of use*	*(3)* *Extent of temporary prohibition or restriction of use of public right of way*
In the District of Redcar and Cleveland	Public footpath - Teesdale Way LDR	Temporarily stop up, prohibit the use of, restrict the use of, alter or divert the footpath between the points marked DK and DJ on Sheet 2 of the access and rights of way plans
In the District of Redcar and Cleveland	Public footpath - Teesdale Way LDR	Temporarily stop up, prohibit the use of, restrict the use of, alter or divert the footpath between the points marked DH and CZ on Sheet 3 of the access and rights of way plans
In the District of Redcar and Cleveland	Public footpath - England Coast Path / Teesdale Way LDR	Temporarily stop up, prohibit the use of, restrict the use of, alter or divert the footpath between the points marked BH and BG on Sheet 4 of the access and rights of way plans
In the District of Redcar and Cleveland	Public footpath - England Coast Path / Teesdale Way LDR	Temporarily stop up, prohibit the use of, restrict the use of, alter or divert the footpath between the points marked CK and CM on Sheet 3 of the access and rights of way plans
In the District of Redcar and Cleveland	Public bridleway - England Coast Path / Teesdale Way LDR	Temporarily stop up, prohibit the use of, restrict the use of, alter or divert the bridleway between the points marked BX and BY on Sheet 4 of the access and rights of way plans
In the District of Stockton-on-Tees	Public footpath - England Coast Path	Temporarily stop up, prohibit the use of, restrict the use of, alter or divert the footpath between the points marked V and W1 on Sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	Public footpath - England Coast Path	Temporarily stop up, prohibit the use of, restrict the use of, alter or divert the footpath between the points marked W and X on sheet 6 of the access and rights of way plans

PART 3

THOSE PARTS OF THE ACCESS LAND WHERE PUBLIC ACCESS MAY BE TEMPORARILY SUSPENDED

Table 6

(1) *Area*	*(2)* *Access land subject to temporary prohibition or restriction of use*	*(3)* *Extent of temporary prohibition or restriction of use of access land*
In the District of Redcar and Cleveland	Access land at South Gare Road and Coatham beach and sand dunes	Temporarily suspend access to the area shaded beige on sheets 1, 2 and 3 of the access and rights of way plans

SCHEDULE 7

Article 25

LAND IN WHICH NEW RIGHTS ETC. MAY BE ACQUIRED

Interpretation

1. In this Schedule—

"Work No. 2A infrastructure" means any works or development comprised within Work No. 2A, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 2A on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 2B infrastructure" means any works or development comprised within Work No. 2B, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 2B on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 3 infrastructure" means any works or development comprised within Work No. 3A or Work No. 3B, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 3A or Work No. 3B on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 4A infrastructure" means any works or development comprised within Work No. 4A, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 4A on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 5B infrastructure" means any works or development comprised within Work No. 5B, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 5B on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 5C infrastructure" means any works or development comprised within Work No. 5C, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 5C on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 6 infrastructure" means any works or development comprised within Work No. 6, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 6 on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 8 infrastructure" means any works or development comprised within Work No. 8, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 8 on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus; and

"Work No. 10 access and highway improvements" means any works or development comprised within Work No. 10 including any other necessary works or development permitted within the area delineated as Work No. 10 on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus.

Table 7

(1) *Plot numbers shown on Land Plans*	*(2)* *Purposes for which rights over land may be acquired or restrictive covenants may be imposed*
The following plots shown coloured blue on the land plans— 105, 110, 113, 114, 316, 319, 320, 324, 332, 343, 344, 345, 347, 349, 350, 351, 352, 354, 355, 356, 357, 358, 359, 360, 365, 366, 382, 384, 395, 397, 401, 408, 409, 409a, 409b, 425, 425a, 462, 464	For and in connection with the Work No. 2A infrastructure, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 2A infrastructure and Work No. 2B infrastructure, together with the right to install, retain, use and maintain the Work No. 2A infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 2A infrastructure, or interfere with or obstruct access from and to the Work No. 2A infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
The following plots shown coloured pink on the land plans— 112, 325, 328, 329, 330, 333, 450, 455, 456, 457	
The following plots shown coloured pink on the land plans— 112, 325, 328, 329, 330, 333	For and in connection with the Work No. 2B infrastructure, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 2B infrastructure, together with the right to install, retain, use and maintain the Work No. 2B infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 2B infrastructure, or interfere with or obstruct access from and to the Work No. 2B infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.

The following plots shown coloured blue on the land plans— 386, 387, 388, 393, 393c, 393f, 395, 401, 405, 408, 409, 409a, 409b, 412, 413, 416, 417, 418, 419, 420, 421, 423, 425, 425a, 427, 431, 432, 436, 439, 462, 464, 540a, 540d	For and in connection with the Work No. 3 infrastructure, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 3 infrastructure, together with the right to install, retain, use and maintain the Work No. 3 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 3 infrastructure, or interfere with or obstruct access from and to the Work No. 3 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
The following plots shown coloured pink on the land plans— 391, 393b, 396, 398, 399, 400, 403, 404, 406, 411, 414, 422, 424, 429, 449, 450, 451, 452, 454, 455, 456, 457, 540b, 540c	
The following plots shown coloured blue on the land plans— 409a, 425a, 458, 461, 463, 467, 470, 472, 473, 498, 509, 512, 515, 516, 518, 519, 521, 522, 524, 525, 531, 535, 536, 537, 538	For and in connection with the Work No. 4 infrastructure, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 4 infrastructure, together with the right to install, retain, use and maintain the Work No. 4 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 4 infrastructure, or interfere with or obstruct access from and to the Work No. 4 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
The following plots shown coloured blue on the land plans— 320, 332, 343, 345, 347, 366, 382, 384, 395, 397, 401, 408, 409, 409a, 409b, 425, 425a, 462, 464	For and in connection with the Work No. 5C infrastructure, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 5C infrastructure, together with the right to install, retain, use and maintain the Work No. 5C infrastructure, and a

The following plots shown coloured pink on the land plans— 450, 455, 456, 457	right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 5C infrastructure, or interfere with or obstruct access from and to the Work No. 5C infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
The following plots shown coloured blue on the land plans— 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 20a, 21, 22, 23, 24, 25, 26, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 56, 57, 58, 59, 60, 61, 62, 63, 65, 66, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 93, 94, 95, 96, 99, 100, 101, 102, 115, 119, 120, 121, 124, 124d, 128, 138, 139, 141, 142, 142b, 156, 157, 157b, 158, 165, 165a, 166, 166b, 169, 171, 171b, 172, 174, 174d, 174e, 176, 176b, 181, 183, 184, 191d, 194, 196, 278, 280, 281, 284, 285, 286, 294, 301, 302, 303, 314, 315, 316, 317, 318, 319, 320, 321, 322, 324, 331, 332, 343, 344, 345, 347, 349, 350, 351, 352, 354, 355, 356, 357, 358, 359, 360, 365, 366, 382, 384, 395, 397, 401, 405, 408, 409, 409a, 409b, 421, 423, 425, 425a, 462, 464 The following plots shown coloured pink on the land plans— 325, 328, 329, 330, 333, 385, 394, 400, 404, 411 422, 424, 429, 450, 455, 456, 457	For and in connection with the Work No. 6 infrastructure, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 6 infrastructure, together with the right to install, retain, use and maintain the Work No. 6 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 6 infrastructure, or interfere with or obstruct access from and to the Work No. 6 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
The following plots shown coloured pink on the land plans— 392, 415, 429, 447	For and in connection with the Work No. 8 infrastructure, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 8 infrastructure, together with the right to install, retain, use and maintain the Work No. 8 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 8 infrastructure, or interfere with or obstruct access from and to the Work No. 8 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.

The following plots shown coloured blue on the land plans— 89, 91, 92, 98, 103, 106, 108, 110 111, 126, 136, 137, 143, 144, 145, 146, 147, 148, 150, 151, 152, 153, 157b, 165a, 167, 168, 170, 174e, 181, 186, 187, 316, 319, 320, 324, 332, 343, 344, 345, 347, 349, 350, 351, 352, 354, 355, 356, 357, 358, 359, 360, 365, 366, 377, 378, 382, 384, 386, 387, 388, 393, 393c, 393f, 395, 397, 401, 405, 408, 409, 409a, 409b, 412, 413, 416, 417, 418, 419, 420, 421, 423, 425, 425a, 426, 427, 431, 432, 434, 435, 436, 438, 439, 445, 458, 458a, 459, 461, 462, 463, 464, 467, 470, 472, 473, 474, 475, 477, 478, 483, 485, 486, 487, 488, 489, 493, 495, 496, 498, 500, 502, 504, 505, 508, 509, 510, 511, 512, 514, 515, 516, 517, 518, 519, 521, 522, 523, 524, 532, 533, 534, 540d The following plots shown coloured pink on the land plans— 325, 327, 328, 329, 330, 333, 339, 391, 393b, 403, 450, 455, 456, 457, 479, 482, 540b, 540c	For and in connection with the Work No. 10 access and highway improvements, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the authorised development, along with the right to prevent any works on or uses of the land which may interfere with or obstruct access from and to the authorised development, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
The following plots shown coloured blue on the land plans— 377, 378, 379, 448, 494, 499, 501, 526, 527, 528, 529, 530, 539 The following plot shown coloured pink on the land plans— 402	For and in connection with the Work No. 5B infrastructure (except where the right to install, retain, use and maintain the Work No. 5B infrastructure is within the subsoil only), the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 5B infrastructure, together with the right, including within the subsoil, for the undertaker and all persons authorised on its behalf to install, retain, use and maintain the Work No. 5B infrastructure, and a right of support for it, and the right to the free flow of water (as relevant), along with the right to prevent any works on or uses of the land or, in the case of a right within the subsoil any works or uses above, under and adjoining such subsoil, which may interfere with or damage the Work No. 5B infrastructure, including the right to prevent or remove the whole of any fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land or subsoil (as relevant).
The following plots shown coloured blue on the land plans— 185, 190, 190b, 191, 191a, 191b, 202c, 218, 232a, 252, 252a, 253, 253a, 255, 263	For and in connection with the Work No. 6 infrastructure (except where the right to install, retain, use and maintain the Work No. 6 infrastructure is within the subsoil only), the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot,

	with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 6 infrastructure, together with the right, including within the subsoil, for the undertaker and all persons authorised on its behalf to install, retain, use and maintain the Work No. 6 infrastructure, and a right of support for it, and the right to the free flow of water (as relevant), along with the right to prevent any works on or uses of the land or, in the case of a right within the subsoil any works or uses above, under and adjoining such subsoil, which may interfere with or damage the Work No. 6 infrastructure, including the right to prevent or remove the whole of any fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land or subsoil (as relevant).
The following plots shown coloured blue on the land plans— 377, 378, 379, 448, 494, 499, 501, 526, 527, 528, 529, 539	For and in connection with the Work No. 8 infrastructure (except where the right to install, retain, use and maintain the Work No. 8 infrastructure is within the subsoil only), the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 8 infrastructure, together with the right, including within the subsoil, for the undertaker and all persons authorised on its behalf to install, retain, use and maintain the Work No. 8 infrastructure, and a right of support for it, and the right to the free flow of water (as relevant), along with the right to prevent any works on or uses of the land or, in the case of a right within the subsoil any works or uses above, under and adjoining such subsoil, which may interfere with or damage the Work No. 8 infrastructure, including the right to prevent or remove the whole of any fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land or subsoil (as relevant).
The following plot shown coloured pink on the land plans— 402	

SCHEDULE 8

Article 25

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS AND IMPOSITION OF NEW RESTRICTIVE COVENANTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation to the scope of paragraph 1, the Land Compensation Act 1973(**a**) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5(3)—

(a) for "land is acquired or taken from" substitute "a right or restrictive covenant over land is purchased from or imposed on"; and

(b) for "acquired or taken from him" substitute "over which the right is exercisable or the restrictive covenant enforceable".

3.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) In section 5A(5A) (relevant valuation date) of the 1961 Act substitute—

"(5A) If—

(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule [8] to the Net Zero Teesside Order 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 [8] to the Net Zero Teesside 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 29 (modification of Part 1 of the Compulsory Purchase Act 1965)) to the acquisition of land under article 22 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 25 (compulsory acquisition of rights etc.)—

(a) with the modification specified in paragraph 5; and

(b) with such other modifications as may be necessary.

(**a**) 1973 c.26.

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 29(3) (modification of Part 1 of the Compulsory Purchase Act 1965) is also modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue

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(**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.

to be entitled to exercise the right acquired or enforce the restrictive covenant imposed, subject to compliance with that section as respects compensation.

(8) For Schedule 2A to the 1965 Act substitute—

"SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1.—(1) This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act (execution of declaration) as applied by article 27 (application of the Compulsory Purchase (Vesting Declarations) Act 1981) of the Net Zero Teesside Order 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 Net Zero Teesside 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 9

Article 31

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

Table 8

(1) *Plot numbers shown on Land Plans*	*(2)* *Purpose for which temporary possession may be taken*
289, 292, 293, 298, 300, 336, 337, 338, 342	Temporary use as laydown, construction compound, construction use and accesses (Work No. 9A) required to facilitate construction of the authorised development
67, 67a, 68, 122, 125	Temporary use as laydown, construction compound, construction use and accesses (Work Nos. 9C and 9D) required to facilitate construction of Work No. 2A
If WN9C— 122, 125 If WN9D— 67, 67a, 68	Temporary use as laydown, construction compound, construction use and accesses (Work Nos. 9C and 9D) required to facilitate construction of Work No. 2B
19, 48, 49, 50, 51, 52, 53, 54, 55, 64, 67, 67a, 68, 122, 125, 174c, 179, 179a, 193, 195, 197, 199, 202a	Temporary use as laydown, construction compound, construction use and accesses (Work Nos. 9B, 9C, 9D, 9E and 9F) required to facilitate construction of Work No. 6
222, 223, 274, 279, 282, 283, 287, 290, 291, 296, 299, 305, 348, 362, 363, 367, 370, 373, 374, 376, 381, 393a, 393d, 393e	Temporary use to facilitate access to and highway improvements (Work No. 10) in relation to the authorised development
48, 49, 50, 51, 52, 53, 54, 55, 64, 123, 188, 189	Temporary use to facilitate access to and highway improvements (Work No. 10) in relation to Work Nos. 2A, 2B and 6
393a, 393d, 393e	Temporary use to facilitate carrying out of Work No. 3A
297, 304, 305, 306, 307, 308, 310, 311, 312, 326, 371	Temporary use to facilitate carrying out of Work No. 5A
1a, 2a, 3a, 4a, 6a, 7a, 7b, 8a, 8b, 9a, 10a, 12a, 13a, 15a, 17, 20, 22a, 23a, 28a, 34a 39a, 39b, 43a, 47a, 63a, 66a, 70a, 70b, 90a, 94a, 94b, 100a, 100b, 124a, 124b, 128a, 135, 138a, 141a, 142a, 156a, 157a, 158a, 166a, 169a, 171a, 172a, 174a, 174b, 176a, 183a, 184a, 185a, 185b, 190a, 191c, 192	Temporary use to facilitate carrying out of Work No. 6

SCHEDULE 10

Article 37

DEEMED MARINE LICENCE UNDER THE 2009 ACT: PROJECT A

PART 1

INTRODUCTION

1.—(1) In this licence—

"the 2008 Act" means the Planning Act 2008;

"the 2009 Act" means the Marine and Coastal Access Act 2009;

"the 2011 Regulations" means the Marine Licensing (Licence Application Appeals) Regulations 2011;

"authorised deposits" means the substances specified in paragraph 5 of Part 2 of this licence;

"authorised development" means the development and associated development described in Part 1 of Schedule 1 of the Order and any other development authorised by this Order that is development within the meaning of section 32 of the 2008 Act;

"Cefas" means the Centre for Environment, Fisheries and Aquaculture Science or any successor body to its function;

"commence" means the first carrying out of any licensed marine activities authorised by this marine licence and "commenced" and "commencement" shall be construed accordingly;

"condition" means a condition under Part 3 of this licence;

"disposal" means the deposit of dredged material at a disposal site carrying reference TY160 – "Tees Bay A" or TY150 – "Tees Bay C";

"enforcement officer" means a person authorised to carry out enforcement duties under Chapter 3 of the 2009 Act;

"(the) English inshore region" has the same meaning as that given in section 322 (interpretation) of the 2009 Act;

"environmental statement" means the document certified as the environmental statement by the Secretary of State for the purposes of this Order and submitted with the application;

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

"licensed activities" means the activities specified in Part 2 of this licence;

"licensable marine activities" means any activity licensable under section 66 of the 2009 Act;

"maintain" includes inspect, upkeep, repair, adjust, alter, improve, preserve and further includes remove, reconstruct and replace provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement and "maintenance" must be construed accordingly;

"Marine Management Organisation" means the body created under the 2009 Act which is responsible for the regulation of this licence or any successor of that function and "MMO" shall be construed accordingly;

"MCA" means the Maritime and Coastguard Agency;

"mean high water springs" or "MHWS" means the highest level which spring tides reach on average over a period of time;

"office hours" means the period from 09:00 until 17:00 on any working day;

"Order" means the Net Zero Teesside Order 202*;

"Order limits" means the limits shown on the works plans within which the authorised development may be carried out, whose grid co-ordinates seaward of MHWS are set out in Table 9 at paragraph 6 of Part 2 of this licence;

"relevant undertaker" means Net Zero Teesside Power Limited or the person who has the benefit of this deemed marine licence by virtue of articles 7 (benefit of this Order) and 8 (consent to transfer benefit of this Order) and any agent, contractor or sub-contractor acting on its behalf;

"TH" means the corporation of Trinity House;

"vessel" means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft and any other craft capable of travelling on, in or under water, whether or not self-propelled;

"working day" means a day other than a Saturday or a Sunday, which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971;

"Work No. 5A" means repair and upgrade of the existing water discharge infrastructure to the Tees Bay as described as Work No. 5A in Schedule 1 to the Order; and

"Work No. 5B" means a new water discharge pipeline to the Tees Bay as described as Work No. 5B in Schedule 1 to the Order.

(2) A reference to any statue, order, regulation or similar instrument is to be construed as reference to a statute, order, regulation or similar instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

(3) Unless otherwise indicated—

(a) all times are taken to be Greenwich Mean Time (GMT); and

(b) all co-ordinates are taken to be latitude and longitude degrees minutes and seconds to three decimal places.

(4) Except where otherwise notified in writing by the relevant organisation, the addresses for postal correspondence for the purposes of this licence are—

(a) Marine Management Organisation, Marine Licensing Team, Lancaster House, Hampshire Court, Newcastle Business Park, Newcastle Upon Tyne, NE4 7YH; Tel. [redacted], Email – marine.consents@marinemanagement.org.uk;

(b) Marine Management Organisation, Local Enforcement Office, Neville House Bell Street, North Shields, NE30 1LJ; Tel. [redacted] Email – northshields@marinemanagement.org.uk;

(c) Trinity House, Tower Hill, London, EC3N 4DH; Tel. [redacted];

(d) The United Kingdom Hydrographic Office, Admiralty Way, Somerset, TA1 2DN; Tel. [redacted]

(e) Maritime and Coastguard Agency, Navigation Safety Branch, Bay 2/20, Spring Place, 105 Commercial Road, Southampton, SO15 1EG; Tel. [redacted]

(f) Natural England, Foss House, Kings Pool, 1-2 Peasholme Green, York, YO1 7PX Tel. [redacted]

(g) Historic England, Cannon Bridge House, 25 Dowgate Hill, London, EC4R 2YA; Tel. [redacted] and

(h) Centre for Environment, Fisheries and Aquaculture Science ('Cefas'), Pakefield Road, Lowestoft, Suffolk, NR33 0HT; Tel. [redacted].

PART 2

DETAILS OF LICENSED MARINE ACTIVITIES

2. Subject to the licence conditions, this licence authorises the relevant undertaker to carry out any licensable marine activities under section 66(1) of the 2009 Act which—

(a) form part of, or are related to, the authorised development; and

(b) are not exempt from requiring a marine licence by virtue of any provision made under section 74 of the 2009 Act.

3. The licensed activities are authorised in relation to the construction, maintenance and operation of—

(a) Work No. 5A—

(i) refurbishment works, including the insertion of replacement outfall tunnel liner(s);

(ii) emplacement of a new outfall head; and

(iii) recommissioning of the outfall tunnel; and

(b) Work No. 5B—

(i) construction of a micro-bored tunnel;

(ii) dredging campaign(s) facilitating the removal of material from the seabed required for the construction of works and backfill / side cast as required;

(iii) the disposal of up to 500m3 of dredge arisings at disposal site reference TY160 – "Tees Bay A" and TY150 – "Tees Bay C";

(iv) the installation of a pipeline;

(v) the establishment of a connection point for a discharge head including but not limited to the creation of a punchhole;

(vi) the emplacement of a discharge head;

(vii) the deposit of rock armour protection;

(viii) construction works; and

(ix) UXO clearance.

4. The licensable activities set out in Part 2, paragraph 3 are authorised in relation to the construction, maintenance and operation of those elements of Work Nos. 5A and 5B of Schedule 1 (authorised development) of this Order as defined in paragraph 1 of this Schedule, and any further development listed in Schedule 1 in connection with Work Nos. 5A and 5B within the English inshore region.

5. The substances authorised for disposal include dredge arisings.

6.—(1) The relevant undertaker may engage in the licensed activities in the area bounded by the coordinates set out in Table 9 in this paragraph.

(2) The coordinates for the disposal sites notified to the MMO for use in this licence are specified in Table 10 in this paragraph.

(3) The coordinates in Table 9 and Table 10 are defined in accordance with reference system WGS84 - World Geodetic System 1984.

Table 9

Work No.	*Description*	*Longitude*	*Latitude*
Work No. 5A	repair and upgrade of the existing water discharge infrastructure to the Tees Bay	-1.114457 -1.114827 -1.114842 -1.114851 -1.117103 -1.118957 -1.121603 -1.122095 -1.122265 -1.122887 -1.122894 -1.122917 -1.122924 -1.121638 -1.120978 -1.11812 -1.118002 -1.116188 -1.115509 -1.115461	54.644012 54.643431 54.643408 54.643394 54.639863 54.636955 54.632804 54.632033 54.632129 54.63252 54.632527 54.632542 54.632546 54.634564 54.635599 54.640081 54.640267 54.64311 54.644175 54.644251
Work No. 5B	new water discharge pipeline to the Tees Bay	-1.089946 -1.082979 -1.08312 -1.083903 -1.099769 -1.099968 -1.103141 -1.103864 -1.104309 -1.105244 -1.107138 -1.107962 -1.108859 -1.108101 -1.107614 -1.106721 -1.10572 -1.105639 -1.090325 -1.090027	54.63327 54.630381 54.630343 54.630131 54.625843 54.625789 54.624931 54.624736 54.624862 54.625169 54.625736 54.625997 54.626305 54.626585 54.626764 54.627093 54.627462 54.627492 54.633131 54.633241

Table 10

Disposal Site Ref	*Description*	*Easting*	*Northing*
TY150	Tees Bay A disposal site	-0.956699 -0.9783 -0.998299 -0.9767 -0.956699	54.698301 54.690001 54.705 54.710001 54.698301

TY160	Tees Bay C disposal site	-1.004999 -1.025 -1.0583 -1.036699 -1.004999	54.683302 54.67 54.680002 54.691702 54.683302

7. The provisions of section 72 of the 2009 Act will apply to this licence except that the provisions of section 72(7) and (8) relating to the transfer of the licence only apply to a transfer not falling within article 8 (consent to transfer benefit of this Order).

PART 3

CONDITIONS

General

8. Any oil, fuel or chemical spill within the marine environment must be reported to the MMO Marine Pollution Response Team as soon as reasonably practicable, but in any event within 12 hours of being identified in accordance with the following, unless otherwise advised in writing by the MMO—

(a) within office hours Tel. [redacted];

(b) outside office hours Tel. [redacted]; or

(c) at all times if other numbers are unavailable Tel. [redacted] or Email – dispersants@marinemanagement.org.uk.

Notifications and Inspections

9.—(1) The relevant undertaker must ensure that—

(a) a copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to—

(i) all agents and contractors notified to the MMO in accordance with condition 13; and

(ii) the vessel masters responsible for the vessels notified to the MMO in accordance with condition 14; and

(b) those persons referred to in paragraph (a) above are informed that within 28 days of receipt of a copy of this licence they must confirm receipt of this licence in writing to the MMO.

(2) Only those persons and vessels notified to the MMO in accordance with conditions 13 and 14 are permitted to carry out the licensed activities.

(3) Copies of this licence must also be available for inspection at the following locations—

(a) the undertaker's registered address;

(b) any site office located at or adjacent to the construction site and used by the undertaker or its agents and contractors responsible for the loading, transportation or deposit of the authorised deposits; and

(c) on board each vessel or at the office of any transport manager with responsibility for vessels from which authorised deposits or removals are to be made.

(4) The documents referred to in sub-paragraph (1)(a) must be available for inspection by an authorised enforcement officer at the locations set out in sub-paragraph (3)(b) above.

(5) The undertaker must provide access, and if necessary appropriate transportation, to the offshore construction site or any other associated works or vessels to facilitate any inspection that the MMO considers necessary to inspect the works during construction and operation of the authorised development.

(6) The undertaker must inform the MMO Coastal Office in writing at least five days prior to the commencement of the licensed activities or any part of them, and within five days of completion of the licensed activities. A copy of the notification must be provided to the MMO Marine Licensing Team within 24 hours of issue.

(7) the undertaker must notify the Kingfisher Information Service of Seafish by email to kingfisher@seafish.co.uk of details regarding the vessel routes, timings and locations relating to the construction of the authorised development or relevant part—

(a) at least 14 days prior to the commencement of offshore activities, for inclusion in the Kingfisher Fortnightly Bulletin and offshore hazard awareness data; and

(b) as soon as reasonably practicable and no later than 24 hours after completion of construction of all marine activities. Confirmation of notification must be provided to the MMO within five days.

(8) A copy of the notification referred to in sub-paragraph (7) must be provided to the MMO Marine Licensing Team within 24 hours of issue.

(9) A notice to mariners must be issued at least 14 days prior to the commencement of the licensed activities or any part of them advising of the start date of Work No. 5A or Work No. 5B, and the expected vessel routes from the construction ports to the relevant location. Copies of all notices must be provided to TH, MCA and the United Kingdom Hydrographic Office within five days. A copy of the notification must be provided to the MMO Marine Licensing Team within 24 hours of issue.

(10) The undertaker must notify the UK Hydrographic Office both of the commencement (within ten days), progress and completion of construction (within ten days) of the licensed activities in order that all necessary amendments to nautical charts are made. A copy of the notification must be provided to the MMO Marine Licensing Team within 24 hours of issue.

(11) In case of material damage to, or destruction or decay of, the authorised development seaward of MHWS or any part thereof the undertaker must as soon as possible and no later than 24 hours following the undertaker becoming aware of any such damage, destruction or decay, notify the MMO, MCA, TH, Kingfisher Information Service and the United Kingdom Hydrographic Office.

(12) In case of exposure of pipelines on or above the seabed, the undertaker must, within three working days following identification of a cable exposure, notify mariners by issuing a notice to mariners and by informing Kingfisher Information Service of the location and extent of exposure.

Pre-construction

10.—(1) The relevant undertaker must submit a sediment sampling plan to the MMO request at least six months prior to the commencement of dredging activities in order to provide an adequate characterisation of material proposed for dredging.

(2) The sediment sampling and analysis must be undertaken against the sampling plan approved by the MMO following consultation with the Environment Agency and must be undertaken by a laboratory which has been validated by the MMO for sediment analysis to inform marine licence applications and must be carried out at least 6 weeks prior to the commencement of dredging activities.

(3) Dredging and disposal must not take place until written approval is provided by the MMO following consultation with the Environment Agency.

11.—(1) The relevant undertaker must submit a Construction Environmental Management Plan ('CEMP') covering the period of construction to include details of—

(a) a marine pollution contingency plan to address the risks, methods and procedures to deal with any spills and collision incidents of the authorised development in relation to all activities to be carried out;

(b) a biosecurity plan detailing how risk of the introduction and spread of invasive non-native species will be minimised;

(c) waste management and disposal arrangements; and

(d) the appointment and responsibilities of a fisheries liaison officer.

(2) The CEMP must be submitted to the MMO for approval in writing at least three months prior to the commencement of licensable activities.

(3) The CEMP submitted pursuant to sub-paragraph (2) must be in accordance with the framework construction environmental management plan.

(4) The licensed activities must be carried out in accordance with the CEMP approved pursuant to sub-paragraph (2) unless otherwise agreed in writing with the MMO.

12.—(1) The relevant undertaker must submit a marine method statement to the MMO at least three months prior to the proposed commencement of the licensed activities.

(2) The method statement for licensable activities related to Work No. 5A is to include details of—

(a) methods of dredging to be employed and associated disposal arrangements;

(b) the discharge tunnel repairs and methodology;

(c) the discharge head installation technique and methodology;

(d) rock armour specification, provenance and installation technique; and

(e) an indicative programme for the delivery of the licensable activities.

(3) The marine method statement for licensable activities related to Work No. 5B is to include details of—

(a) methods of dredging to be employed and associated disposal arrangements;

(b) the micro-bored tunnel installation and methodology;

(c) the discharge head installation technique and methodology;

(d) rock armour specification, provenance and installation technique; and

(e) an indicative programme for the delivery of the licensable activities.

(4) A marine method statement submitted pursuant to sub-paragraph (1), (2) or (3) must—

(a) only include the details [of] the licensed activities in so far as they are required; and

(b) be scaled to correspond to the final requirements of the authorised development.

(5) The licensed activities must not commence until written approval of the marine method statement for such activities is provided by the MMO.

(6) The licensed activities must be carried out in accordance with the marine method statement approved pursuant to sub-paragraph (4).

(7) A marine method statement may be amended from time to time subject to the approval in writing of the MMO.

13. The relevant undertaker must notify the MMO in writing of any agents, contractors or subcontractors (including their name, address and company number if applicable) that will carry on any licensed activity listed in this licence on behalf of the undertaker. Such notification must be received by the MMO no less than 24 hours before the commencement of the licensed activity.

14. The relevant undertaker must notify the MMO in writing of any vessel being used to carry on any licensed activity listed in this licence on behalf of the undertaker. Such notification must be received by the MMO no less than 24 hours before the commencement of the licensed activity. Notification must include the master's name, vessel type, vessel IMO number and vessel owner or operating company.

15. The licensed activities or any part of the activities must not commence unless a written scheme of archaeological investigation has been submitted to and approved in writing by the MMO following consultation with Historic England. It must include—

(a) details of responsibilities of the undertaker, archaeological consultant and contractor where required and appropriate;

(b) archaeological analysis of survey data, and timetable for reporting, which is to be submitted to the MMO;

(c) details of the measures to be taken to protect record or preserve any significant archaeological features that may be found and must set out a process for how unexpected finds will be dealt with which must be in accordance with the measures in the framework construction environmental management plan;

(d) delivery of any mitigation including the use of archaeological construction exclusion zones in agreement with the MMO;

(e) a reporting and recording protocol, including reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised development; and

(f) a geoarchaeological assessment that determines the extent to which any deposits of paleoenvironmental features exist.

During Construction, Operation and Maintenance

16. The relevant undertaker must ensure that any coatings and treatments used are approved by the Health and Safety Executive as suitable for use in the marine environment and are used in accordance with the Pollution Prevention for Businesses guidelines.

17. The storage, handling, transport and use of fuels, lubricants, chemicals and other substances must be undertaken so as to prevent releases into the marine environment including bunding of 110% of the total volume of all reservoirs and containers.

18. The relevant undertaker must not discharge waste concrete slurry or wash water from concrete or cement into the marine environment. The relevant undertaker must site concrete and cement mixing and washing areas at least 10 metres from the River Tees or surface water drain to minimise the risk of run off entering the marine environment.

19.—(1) Vibratory or drilled ‘pin’ piling must be used as standard, with percussive piling only used if required to drive a pile to its design depth and where the undertaker has established following the carrying out of a desk top study, informed by appropriate survey information, that vibratory or drilled ‘pin’ piling would be ineffective. If percussive piling is necessary, soft-start procedures must be used to ensure incremental increase in pile power over a set time period until full operational power is achieved.

(2) The soft-start duration must be a period of not less than 20 minutes.

(3) Should piling cease for a period greater than 10 minutes, then the soft start procedure must be repeated.

20. During licensed activities all wastes must be stored in designated areas that are isolated from surface water drains, open water and bunded to contain any spillage.

21. The relevant undertaker must ensure any rock material used in the construction of the authorised development is from a recognised source, free from contaminants and containing minimal fines.

22.—(1) In the event that any rock material is misplaced or lost below MHWS, the relevant undertaker must report the loss to the District Marine Office and Marine Licensing Team as soon as possible and in any event within 48 hours and if the MMO reasonably considers such material to constitute a navigation or environmental hazard (dependent on the size and nature of the material) the undertaker must use reasonable endeavours to locate the material and recover it. In that event, the undertaker must demonstrate to the MMO that reasonable attempts have been made to locate, remove or move any such material.

(2) All dropped objects must be reported to the MMO using the dropped object procedure and via return of a completed Marine Licence Dropped Incident Report (MLDIR1) as soon as

reasonably practicable and in any event within 24 hours of the undertaker becoming aware of an incident.

UXO Clearance

23. No removal or detonation of UXO can take place until a UXO clearance methodology has been submitted to and approved in writing by the MMO (following consultation with the environment agency). It must include—

(a) a methodology for the identification of potential UXO targets;

(b) a methodology for the clearance of magnetic anomalies or otherwise which are deemed a UXO risk;

(c) information to demonstrate how the best available evidence and technology has been taken into account in formulating the methodology;

(d) a debris removal plan;

(e) a plan highlighting the area(s) within which clearance activities are proposed;

(f) details of engagement with other local legitimate users of the sea;

(g) a programme of works; and

(h) a Marine Mammal Mitigation Protocol (MMMP) with the intention of preventing auditory or other injury to marine mammals, informed, as required, by the MMO Marine Conservation Team.

Post Construction

24. The relevant undertaker must ensure that any equipment, temporary structures, waste and debris associated with the licensable activities are removed within six weeks of completion of the licensed activity.

Disposal

25.—(1) The undertaker must inform the MMO of the location and quantities of material disposed each month under this licence. This information must be submitted to the MMO by 15 February each year for the months August to January inclusive, and by 15 August each year for the months February to July inclusive.

(2) The undertaker must ensure that only inert material of natural origin, produced during dredging is disposed of within the extent of the Order limits seaward of MHWS, within the disposal site TY150, TY160 (or any other disposal site approved in writing by the MMO), and that any other materials are screened out before disposal at this site.

(3) The material to be disposed of within the disposal site must be placed within the boundaries of the disposal site(s) specified within Table 10 in Part 2 of this licence.

(4) The volume of material for disposal at the site(s) specified within Table 10 in Part 2 of this licence must not exceed 500m3.

Provision of Information

26.—(1) Should the undertaker become aware that any of the information on which the granting of this licence was based was materially false or misleading, the undertaking must notify the MMO of this fact in writing as soon as is reasonably practicable. The undertaker must explain in writing what information was materially false or misleading and must provide to the MMO the correct information.

(2) With respect to any condition which requires the licensed activities to be carried out in accordance with the plans, protocols or statements approved under this licence, the plans, protocols or statements so approved are taken to include amendments that may be approved in

writing by the MMO subsequent to the first approval of those plans, protocols or statements provided it has been demonstrated to the satisfaction of the MMO that the subject matter of the relevant amendments do not give rise to any materially new or materially different environmental effects to those assessed in the environmental information.

27. Work No. 5B must be carried out in accordance with the maximum parameters set out in paragraph 9.3.28 of Chapter 9 of the environmental statement.

Safety Management

28.—(1) Subject to sub-paragraph 4, no part of the licensed activities may commence until a marine safety management system for that part has been submitted to and approved in writing by the MMO.

(2) The marine safety management system approved pursuant to sub-paragraph (1) must be in accordance with the Port Marine Safety Code and Guide to Good Practice on Port Marine Operations.

(3) The licensed activities must be carried out in accordance with the marine safety management system approved pursuant to sub-paragraph (1).

(4) Sub-paragraphs (1) to (3) do not apply where evidence has been submitted to and approved in writing by the MMO that there is an existing marine safety management system in place and which will apply to the relevant part of the licensed activities.

SCHEDULE 11 Article 37

DEEMED MARINE LICENCE UNDER THE 2009 ACT: PROJECT B

PART 1

INTRODUCTION

1.—(1) In this licence—

"the 2008 Act" means the Planning Act 2008;

"the 2009 Act" means the Marine and Coastal Access Act 2009;

"the 2011 Regulations" means the Marine Licensing (Licence Application Appeals) Regulations 2011;

"authorised deposits" means the substances specified in paragraph 5 of Part 2 of this licence;

"authorised development" means the development and associated development described in Part 1 of Schedule 1 of the Order and any other development authorised by this Order that is development within the meaning of section 32 of the 2008 Act;

"Cefas" means the Centre for Environment, Fisheries and Aquaculture Science or any successor body to its function;

"commence" means the first carrying out of any licensed marine activities authorised by this marine licence and "commenced" and "commencement" shall be construed accordingly;

"condition" means a condition under Part 3 of this licence;

"disposal" means the deposit of dredged material at a disposal site carrying reference TY160 – "Tees Bay A" or TY150 – "Tees Bay C";

"enforcement officer" means a person authorised to carry out enforcement duties under Chapter 3 of the 2009 Act;

"(the) English inshore region" has the same meaning as that given in section 322 (interpretation) of the 2009 Act;

"environmental statement" means the document certified as the environmental statement by the Secretary of State for the purposes of this Order and submitted with the application;

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

"licensed activities" means the activities specified in Part 2 of this licence;

"licensable marine activities" means any activity licensable under section 66 of the 2009 Act;

"maintain" includes inspect, upkeep, repair, adjust, alter, improve, preserve and further includes remove, reconstruct and replace provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement and "maintenance" must be construed accordingly;

"Marine Management Organisation" means the body created under the 2009 Act which is responsible for the regulation of this licence or any successor of that function and "MMO" shall be construed accordingly;

"MCA" means the Maritime and Coastguard Agency;

"mean high water springs" or "MHWS" means the highest level which spring tides reach on average over a period of time;

"office hours" means the period from 09:00 until 17:00 on any working day;

"Order" means the Net Zero Teesside Order 202*;

"Order limits" means the limits shown on the works plans within which the authorised development may be carried out, whose grid co-ordinates seaward of MHWS are set out in Table 11 at paragraph 6 of Part 2 of this licence;

"relevant undertaker" means Net Zero North Sea Storage Limited or the person who has the benefit of this deemed marine licence by virtue of articles 7 (benefit of this Order) and 8 (consent to transfer benefit of this Order) and any agent, contractor or sub-contractor acting on its behalf;

"TH" means the corporation of Trinity House;

"vessel" means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft and any other craft capable of travelling on, in or under water, whether or not self-propelled;

"working day" means a day other than a Saturday or a Sunday, which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971;

"Work No. 5A" means repair and upgrade of the existing water discharge infrastructure to the Tees Bay as described as Work No. 5A in Schedule 1 to the Order;

"Work No. 5B" means a new water discharge pipeline to the Tees Bay as described as Work No. 5B in Schedule 1 to the Order; and

"Work No. 8" means a section of underground high pressure carbon dioxide export pipeline as described as Work No. 8 in Part 1 of Schedule 1 to the Order.

(2) A reference to any statue, order, regulation or similar instrument is to be construed as reference to a statute, order, regulation or similar instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

(3) Unless otherwise indicated—

(a) all times are taken to be Greenwich Mean Time (GMT); and

(b) all co-ordinates are taken to be latitude and longitude degrees minutes and seconds to three decimal places.

(4) Except where otherwise notified in writing by the relevant organisation, the addresses for postal correspondence for the purposes of this licence are—

(a) Marine Management Organisation, Marine Licensing Team, Lancaster House, Hampshire Court, Newcastle Business Park, Newcastle Upon Tyne, NE4 7YH; Tel. [redacted] Email – marine.consents@marinemanagement.org.uk;

(b) Marine Management Organisation, Local Enforcement Office, Neville House Bell Street, North Shields, NE30 1LJ; Tel. [redacted], Email – northshields@marinemanagement.org.uk;

(c) Trinity House, Tower Hill, London, EC3N 4DH; Tel. [redacted];

(d) The United Kingdom Hydrographic Office, Admiralty Way, Somerset, TA1 2DN; Tel. [redacted];

(e) Maritime and Coastguard Agency, Navigation Safety Branch, Bay 2/20, Spring Place, 105 Commercial Road, Southampton, SO15 1EG; Tel. [redacted]

(f) Natural England, Foss House, Kings Pool, 1-2 Peasholme Green, York, YO1 7PX Tel. [redacted]

(g) Historic England, Cannon Bridge House, 25 Dowgate Hill, London, EC4R 2YA; Tel. [redacted] and

(h) Centre for Environment, Fisheries and Aquaculture Science ('Cefas'), Pakefield Road, Lowestoft, Suffolk, NR33 0HT; Tel. [redacted]

PART 2

DETAILS OF LICENSED MARINE ACTIVITIES

2. Subject to the licence conditions, this licence authorises the relevant undertaker to carry out any licensable marine activities under section 66(1) of the 2009 Act which—

(a) form part of, or are related to, the authorised development; and

(b) are not exempt from requiring a marine licence by virtue of any provision made under section 74 of the 2009 Act.

3. The licensed activities are authorised in relation to the construction, maintenance and operation of—

(a) Work No. 5A—

(i) refurbishment works, including the insertion of replacement outfall tunnel liner(s);

(ii) emplacement of a new outfall head;

(iii) recommissioning of the outfall tunnel;

(iv) the deposit of rock armour protection;

(v) construction works; and

(vi) UXO clearance;

(b) Work No. 5B—

(i) construction of a micro-bored tunnel;

(ii) dredging campaign(s) facilitating the removal of material from the seabed required for the construction of works and backfill / side cast as required;

(iii) the disposal of up to 500m3 of dredge arisings at disposal site reference TY160 – "Tees Bay A" and TY150 – "Tees Bay C";

(iv) the installation of a pipeline;

(v) the establishment of a connection point for a discharge head including but not limited to the creation of a punchhole;

(vi) the emplacement of a discharge head;

(vii) the deposit of rock armour protection;

(viii) construction works; and

(ix) UXO clearance;

(c) Work No. 8—

(i) horizontal direction drilling and works to facilitate such drilling;

(ii) grouting, sealing and jointing activities required to install a safe and functional pipeline;

(iii) the construction of a pipeline end-piece in order to effectively provide temporary prevention from ingress;

(iv) installation of fibre-optic control cables and power cables; and

(v) UXO clearance.

4. The licensable activities set out in Part 2, paragraph 3 are authorised in relation to the construction, maintenance and operation of those elements of Work Nos. 5A, 5B and 8 of Schedule 1 (authorised development) of this Order as defined in paragraph 1 of this Schedule, and any further development listed in Schedule 1 in connection with Work Nos, 5A, 5B and 8 within the English inshore region.

5. The substances authorised for disposal include dredge arisings.

6.—(1) The relevant undertaker may engage in the licensed activities in the area bounded by the coordinates set out in Table 11 in this paragraph.

(2) The coordinates for the disposal sites notified to the MMO for use in this licence are specified in Table 12 in this paragraph.

(3) The coordinates in Table 11 and Table 12 are defined in accordance with reference system WGS84 - World Geodetic System 1984.

Table 11

Work No.	*Description*	*Longitude*	*Latitude*
Work No. 5A	repair and upgrade of the existing water discharge infrastructure to the Tees Bay	-1.114457 -1.114827 -1.114842 -1.114851 -1.117103 -1.118957 -1.121603 -1.122095 -1.122265 -1.122887 -1.122894 -1.122917 -1.122924 -1.121638 -1.120978 -1.11812 -1.118002 -1.116188 -1.115509 -1.115461	54.644012 54.643431 54.643408 54.643394 54.639863 54.636955 54.632804 54.632033 54.632129 54.63252 54.632527 54.632542 54.632546 54.634564 54.635599 54.640081 54.640267 54.64311 54.644175 54.644251
Work No. 5B	new water discharge pipeline to the Tees Bay	-1.089946 -1.082979 -1.08312 -1.083903 -1.099769 -1.099968 -1.103141 -1.103864 -1.104309 -1.105244 -1.107138 -1.107962 -1.108859 -1.108101 -1.107614 -1.106721 -1.10572 -1.105639 -1.090325 -1.090027	54.63327 54.630381 54.630343 54.630131 54.625843 54.625789 54.624931 54.624736 54.624862 54.625169 54.625736 54.625997 54.626305 54.626585 54.626764 54.627093 54.627462 54.627492 54.633131 54.633241
Work No. 8	underground high pressure carbon dioxide export pipeline	-1.105639 -1.105445 -1.105243	54.627492 54.6274 54.627298

		-1.105031	54.627203
		-1.104828	54.627127
		-1.104626	54.627055
		-1.10423	54.626919
		-1.103942	54.62684
		-1.103788	54.626803
		-1.103773	54.6268
		-1.103684	54.626783
		-1.103594	54.626769
		-1.103413	54.626743
		-1.103263	54.626724
		-1.103171	54.626713
		-1.103121	54.626707
		-1.103036	54.626694
		-1.102839	54.626665
		-1.102667	54.62663
		-1.102396	54.626569
		-1.102034	54.626496
		-1.101672	54.626409
		-1.101342	54.626325
		-1.100985	54.626223
		-1.100717	54.626145
		-1.100333	54.626036
		-1.10005	54.625942
		-1.099769	54.625843
		-1.099968	54.625789
		-1.103141	54.624931
		-1.103864	54.624736
		-1.104309	54.624862
		-1.105244	54.625169
		-1.107138	54.625736
		-1.107962	54.625997
		-1.108859	54.626305
		-1.108101	54.626585
		-1.107614	54.626764
		-1.106721	54.627093
		-1.10572	54.627462

Table 12

Disposal Site Ref	*Description*	*Easting*	*Northing*
TY150	Tees Bay A disposal site	-0.956699	54.698301
		-0.9783	54.690001
		-0.998299	54.705
		-0.9767	54.710001
		-0.956699	54.698301
TY160	Tees Bay B disposal site	-1.004999	54.683302
		-1.025	54.67
		-1.0583	54.680002
		-1.036699	54.691702
		-1.004999	54.683302

7. The provisions of section 72 of the 2009 Act will apply to this licence except that the provisions of section 72(7) and (8) relating to the transfer of the licence only apply to a transfer not falling within article 8 (consent to transfer benefit of this Order).

PART 3

CONDITIONS

General

8. Any oil, fuel or chemical spill within the marine environment must be reported to the MMO Marine Pollution Response Team as soon as reasonably practicable, but in any event within 12 hours of being identified in accordance with the following, unless otherwise advised in writing by the MMO—

(a) within office hours Tel. [redacted]

(b) outside office hours Tel. [redacted] or

(c) at all times if other numbers are unavailable Tel. [redacted] or Email – dispersants@marinemanagement.org.uk.

Notifications and Inspections

9.—(1) The relevant undertaker must ensure that—

(a) a copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to—

(i) all agents and contractors notified to the MMO in accordance with condition 13; and

(ii) the vessel masters responsible for the vessels notified to the MMO in accordance with condition 14; and

(b) those persons referred to in paragraph (a) above are informed that within 28 days of receipt of a copy of this licence they must confirm receipt of this licence in writing to the MMO.

(2) Only those persons and vessels notified to the MMO in accordance with conditions 13 and 14 are permitted to carry out the licensed activities.

(3) Copies of this licence must also be available for inspection at the following locations—

(a) the undertaker's registered address;

(b) any site office located at or adjacent to the construction site and used by the undertaker or its agents and contractors responsible for the loading, transportation or deposit of the authorised deposits; and

(c) on board each vessel or at the office of any transport manager with responsibility for vessels from which authorised deposits or removals are to be made.

(4) The documents referred to in sub-paragraph (1)(a) must be available for inspection by an authorised enforcement officer at the locations set out in sub-paragraph (3)(b) above.

(5) The undertaker must provide access, and if necessary appropriate transportation, to the offshore construction site or any other associated works or vessels to facilitate any inspection that the MMO considers necessary to inspect the works during construction and operation of the authorised development.

(6) The undertaker must inform the MMO Coastal Office in writing at least five days prior to the commencement of the licensed activities or any part of them, and within five days of completion of the licensed activities. A copy of the notification must be provided to the MMO Marine Licensing Team within 24 hours of issue.

(7) the undertaker must notify the Kingfisher Information Service of Seafish by email to kingfisher@seafish.co.uk of details regarding the vessel routes, timings and locations relating to the construction of the authorised development or relevant part—

(a) at least 14 days prior to the commencement of offshore activities, for inclusion in the Kingfisher Fortnightly Bulletin and offshore hazard awareness data; and

(b) as soon as reasonably practicable and no later than 24 hours after completion of construction of all marine activities. Confirmation of notification must be provided to the MMO within five days.

(8) A copy of the notification referred to in sub-paragraph (7) must be provided to the MMO Marine Licensing Team within 24 hours of issue.

(9) A notice to mariners must be issued at least 14 days prior to the commencement of the licensed activities or any part of them advising of the start date of Work No. 5A, Work No. 5B or Work No. 8 and the expected vessel routes from the construction ports to the relevant location. Copies of all notices must be provided to TH, MCA and the United Kingdom Hydrographic Office within five days. A copy of the notification must be provided to the MMO Marine Licensing Team within 24 hours of issue.

(10) The undertaker must notify the United Kingdom Hydrographic Office both of the commencement (within ten days), progress and completion of construction (within ten days) of the licensed activities in order that all necessary amendments to nautical charts are made. A copy of the notification must be provided to the MMO Marine Licensing Team within 24 hours of issue.

(11) In case of material damage to, or destruction or decay of, the authorised development seaward of MHWS or any part thereof the undertaker must as soon as possible and no later than 24 hours following the undertaker becoming aware of any such damage, destruction or decay, notify the MMO, MCA, TH, Kingfisher Information Service and the United Kingdom Hydrographic Office.

(12) In case of exposure of pipelines on or above the seabed, the undertaker must, within three working days following identification of a cable exposure, notify mariners by issuing a notice to mariners and by informing Kingfisher Information Service of the location and extent of exposure.

Pre-construction

10.—(1) The relevant undertaker must submit a sediment sampling plan to the MMO request at least six months prior to the commencement of dredging activities in order to provide an adequate characterisation of material proposed for dredging.

(2) The sediment sampling and analysis must be undertaken against the sampling plan approved by the MMO following consultation with the Environment Agency and must be undertaken by a laboratory which has been validated by the MMO for sediment analysis to inform marine licence applications and must be carried out at least 6 weeks prior to the commencement of dredging activities.

(3) Dredging and disposal must not take place until written approval is provided by the MMO following consultation with the Environment Agency.

11.—(1) The relevant undertaker must submit a Construction Environmental Management Plan ('CEMP') covering the period of construction to include details of—

(a) a marine pollution contingency plan to address the risks, methods and procedures to deal with any spills and collision incidents of the authorised development in relation to all activities to be carried out;

(b) a biosecurity plan detailing how risk of the introduction and spread of invasive non-native species will be minimised;

(c) waste management and disposal arrangements; and

(d) the appointment and responsibilities of a fisheries liaison officer.

(2) The CEMP must be submitted to the MMO for approval in writing at least three months prior to the commencement of licensable activities.

(3) The CEMP submitted pursuant to sub-paragraph (2) must be in accordance with the framework construction environmental management plan.

(4) The licensed activities must be carried out in accordance with the CEMP approved pursuant to sub-paragraph (2) unless otherwise agreed in writing with the MMO.

12.—(1) The relevant undertaker must submit a marine method statement to the MMO at least three months prior to the proposed commencement of any part of the licensed activities.

(2) The method statement for licensable activities related to Work No. 5A is to include details of—

(a) methods of dredging to be employed and associated disposal arrangements;

(b) the discharge tunnel repairs and methodology;

(c) the discharge head installation technique and methodology;

(d) rock armour specification, provenance and installation technique; and

(e) an indicative programme for the delivery of the licensable activities.

(3) The marine method statement for licensable activities related to Work No.5B is to include details of—

(a) methods of dredging to be employed and associated disposal arrangements;

(b) the micro-bored tunnel installation and methodology;

(c) the discharge head installation technique and methodology;

(d) rock armour specification, provenance and installation technique; and

(e) an indicative programme for the delivery of the licensable activities.

(4) The method statement for licensable activities related to Work No. 8 is to include details of—

(a) the pipeline installation technique and methodology; and

(b) an indicative programme for the delivery of the licensable activities.

(5) A marine method statement submitted pursuant to sub-paragraph (2), (3) or (4) must—

(a) only include the details [of] the licensed activities in so far as they are required; and

(b) be scaled to correspond to the final requirements of the authorised development.

(6) The licensed activities must not commence until written approval of the marine method statement for such activities is provided by the MMO.

(7) The licensed activities must be carried out in accordance with the marine method statement approved pursuant to sub-paragraph (5).

(8) A marine method statement may be amended from time to time subject to the approval in writing of the MMO.

13. The relevant undertaker must notify the MMO in writing of any agents, contractors or subcontractors (including their name, address and company number if applicable) that will carry on any licensed activity listed in this licence on behalf of the undertaker. Such notification must be received by the MMO no less than 24 hours before the commencement of the licensed activity.

14. The relevant undertaker must notify the MMO in writing of any vessel being used to carry on any licensed activity listed in this licence on behalf of the undertaker. Such notification must be received by the MMO no less than 24 hours before the commencement of the licensed activity. Notification must include the master’s name, vessel type, vessel IMO number and vessel owner or operating company.

15. The licensed activities or any part of the activities must not commence unless a written scheme of archaeological investigation has been submitted to and approved in writing by the MMO following consultation with Historic England. It must include—

(a) details of responsibilities of the undertaker, archaeological consultant and contractor where required and appropriate;

(b) archaeological analysis of survey data, and timetable for reporting, which is to be submitted to the MMO;

(c) details of the measures to be taken to protect record or preserve any significant archaeological features that may be found and must set out a process for how unexpected finds will be dealt with which must be in accordance with the measures in the framework construction environmental management plan;

(d) delivery of any mitigation including the use of archaeological construction exclusion zones in agreement with the MMO;

(e) a reporting and recording protocol, including reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised development; and

(f) a geoarchaeological assessment that determines the extent to which any deposits of paleoenvironmental features exist.

During Construction, Operation and Maintenance

16. The relevant undertaker must ensure that any coatings and treatments used are approved by the Health and Safety Executive as suitable for use in the marine environment and are used in accordance with the Pollution Prevention for Businesses guidelines.

17. The storage, handling, transport and use of fuels, lubricants, chemicals and other substances must be undertaken so as to prevent releases into the marine environment including bunding of 110% of the total volume of all reservoirs and containers.

18. The relevant undertaker must not discharge waste concrete slurry or wash water from concrete or cement into the marine environment. The relevant undertaker must site concrete and cement mixing and washing areas at least 10 metres from the River Tees or surface water drain to minimise the risk of run off entering the marine environment.

19.—(1) Vibratory or drilled ‘pin’ piling must be used as standard, with percussive piling only used if required to drive a pile to its design depth and where the undertaker has established following the carrying out of a desk top study, informed by appropriate survey information, that vibratory or drilled ‘pin’ piling would be ineffective. If percussive piling is necessary, soft-start procedures must be used to ensure incremental increase in pile power over a set time period until full operational power is achieved.

(2) The soft-start duration must be a period of not less than 20 minutes.

(3) Should piling cease for a period greater than 10 minutes, then the soft start procedure must be repeated.

20. During licensed activities all wastes must be stored in designated areas that are isolated from surface water drains, open water and bunded to contain any spillage.

21. The relevant undertaker must ensure any rock material used in the construction of the authorised development is from a recognised source, free from contaminants and containing minimal fines.

22.—(1) In the event that any rock material is misplaced or lost below MHWS, the relevant undertaker must report the loss to the District Marine Office and Marine Licensing Team as soon as possible and in any event within 48 hours and if the MMO reasonably considers such material to constitute a navigation or environmental hazard (dependent on the size and nature of the material) the undertaker must use reasonable endeavours to locate the material and recover it. In

that event, the undertaker must demonstrate to the MMO that reasonable attempts have been made to locate, remove or move any such material.

(2) All dropped objects must be reported to the MMO using the dropped object procedure and via return of a completed Marine Licence Dropped Incident Report (MLDIR1) as soon as reasonably practicable and in any event within 24 hours of the undertaker becoming aware of an incident.

UXO Clearance

23. No removal or detonation of UXO can take place until a UXO Clearance methodology has been submitted to and approved in writing by the MMO (following consultation with the environment agency). It must include—

(a) a methodology for the identification of potential UXO targets;

(b) a methodology for the clearance of magnetic anomalies or otherwise which are deemed a UXO risk;

(c) information to demonstrate how the best available evidence and technology has been taken into account in formulating the methodology;

(d) a debris removal plan;

(e) a plan highlighting the area(s) within which clearance activities are proposed;

(f) details of engagement with other local legitimate users of the sea;

(g) a programme of works; and

(h) a Marine Mammal Mitigation Protocol (MMMP) with the intention of preventing auditory or other injury to marine mammals, informed, as required, by the MMO Marine Conservation Team.

Post Construction

24. The relevant undertaker must ensure that any equipment, temporary structures, waste and debris associated with the authorised development are removed within six weeks of completion of the licensed activity.

Disposal

25.—(1) The undertaker must inform the MMO of the location and quantities of material disposed each month under this licence. This information must be submitted to the MMO by 15 February each year for the months August to January inclusive, and by 15 August each year for the months February to July inclusive.

(2) The undertaker must ensure that only inert material of natural origin, produced during dredging is disposed of within the extent of the Order limits seaward of MHWS, within the disposal site TY150, TY160 (or any other disposal site approved in writing by the MMO), and that any other materials are screened out before disposal at this site.

(3) The material to be disposed of within the disposal site must be placed within the boundaries of the disposal site(s) specified within Table 12 in Part 2 of this licence.

(4) The volume of material for disposal at the site(s) specified within Table 12 in Part 2 of this licence must not exceed 500m3.

Provision of Information

26.—(1) Should the undertaker become aware that any of the information on which the granting of this licence was based was materially false or misleading, the undertaking must notify the MOO of this fact in writing as soon as is reasonably practicable. The undertaker must explain in writing

what information was materially false or misleading and must provide to the MMO the correct information.

(2) With respect to any condition which requires the licensed activities to be carried out in accordance with the plans, protocols or statements approved under this licence, the plans, protocols or statements so approved are taken to include amendments that may be approved in writing by the MMO subsequent to the first approval of those plans, protocols or statements provided it has been demonstrated to the satisfaction of the MMO that the subject matter of the relevant amendments do not give rise to any materially new or materially different environmental effects to those assessed in the environmental information.

27. Work No. 5B must be carried out in accordance with the maximum parameters set out in paragraph 9.3.28 of Chapter 9 of the environmental statement.

Safety Management

28.—(1) Subject to sub-paragraph (4), no part of the licensed activities may commence until a marine safety management system for that part has been submitted to and approved in writing by the MMO.

(2) The marine safety management system approved pursuant to sub-paragraph (1) must be in accordance with the Port Marine Safety Code and Guide to Good Practice on Port Marine Operations (or such documents as may replace them).

(3) The licensed activities must be carried out in accordance with the marine safety management system approved pursuant to sub-paragraph (1).

(4) Sub-paragraphs (1) to (3) do not apply to any part of the licensed activities where evidence has been submitted to and approved in writing by the MMO that there is an existing marine safety management system in place and which will apply to the relevant part of the licensed activities.

SCHEDULE 12

Article 41

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this Part of this Schedule, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertaker concerned.

2. In this Part—

"alternative apparatus" means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means—

(a) in the case of a utility undertaker within paragraph (a) of the definition of that term, electric lines or electrical plant (as defined in the Electricity Act 1989), belonging to or maintained by that utility undertaker;

(b) in the case of a utility undertaker within paragraph (b) of the definition of that term, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;

(c) in the case of a utility undertaker within paragraph (c) of the definition of that term—

(i) mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and

(ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A (agreement to adopt water main or service pipe at future date) of the Water Industry Act 1991;

(d) in the case of a utility undertaker within paragraph (d) of the definition of that term—

(i) any drain or works vested in the utility undertaker under the Water Industry Act 1991;

(ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewage disposal works, at future date) of that Act, and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus; and

(e) any other mains, pipelines or cables that are not the subject of the protective provisions in Parts 2 to 19 of this Schedule;

"functions" includes powers and duties;

"in", in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land; and

"utility undertaker" means—

(a) any licence holder within the meaning of Part 1 (electricity supply) of the Electricity Act 1989;

(b) a gas transporter within the meaning of Part 1 (gas supply) of the Gas Act 1986;

(c) water undertaker within the meaning of the Water Industry Act 1991;

(d) a sewerage undertaker within the meaning of Part 1 (preliminary) of the Water Industry Act 1991; and

(e) an owner or operator of apparatus within paragraph (e) of the definition of that term,

for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

Precedence of the 1991 Act in respect of apparatus in the streets

3. This Part does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13 (temporary stopping up of streets, public rights of way and access land), a utility undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

No acquisition etc. except by agreement

5. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part, and any right of a utility undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

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

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

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed

between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 47 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 47 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part.

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

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

Facilities and rights for alternative apparatus

7.—(1) Where, in accordance with the provisions of this Part, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 47 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained Apparatus

8.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6(2), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (1) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written

notice to the undertaker of that requirement, paragraphs 1 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

Expenses and costs

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 6(2).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part, that value being calculated after removal.

(3) If in accordance with the provisions of this Part—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 47 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 6(2); and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than seven years and six months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 6(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its

intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

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

(b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker, by reason or in consequence of any such damage or interruption.

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

(a) any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, employees, servants, contractors or agents; or

(b) any indirect or consequential loss or loss of profits by a utility undertaker.

(3) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) A utility undertaker must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 10 applies. If requested to do so by the undertaker, a utility undertaker must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 10 for claims reasonably incurred by a utility undertaker.

Enactments and agreements

11. Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaking in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

12.—(1) For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

(2) In this Part—

"the 2003 Act" means the Communications Act 2003;

"electronic communications apparatus" has the same meaning as set out in paragraph 5 of the electronic communications code;

"the electronic communications code" has the same meaning as set out in section 106 (application of the electronic communications code) of the 2003 Act;

"infrastructure system" has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7 of that code;

"network" means—

(a) so much of a network or infrastructure system provided by an operator as is not excluded from the application of the electronic communications code by a direction under section 106(5) of the 2003 Act; and

(b) a network which the Secretary of State is providing or proposing to provide; and "operator" means a person in whose case the electronic communications code is applied

by a direction under section 106(5) of the 2003 Act and who is an operator of a network; and

"operator" means a person in whose case the electronic communications code is applied by a direction under section 106(5) of the 2003 Act and who is an operator of a network.

13. The exercise of the powers of article 33 (statutory undertakers) is subject to Part 10 of Schedule 3A (the electronic communications code) of the 2003 Act.

14.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or

(b) there is any interruption in the supply of the service provided by an operator, the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

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

(a) any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, employees, servants, contractors or agents; or

(b) any indirect or consequential loss or loss of profits by an operator.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) The operator must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 14 applies. If requested to do so by the undertaker, the operator must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 14 for claims reasonably incurred by the operator.

(5) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 47 (arbitration).

15. This Part of this Schedule does not apply to—

(a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or

(b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

16. Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 3

FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY AND GAS UNDERTAKER

Application

17. For the protection of National Grid as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid.

Interpretation

18. In this Part of this Schedule—

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means—

(a) any electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid; and

(b) any mains, pipes or other apparatus belonging to or maintained by National Grid 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 Grid for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised development" has the same meaning as in article 2 (interpretation) of this Order and includes any associated development authorised by the Order and (unless otherwise specified) for the purposes of this Part of this Schedule includes the use and maintenance of the authorised development and construction of any works authorised by this Schedule;

"commence" and "commencement" has the same meaning as in article 2 (interpretation) of this Order and commencement is construed to have the same meaning save that for the purposes of this Part of this Schedule only the term commence and commencement includes any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment within 15 metres of any apparatus;

"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 and/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 Part 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 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 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;

"maintain" and "maintenance" shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid including construct, use, repair, alter, inspect, renew or remove the apparatus;

"National Grid" means—

(a) 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 Electricity Act 1989; and

(b) National Grid Gas plc (company number 02006000) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that area reasonable necessary properly and sufficiently to describe and assess the works to be executed; and

"specified works" means any of the authorised development or activities undertaken in association with the authorised development which—

(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 22(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 22(2) or otherwise; and/or

(c) includes in relation to gas apparatus any of the activities that are referred to in paragraph 23 of T/SP/SSW/22 (National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties").

On Street Apparatus

19. Except for paragraphs 20 (apparatus of National Grid in streets subject to temporary stopping up), 24 (retained apparatus: protection of electricity undertaker), 25 (retained apparatus: protection of gas undertaker), 26 (expenses) and 27 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under this Order affecting the rights and apparatus of National Grid, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

Apparatus of National Grid in streets subject to temporary stopping up

20. Notwithstanding the temporary stopping up or diversion of any street under the powers of article 13 (temporary stopping up of streets, public rights of way and access land), National Grid will be at liberty at all times to take all necessary access across any such stopped up street and/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

21.—(1) 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 and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of National

Grid or any interruption in the supply of electricity and/or gas, as the case may be, by National Grid is caused, the undertaker must bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and, subject to sub-paragraph (2), must—

(a) pay compensation to National Grid for any loss sustained by it; and

(b) indemnify National Grid against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by that undertaker, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of National Grid or its contractors or workmen; and National Grid will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof may be made by National Grid, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

Removal of apparatus

22.—(1) If the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to National Grid to its satisfaction (taking into account paragraph 23(1) below) the necessary facilities and rights—

(a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation must not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

23.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter will be referred to arbitration in accordance with paragraph 31 (arbitration) of this Part of this Schedule and the arbitrator may make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of electricity undertaker

24.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

(f) any intended maintenance regimes; and

(g) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

(a) details of any cable trench design including route, dimensions, clearance to pylon foundations;

(b) demonstration that pylon foundations will not be affected prior to, during and post construction;

(c) details of load bearing capacities of trenches;

(d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;

(e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;

(f) written details of the operations and maintenance regime for any cable, including frequency and method of access;

(g) assessment of earth rise potential if reasonably required by National Grid's engineers; and

(h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of at least 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-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-paragraphs (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 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 under sub-paragraph (6) 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 authorised development (or any relevant part thereof) for which protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-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 17 to 19, 22 and 23 apply as if the removal of the apparatus had been required by the undertaker under paragraph 22(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in 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".

Retained apparatus: protection of gas undertaker

25.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan and, if reasonably required by National Grid, a ground monitoring scheme in respect of those works.

(2) 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 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 Grid has given written approval of the plan so submitted.

(4) Any approval of National Grid required under sub-paragraph (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (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 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 purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under this paragraph 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 Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) 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.

(7) Where National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any specified works for which protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Grid in accordance with sub-paragraphs (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 17 to 19, 22 and 23 apply as if the removal of the apparatus had been required by the undertaker under paragraph 22(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in 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 (5), (6) and (7) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (10) at all times;

(11) At all times when carrying out any works authorised under the Order National Grid must comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, 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 Grid 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 26.

Expenses

26.—(1) Save where otherwise agreed in writing between National Grid and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid on demand all charges, costs and expenses reasonably and properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised development as are referred to in this Part of this Schedule including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid—

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 22(3); or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 31 to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

27.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and

(b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid other than arising from any default of National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid as a consequence of the authorised development or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of 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 workman like manner or in a manner that does not accord with the approved plan.

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

(a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, employees, servants, contractors or agents; and

(b) any part of the authorised development and/or any other works authorised by this Part of this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of this Order pursuant to section 156 of the Planning Act 2008 or article 8 (consent to transfer benefit of this Order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised development yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 27.

(4) National Grid 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.

(5) National Grid must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands and penalties to which the indemnity under this paragraph 27 applies where it is within National Grid's reasonable gift and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid's control. If requested to do so by the undertaker, National Grid must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1).

(6) National Grid must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

Enactments and agreements

28. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Part of this Schedule will affect the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

29.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or National Grid requires the removal of apparatus under paragraph 22(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 24 or 25, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

30. If in consequence of the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

31. Save for differences or disputes arising under paragraphs 22(2), 22(4), 23(1), 24 and 25 any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 47 (arbitration).

Notices

32. The plans submitted to National Grid by the undertaker pursuant to this Part must be sent to National Grid Plant Protection at plantprotection@nationalgrid.com or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 4

FOR THE PROTECTION OF AIR PRODUCTS PLC

33. For the protection of Air Products the following provisions have effect, unless otherwise agreed in writing between the undertaker and Air Products.

34. In this Part—

"Air Products" means Air Products Public Limited Company (company number 00103881);

"alternative apparatus" means alternative apparatus adequate to enable Air Products to fulfil its contractual obligations in a manner not less efficient than previously;

"apparatus" means any mains, pipes or other apparatus belonging to or maintained by Air Products for the purposes of gas supply; and

"in", in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land.

Precedence of the 1991 Act in respect of apparatus in streets

35. This Part does not apply to apparatus in respect of which the relations between the undertaker and Air Products are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

36. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13 (temporary stopping up of streets, public rights of way and access land), Air Products is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

No acquisition etc. except by agreement

37. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

38.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that Air Products' apparatus is relocated or diverted, that apparatus must not be removed under this Part, and any right of Air Products to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of Air Products in accordance with sub-paragraphs (2) to (7).

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such

apparatus is to be constructed, Air Products must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Air Products and the undertaker or in default of agreement settled by arbitration in accordance with article 47 (arbitration).

(5) Air Products must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 47 (arbitration), and after the grant to Air Products of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part.

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

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

Facilities and rights for alternative apparatus

39.—(1) Where, in accordance with the provisions of this Part, the undertaker affords to Air Products facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Air Products or in default of agreement settled by arbitration in accordance with article 47 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Air Products than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Air Products as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained Apparatus

40.—(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 38(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 33 to 39 apply as if the removal of the apparatus had been required by the undertaker under paragraph 38(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to Air Products notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

Expenses and costs

41.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Air Products the reasonable expenses incurred by it in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 38(2).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part, that value being calculated after removal.

(3) If in accordance with the provisions of this Part—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 47 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Air Products by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 38(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.

42.—(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 38(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its

intended removal for the purposes of those works) or property of Air Products, or there is any interruption in any service provided, or in the supply of any goods, by Air Products, the undertaker must—

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

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

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Air Products, its officers, employees, servants, contractors or agents.

(3) Air Products must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Air Products must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 42 applies. If requested to do so by the undertaker, Air Products must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 42 for claims reasonably incurred by Air Products.

Enactments and agreements

43. Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and Air Products in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 5

FOR THE PROTECTION OF CATS NORTH SEA LIMITED

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

45. In this Part of this Schedule—

"CATS" means CATS North Sea Limited (Company number 09250798) and any successor in title or function to the CATS pipelines;

"CATS pipeline(s)" means the following pipelines, owned by CATS and operated by Wood UK Ltd—

(a) The 36" CATS pipeline (PL-774) transporting high pressure natural gas 411.84km (404km subsea, 7.84km onshore) from the CATS Riser Platform, located in the Central Graben Development of the North Sea, to processing facilities at the CATS Terminal in Teesside;

(b) Onshore 6" Condensate export pipeline (PL-937) transporting natural gas condensate 2.87km from the CATS Terminal to Sabic, North Tees plant;

(c) Onshore 6" Condensate export pipeline (PL-938) transporting natural gas condensate 2.45km from the CATS Terminal to the Navigator Terminals storage site;

(d) Onshore 6" Propane pipeline (CAT-Pipeline-04) transporting Propane 1.09km from the CATS Terminal to ConocoPhillips storage site;

(e) CAT-Pipeline-05 6" Butane pipeline transporting butane 1.09km from the CATS Terminal to Conoco Phillips storage site;

"CATS requirements" means the requirements applicable for works undertaken within 50 metres of the CATS pipelines as set out in the—

(a) CATS Wayleaves Guidance for Landowners and Third Parties, Doc Number: CAT-PPI-PRC-019;

(b) CATS Conditions and Restrictions for Work Activities in Close Proximity to CATS Pipelines, Doc Number: CAT-PPI-PRC-020; and

(c) CATS Procedures for the Excavation and Backfill of CATS Pipelines, Doc Number: CAT-PPI-PRC-021,

or any updates or amendments thereto as notified to the undertaker in writing; and

"works details" means—

(a) plans and sections;

(b) details of the proposed method of working and timing of execution of works;

(c) details of vehicle access routes for construction and operational traffic; and

(d) any further particulars provided in response to a request under paragraph 46.

Consent under this Part

46. Before commencing any part of the authorised development within 50 metres of the CATS pipelines, the undertaker must submit to CATS the works details for the proposed works and such further particulars as CATS may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require in line with the CATS requirements.

47. No works comprising any part of the authorised development within 50 metres of the CATS pipelines are to be commenced until the works details in respect of those works submitted under paragraph 46 have been approved by CATS.

48.—(1) Any approval of CATS required under paragraph 47 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as CATS may require to be made having regard to the CATS requirements.

(2) Where CATS reasonably consider that the authorised development will adversely affect the safe operation of the CATS pipelines it is entitled to withhold its authorisation until the undertaker can demonstrate to the reasonable satisfaction of CATS that the authorised development will not adversely affect the safe operation of the CATS pipeline.

(3) The authorised development must be carried out in accordance with the works details approved under paragraph 47 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 56 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 56.

49. Where formal consent is required under the CATS requirements for works within the wayleave of the CATS pipelines (between 3.5 metres to 7.5 metres either side of the pipeline, depending on location), approval given by CATS under paragraph 47 constitutes formal consent for the purposes of the CATS requirements.

Compliance with the CATS requirements

50. In undertaking any works or exercising any rights within 50 metres of the CATS pipelines, the undertaker must comply with such conditions, requirements or regulations as are set out in the CATS requirements.

51. No explosives for blasting are to be used within 400 metres of any part of the CATS pipeline(s) or associated installations, until the details in respect of those works have been

submitted to and approved by CATS, and paragraphs 46 to 49 apply to any submission and approval required under this paragraph 51.

Monitoring for damage to pipelines

52.—(1) When undertaking any works or exercising any rights within 50 metres of the CATS pipelines, the undertaker must monitor the CATS pipelines to establish whether damage has occurred.

(2) Where any damage occurs to the CATS pipelines as a result of the works, the undertaker must immediately cease all work in the vicinity of the damage and must notify CATS to enable repairs to be carried out to the reasonable satisfaction of CATS.

(3) If damage has occurred to the CATS pipelines as a result of the works the undertaker will, at the request and election of CATS—

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

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

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

(5) Following the completion of any works within 50 metres of the CATS pipelines if damage is found to have occurred to any of the CATS pipelines as a result of the relevant 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 CATS is entitled, but not obliged, to undertake the necessary remedial work and recover the cost of doing so from the undertaker.

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

(2) Where there is leakage or escape, the undertaker must immediately—

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

(b) inform CATS;

(c) prevent any approach by the public;

(d) shut down any machinery and other sources of ignition within at least 350 metres from the leakage; and

(e) assist emergency services as may be requested.

Indemnity

54.—(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 46, any damage is caused to the CATS Pipelines, or there is any interruption in any service provided, or in the supply of any goods, by CATS, the undertaker must—

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

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

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of CATS, its officers, employees, servants, contractors or agents.

(3) CATS must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) CATS must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 54 applies. If requested to do so by the undertaker, CATS must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 54 for claims reasonably incurred by CATS.

Costs

55.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to CATS the reasonable expenses incurred by them in, or in connection with, the inspection, removal, alteration or protection of any CATS pipeline which may be required in consequence of the execution of any such works referred to or approved under paragraphs 57 and 58, including without limitation—

(a) authorisation of works details in accordance with paragraphs 46 to 49;

(b) the engagement of an engineer and their observation of the authorised works affecting the CATS pipelines and the provision of safety advice in accordance with the CATS requirements; and

(c) any reasonable costs incurred by CATS in engaging and retaining such external experts, consultants and contractors as may be reasonably necessary.

(2) Prior to incurring any fees, costs, charges or expenses associated with the activities outlined in sub-paragraph (1), CATS must give prior written notice to the undertaker of the activity or activities to be undertaken and an estimate of the fees, costs, charges or expenses to be incurred.

Arbitration

56. Any difference or dispute arising between the undertaker and CATS under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and CATS, be referred to and settled by arbitration in accordance with article 47 (arbitration).

PART 6

FOR THE PROTECTION OF CF FERTILISERS UK LIMITED

57. For the protection of CF Fertilisers, the following provisions have effect, unless otherwise agreed in writing between the undertaker and CF Fertilisers.

58. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable CF Fertilisers to undertake its operations on the CF Fertilisers site in a manner not less efficient than previously;

"apparatus" means any mains, pipes or other apparatus belonging to or maintained by CF Fertilisers;

"CF Fertilisers" means CF Fertilisers UK Limited (company number 03455690) and any successor in title to the CF Fertilisers site;

"the CF Fertilisers site" means the land in between Haverton Hill Road and Belasis Avenue, adjacent to the Order limits and which is owned and operated by CF Fertilisers;

"in", in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

"the proposed CF pipeline" the proposed pipeline to service the CF Fertilisers site and which is to be owned or for the benefit of CF Fertilisers and to be used for the passage of multi-purpose hydrocarbon fuels and all ancillary apparatus including such works and apparatus properly appurtenant to the pipeline as are specified by section 65(2) of the Pipe-lines Act 1962 (meaning of "pipe-line");

"the respective authorised developments" means the authorised development and the proposed CF pipeline respectively; and

"works details" means—

(a) plans and sections;

(b) details of the proposed method of working and timing of execution of works;

(c) details of vehicle access routes for construction and operational traffic; and

(d) any further particulars provided in response to a request under paragraph 67.

Precedence of the 1991 Act in respect of apparatus in streets

59. This Part does not apply to apparatus in respect of which the relations between the undertaker and CF Fertilisers are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

60. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13 (temporary stopping up of streets, public rights of way and access land), CF Fertilisers is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

Removal of apparatus/access

61.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that apparatus is relocated or diverted, that apparatus must not be removed under this Part, and any right of CF Fertilisers to maintain that apparatus in that land and to gain access to it must not be extinguished (or otherwise made less advantageous), until alternative apparatus (or alternative rights as the case may be) has been constructed (or granted) and is in operation, and access to it has been provided, to the reasonable satisfaction of CF Fertilisers in accordance with sub-paragraphs (2) to (7).

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, CF Fertilisers must, on receipt of a written notice to that effect from

the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between CF Fertilisers and the undertaker or in default of agreement settled by arbitration in accordance with article 47 (arbitration).

(5) CF Fertilisers must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 47 (arbitration), and after the grant to CF Fertilisers of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part.

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

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

Facilities and rights for alternative apparatus

62.—(1) Where, in accordance with the provisions of this Part, the undertaker affords to CF Fertilisers facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted—

(a) upon such terms and conditions as may be agreed between the undertaker and CF Fertilisers or in default of agreement settled by arbitration in accordance with article 47; and

(b) in compliance with all health and safety, environmental and regulatory requirements and relevant industry standards.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to CF Fertilisers than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to CF Fertilisers as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained Apparatus

63.—(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 62(2), the undertaker must submit to CF Fertilisers the works details for the proposed works and such further particulars as CF Fertilisers may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

(2) No works referred to in sub-paragraph (1) are to be commenced until the works details in respect of those works submitted under sub-paragraph (1) have been approved by CF Fertilisers.

(3) Any approval of CF Fertilisers required under sub-paragraph (1) must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as CF Fertilisers

may require to be made for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and CF Fertilisers is entitled to watch and inspect the execution of those works.

(4) The works referred to in sub-paragraph (1) must be carried out in accordance with the works details approved under sub-paragraph (2) and any requirements imposed on the approval under sub-paragraph (3).

(5) Where there has been a reference to an arbitrator in accordance with paragraph 73 and the arbitrator gives approval for the works details, the works referred to in sub-paragraph (1) must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 73.

(6) If CF Fertilisers in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 62(2).

(7) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(8) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to CF Fertilisers notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

Consent under this Part

64. Paragraphs 65 to 68 of this Part only apply where prior to the undertaker commencing any part of Work Numbers 2A or 6 CF Fertilisers has begun (but not completed) construction of the proposed CF pipeline anywhere within the Order limits.

65. Before commencing any part of the authorised development which would have an effect on the operation or maintenance of the proposed CF pipeline or access to it, the undertaker must submit to CF Fertilisers the works details for the proposed works and such further particulars as CF Fertilisers may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

66. No works comprising any part of the authorised development which would have an effect on the operation or maintenance of the proposed CF pipeline or access to it are to be commenced until the works details in respect of those works submitted under paragraph 67 have been approved by CF Fertilisers.

67. Any approval of CF Fertilisers required under paragraph 66 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as CF Fertilisers may require to be made for the routing, construction, safety, operational viability and maintenance of the proposed CF pipeline.

68.—(1) The authorised development must be carried out in accordance with the works details approved under paragraph 66 and any requirements imposed on the approval under paragraph 67.

(2) Where there has been a reference to an arbitrator in accordance with paragraph 73 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 73.

(3) Nothing in paragraphs 65 to 68 precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously

submitted, and having done so the provisions of paragraphs 67 to 70 apply to and in respect of the new plan, section and description.

Notices

69. Any notices to be served on CF Fertilisers in accordance with this Part shall be served in writing on the registered company address and on the General Counsel at CF Fertilisers, Ince, Chester, Cheshire CH2 4LB.

Co-operation

70.—(1) This paragraph applies insofar as—

(a) the construction of the authorised development would have the potential to have an effect on the exercise by CF Fertilisers of its rights in connection with the proposed CF pipeline within the Order limits;

(b) the construction of the respective authorised developments may be undertaken within the Order limits concurrently; or

(c) the construction of one of the respective authorised developments would have an effect on the operation or maintenance of the other respective authorised development or access to it.

(2) Where this paragraph applies the undertaker and CF Fertilisers must—

(a) co-operate with each other with a view to ensuring—

(i) the compatibility of the respective authorised developments;

(ii) the co-ordination of construction programming and the carrying out of the respective authorised developments;

(iii) that access for the purposes of constructing the respective authorised developments is maintained for the undertaker, CF Fertilisers and their respective employees, contractors and sub-contractors;

(iv) the undertaker and CF Fertilisers have the appropriate risk assessments, method statements (RAMS) and construction design management (CDM) in place and are able to comply with their obligations in this respect; and

(v) that operation, maintenance and access to the respective authorised developments is maintained for the undertaker and CF Fertilisers;

(b) use reasonable endeavours to avoid any conflict arising from the carrying out of the respective authorised developments.

Expenses and costs

71.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to CF Fertilisers the reasonable expenses incurred by it in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 62(2).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part, that value being calculated and agreed after removal.

(3) If in accordance with the provisions of this Part—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 47 to be necessary,

then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to CF Fertilisers by virtue of sub-paragraph (1) is to be reduced by the amount of that excess. The provisions of this sub-paragraph (3) shall only apply where the alteration is at the election of CF Fertilisers and not where such change to the existing type, capacity, dimensions or depth is as a result of industry requirements, legislation or environmental or health and safety considerations.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 62(2); and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to CF Fertilisers in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than seven years and six months earlier so as to confer on CF Fertilisers any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

72.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of CF Fertilisers, or there is any interruption in any service provided, or in the supply of any goods, by CF Fertilisers, the undertaker must—

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

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

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of CF Fertilisers, its officers, employees, servants, contractors or agents.

(3) CF Fertilisers must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand subject to its obligations in sub-paragraph (4).

(4) If the Undertaker becomes responsible for a claim or demand pursuant to sub-paragraph (3) it must—

(a) keep CF Fertilisers fully informed of the developments and material elements of the proceedings;

(b) take account of the views of CF Fertilisers before taking any action in relation to the claim;

(c) not bring the name of CF Fertilisers or any related company into disrepute and act in an appropriate and professional manner when disputing any claim; and

(d) not pay or settle such claims without the prior written consent of CF Fertilisers, such consent not to be unreasonably withheld or delayed.

(5) CF Fertilisers must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 72 applies. If requested to do so by the undertaker, CF Fertilisers must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 72 for claims reasonably incurred by CF Fertilisers.

Arbitration

73. Any difference or dispute arising between the undertaker and CF Fertilisers under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and CF Fertilisers, be referred to and settled by arbitration in accordance with article 47 (arbitration).

PART 7

FOR THE PROTECTION OF EXOLUM SEAL SANDS LTD

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

75. In this Part of this Schedule—

"Exolum" means Exolum Seal Sands Ltd (Company number 00465548) and any successor in function to Exolum's operations;

"the Exolum operations" means the operations and assets within the Order limits or operations and assets which have the benefit of rights (including access) over the Order limits vested in Exolum including the pipeline crossing the Order limits operated by Exolum used at all times and all ancillary apparatus including such works and apparatus properly appurtenant to the pipelines as are specified by section 65(2) (meaning of "pipe-line") of the Pipe-lines Act 1962;

"restricted works" means any works forming any part of the authorised development that are near to, or will or may affect the Exolum operations or access to them including—

(a) all works within 15 metres of the Exolum operations;

(b) the crossing of the Exolum operations by other utilities;

(c) the use of explosives within 400 metres of the Exolum operations; and

(d) piling, undertaking of a 3D seismic survey or the sinking boreholes within 30 metres of the Exolum operations,

whether carried out by the undertaker or any third party in connection with the authorised development; and

"works details" means—

(a) plans and sections;

(b) a method statement describing—

(i) the exact position of the works;

(ii) the level at which the works are proposed to be constructed or renewed;

(iii) the manner of the works' construction or renewal including details of excavation, positioning of plant etc.;

(iv) the position of all apparatus;

(v) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

(vi) any intended maintenance regime;

(vii) details of the proposed method of working and timing of execution of works; and

(viii) details of vehicle access routes for construction and operational traffic;

(c) where the restricted works will or may be situated on, over, under or within 15 metres measured in any direction of the Exolum operations, or (wherever situated) impose any load directly upon the Exolum operations or involve embankment works within 15 metres of the Exolum operations, the method statement must also include—

(i) the position of the Exolum operations; and

(ii) by way of detailed drawings, every alteration proposed to be made to the Exolum operations; and

(d) any further particulars provided in response to a request under paragraph 76.

Consent of restricted works under this Part

76.—(1) Unless a shorter period is otherwise agreed in writing between the undertaker and Exolum, not less than thirty five (35) days before commencing the execution of any restricted works, the undertaker must submit to Exolum the works details for the restricted works and such further particulars as Exolum may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

(2) No restricted works are to be commenced until the works details in respect of those works submitted under sub-paragraph (1) have been approved by Exolum.

(3) Any approval of Exolum required under this paragraph 76 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as Exolum may require to be made for—

(a) the continuing safety and operational viability of the Exolum operations; and

(b) the requirement for Exolum to have reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the Exolum operations.

(4) Any approval of Exolum required under this paragraph 76 including any reasonable requirements required by Exolum under sub-paragraph (3), must be made in writing within a period of 21 days (unless a shorter period is otherwise agreed in writing between the undertaker and Exolum) beginning with the date on which the works details were submitted to Exolum under sub-paragraph (1) or the date on which any further particulars requested by Exolum under sub-paragraph (1) were submitted to Exolum (whichever is the later).

(5) The authorised development must be executed only in accordance with the works details approved by Exolum under this paragraph 76 including any reasonable requirements notified to the undertaker in accordance with sub-paragraph (3) and Exolum shall be entitled to watch and inspect the execution of those works.

(6) If Exolum in accordance with sub-paragraph (3) and in consequence of the restricted works proposed by the undertaker, reasonably requires the removal of any of the Exolum operations and gives written notice to the undertaker of that requirement, this Order applies as if the removal of the apparatus had been required by the undertaker under sub-paragraph (1).

(7) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but (unless otherwise agreed in writing between the undertaker and Exolum) in no case less than 28 days before commencing the execution of any restricted works, new works details, instead of the works details previously submitted, and having done so the provisions of this paragraph 76 apply to and in respect of the new works details.

Prohibition of acquisition and interference

77.—(1) Regardless of any provision in this Order or anything shown on the land plans or if the Order applies to any interest in any land in which the Exolum operations are placed or over which access to the Exolum operations is enjoyed—

(a) the undertaker must not, otherwise than in accordance with terms of this Order including any approval given under this Part—

(i) obstruct or render less convenient the access to the Exolum operations;

(ii) interfere with or affect the Exolum operations or Exolum's ability to carry out its functions including operating its pipeline and its terminal by way of the creation of restrictive covenants or otherwise;

(iii) require that the Exolum operations are relocated or diverted; or

(iv) remove or require to be removed any Exolum operations; and

(b) any right of Exolum to access the Exolum operations shall not be extinguished until any necessary alternative access has been provided to the reasonable satisfaction of Exolum.

(2) Where the undertaker takes temporary possession of any land or carries out survey works on land in respect of which Exolum has an easement, right, operations, assets or other interests (together "Exolum's rights")—

(a) where Exolum's rights do not provide or require access over, in or under the Order limits, there is no restriction on the exercise of such rights;

(b) where Exolum's rights do provide or reasonably require access in, on or under the Order limits, Exolum may exercise those rights where reasonably necessary—

(i) in an emergency without notice; and

(ii) in non-emergency circumstances having first given the undertaker prior written notice in order to allow the parties to liaise over timing and co-ordination of their respective works during the period of temporary possession; and

(c) the undertaker shall not extinguish Exolum's rights, unless in accordance with the provisions of this Order.

Cathodic protection testing

78. Where in the reasonable opinion of Exolum or the undertaker—

(a) the authorised development might interfere with the cathodic protection forming part of the Exolum operations; or

(b) the Exolum operations might interfere with the proposed or existing cathodic protection forming part of the authorised development,

Exolum and the undertaker must co-operate in undertaking the tests which they consider reasonably necessary for ascertaining the nature and extent of such interference and implement measures for providing or preserving cathodic protection.

Expenses

79.—(1) Subject to the following provisions of this paragraph 79, the undertaker must pay to Exolum the reasonable and properly incurred costs and expenses (including reasonable staffing costs if work is carried out in-house) incurred by Exolum in, or in connection with—

(a) undertaking its obligations under this Order including—

(i) the execution of any works under this Order including for the protection of the Exolum operations; and

(ii) the review and assessment of works details in accordance with paragraph 76;

(b) the watching of and inspecting the execution of the restricted works within 15 metres of the Exolum operations and undertaken as a result of or in connection with the authorised development; and

(c) imposing reasonable requirements in accordance with paragraph 76(3).

(2) Prior to incurring any costs or expenses associated with the activities in sub-paragraph (1), Exolum must give prior written notice to the undertaker of the activities to be undertaken and an estimate of the costs or expenses to be incurred.

Indemnity

80.—(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 76, any damage is caused to the Exolum operations, or there is any interruption in any service provided, or in the supply of any goods, by Exolum, the undertaker must—

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

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

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Exolum, its officers, employees, servants, contractors or agents.

(3) Exolum must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Exolum must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 80 applies. If requested to do so by the undertaker, Exolum must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 80 for claims reasonably incurred by Exolum.

Arbitration

81.—(1) Any difference or dispute arising between the undertaker and Exolum under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Exolum, be referred to and settled by arbitration in accordance with article 47 (arbitration).

(2) Where there has been a reference to an arbitrator in accordance with sub-paragraph (1) and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under sub-paragraph (1)

PART 8

FOR THE PROTECTION OF INEOS NITRILES (UK) LIMITED

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

83. In this Part of this Schedule—

"INEOS" means INEOS Nitriles (UK) Limited (Company number 06238238) and any successor in title or function to the INEOS operations;

"the INEOS operations" means the operations or property within Order limits vested in INEOS Nitriles (UK) Limited including the pipeline crossing the Order limits owned and operated by INEOS used at various times for the passage of multi-purpose hydrocarbon fuels and all ancillary apparatus including such works and apparatus properly appurtenant to the pipelines as are specified by section 65(2) (meaning of "pipe-line") of the Pipe-lines Act 1962; and

"works details" means—

(a) plans and sections;

(b) details of the proposed method of working and timing of execution of works;

(c) details of vehicle access routes for construction and operational traffic; and

(d) any further particulars provided in response to a request under paragraph 84.

Consent under this Part

84. Before commencing any part of the authorised development which would have an effect on the operation or maintenance of the INEOS operations or access to them or which would otherwise be located on land within the INEOS operations, the undertaker must submit to INEOS the works details for the proposed works and such further particulars as INEOS may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

85. No works comprising any part of the authorised development which would have an effect on the operation or maintenance of the INEOS operations or access to them or which would otherwise be located on land within the INEOS operations are to be commenced until the works details in respect of those works submitted under paragraph 84 have been approved by INEOS.

86.—(1) Any approval of INEOS required under paragraph 85 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as INEOS may require to be made for—

(a) the continuing safety and operational viability of the INEOS operations;

(b) the continuing safe operation of infrastructure not belonging to INEOS but within or adjacent to the INEOS operations, including access at all times for inspection maintenance and repair etc whether that be by INEOS or by any party with rights in the land or infrastructure on or in the land; and

(c) the requirement for INEOS to have—

(i) uninterrupted and unimpeded emergency access with or without vehicles to the INEOS operations at all times; and

(ii) uninterrupted and unimpeded access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the INEOS operations.

(2) Where INEOS can reasonably demonstrate that the authorised development will significantly adversely affect the safety of the INEOS operations it is entitled to withhold its authorisation until the undertaker can demonstrate to the reasonable satisfaction of INEOS that the authorised development will not significantly adversely affect the safety of the INEOS operations.

(3) The authorised development must be carried out in accordance with the works details approved under paragraph 85 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 89 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 89.

Compliance with requirements, etc. applying to the INEOS operations

87. In undertaking any works in relation to the INEOS operations or exercising any rights relating to or affecting the INEOS operations, the undertaker must comply with such conditions, requirements or regulations relating to health, safety, security and welfare as are operated in relation to access to or activities in the INEOS operations.

Indemnity

88.—(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 84, any damage is caused to the INEOS operations or there is any interruption in any service provided, or in the supply of any goods, by INEOS, the undertaker must—

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

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

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of INEOS, its officers, employees, servants, contractors or agents.

(3) INEOS must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) INEOS must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 88 applies. If requested to do so by the undertaker, INEOS must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 88 for claims reasonably incurred by INEOS.

Arbitration

89. Any difference or dispute arising between the undertaker and INEOS under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and INEOS, be referred to and settled by arbitration in accordance with article 47 (arbitration).

PART 9

FOR THE PROTECTION OF MARLOW FOODS LIMITED

90. For the protection of Marlow Foods, the following provisions have effect, unless otherwise agreed in writing between the undertaker and Marlow Foods.

91. In this Part of this Schedule—

"Marlow Foods" means Marlow Foods Limited (Company number 01752242) and any successor in title to the Marlow Foods operations; and

"the Marlow Foods operations" means the operations of Marlow Foods located on Nelson Avenue, Billingham TS23 4HA.

Regulation of powers

92. The undertaker must not exercise the powers granted under this Order so as to hinder or prevent access to the Marlow Foods operations by Marlow Foods, its employees, contractors or sub-contractors, such access to be either along the existing highway route at Nelson Avenue, Billingham or such diversionary route as the undertaker may provide.

93. The undertaker must give to Marlow Foods not less than 28 days' written notice of its intention to commence the construction of any part of the authorised development that uses the existing highway route at Nelson Avenue, Billingham.

Co-operation

94. Insofar as the construction of any part of the authorised development and access to the Marlow Foods operations would have an effect on each other, the undertaker and Marlow Foods must—

(a) co-operate with each other with a view to ensuring—

(i) that access for the purposes of constructing the authorised development is maintained for the undertaker, its employees, contractors and sub-contractors; and

(ii) that access to the Marlow Foods operations is maintained for Marlow Foods, its employees, contractors and sub-contractors; and

(b) use reasonable endeavours to avoid any conflict arising from the access to the Marlow Foods operations and the construction of the authorised development.

Indemnity

95.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the use of the highway at Nelson Avenue by the undertaker in connection with the construction of the authorised development, there is any interruption in any service provided, or in the supply of any goods, by Marlow Foods, the undertaker must make reasonable compensation to Marlow Foods for any expenses, loss, damages, penalty or costs incurred by Marlow Foods, by reason or in consequence of any such interruption.

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

(a) any damage or interruption to the extent that it is attributable to the act, neglect or default of Marlow Foods, its officers, employees, servants, contractors or agents; or

(b) any indirect or consequential loss or loss of profits by Marlow Foods.

(3) Marlow Foods must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Marlow Foods must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 95 applies. If requested to do so by the undertaker, Marlow Foods must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 95 for claims reasonably incurred by Marlow Foods.

Arbitration

96. Any difference or dispute arising between the undertaker and Marlow Foods under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Marlow Foods, be referred to and settled by arbitration in accordance with article 47 (arbitration).

PART 10

FOR THE PROTECTION OF NETWORK RAIL INFRASTRUCURE LIMITED

97. The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 110, any other person on whom rights or obligations are conferred by that paragraph.

98.—(1) In this Part of this Schedule—

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"the engineer" means an engineer appointed by Network Rail for the purposes of this Order;

"network licence" means the network licence, as the same is amended from time to time, granted to Network Rail by the Secretary of State in exercise of their powers under section 8 (licences) of the Railways Act 1993(**a**);

"Network Rail" means Network Rail Infrastructure Limited (Company number 02904587, whose registered office is at 1 Eversholt Street, London NW1 2DN) 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 (meaning of "subsidiary" etc.) of the Companies Act 2006(b)) 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;

"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 100(4);

"railway operational procedures" means procedures specified under any access agreement (as defined in 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 for the purposes of such railway or works, apparatus or equipment; and

"specified work" means so much of any of the authorised development as is or is to be situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

99.—(1) Where under this Part of this Schedule Network Rail is required to give its consent, or approval in respect of any matter, that consent, or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

(a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and

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(**a**) 1993 c.43.

(b) use its 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.

100.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 47 (arbitration).

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not communicated disapproval of those plans and the grounds of 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 is 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 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 in question until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

101.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 100(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 100;

(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 on it and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of a specified work or a protective work, the undertaker must, regardless of any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its employees, contractors or agents or any liability on Network Rail with respect to any damage, costs, expenses or loss attributable to the negligence of the undertaker or its employees, contractors or agents.

102. The undertaker must—

(a) at all times afford reasonable facilities to the engineer for access to a specified work or a protective work during its construction; and

(b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or a protective work or the method of constructing it.

103. Network Rail must at all times afford reasonable facilities to the undertaker and its employees, contractors or agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

104.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work or a protective work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations or additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations or additions as are to be permanent, a capitalised sum representing the increase of the costs which are expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work or a protective work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work or the protective work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work or the protective work is to be constructed, Network Rail must assume construction of that part of the specified work or protective work and the undertaker must, regardless of any approval of the specified work or protective work in question under paragraph 100, 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 or protective work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 105(a), provide such details of the formula or method of calculation 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.

105. 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 100(3) or in constructing any protective works under the provisions of paragraph 100(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 or a protective work;

(c) in respect of the employment or procurement of the services of any inspectors, signallers, watchkeepers and other persons whom it is 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 or a protective work;

(d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer be required to be imposed by reason or in consequence of the construction or failure of a specified work or a protective 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 or a protective work.

106.—(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 100 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 100) in order to identify all potential causes of EMI and the measures required to eliminate them;

(b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and

(c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified under sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected at the reasonable discretion of Network Rail, and in relation to such modifications paragraph 100 has effect subject to this sub-paragraph.

(6) If at any time prior to the completion of the authorised development and regardless of any measures adopted under sub-paragraph (3) the testing or commissioning of the authorised development causes EMI, 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) 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; and

(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.

(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 101.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 109(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 105(a) any modifications to Network Rail's apparatus under this paragraph are deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 47 (arbitration) to the Institution of Civil Engineers is to be read as a reference to the Institution of Engineering and Technology.

107.—(1) If at any time after the completion of a specified work or a protective 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 or the protective 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 or protective 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 or protective work the subject of the notice in such state of maintenance as not adversely to affect railway property. If Network Rail agrees to undertake the steps it must give to the undertaker reasonable notice of its intention to carry out such steps, and the undertaker must pay to Network Rail the reasonable cost of doing so.

108. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work or a protective 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. 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 or protective 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.

109.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Network Rail—

(a) by reason of the construction or maintenance of a specified work or a protective work or the failure of it;

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work or a protective work,

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 protective 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 will not (if it was done without negligence on the part of Network Rail or its employees, contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand is to be made without the prior written consent of the undertaker.

(3) In no circumstances is the undertaker liable to Network Rail under sub-paragraph (1) for any indirect or consequential loss or loss of profits, save that the sums payable by the undertaker under that sub-paragraph include a sum equivalent to the relevant costs in circumstances where—

(a) Network Rail is liable to make payment of the relevant costs pursuant to the terms of an agreement between Network Rail and a train operator; and

(b) the existence of that agreement and the extent of Network Rail's liability to make payment of the relevant costs pursuant to its terms has previously been disclosed in writing to the undertaker, but not otherwise.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) Network Rail must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 109 applies. If requested to do so by the undertaker, 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 109 for claims reasonably incurred by Network Rail.

(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 restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or a protective 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.

110. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable pursuant to this Part of this Schedule

(including the amount of the relevant costs mentioned in paragraph 109) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

111. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

112. 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 plans or the 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.

113. 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.

114. The undertaker must give written notice to Network Rail where 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 7 days before any such application is made and must describe or give (as appropriate)—

(a) the nature of the application to be made;

(b) the extent of the geographical area to which the application relates; and

(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

115. The undertaker must no later than 28 days from the date that the plans and documents referred to in article 45 (certification of plans etc.) are certified by the Secretary of State provide a set of those plans and documents to Network Rail in a format specified by Network Rail.

PART 11

FOR THE PROTECTION OF NORTHERN POWERGRID (NORTHEAST) PLC AND NORTHERN POWERGRID LIMITED

116. For the protection of Northern Powergrid (Northeast) Plc and Northern Powergrid Limited the following provisions have effect, unless otherwise agreed in writing between the undertaker and Northern Powergrid.

117. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable Northern Powergrid to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means electric lines or electrical plant (as defined in the Electricity Act 1989), belonging to or maintained by Northern Powergrid;

"functions" includes powers and duties;

"in", in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land; and

"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 Northern Powergrid Limited (Company number 03271033) whose registered office is at Lloyds Court, 78 Grey Street, Newcastle Upon Tyne, NE1 6AF.

118. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Northern Powergrid are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

119. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13 (temporary stopping up of streets, public rights of way and access land), Northern Powergrid is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

120. 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.

121.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that Northern Powergrid's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Northern Powergrid to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided pursuant to a completed easement for a tenure no less than exists to the apparatus being relocated or diverted, all to the reasonable satisfaction of Northern Powergrid in accordance with sub-paragraphs (2) to (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 Northern Powergrid written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Northern Powergrid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Northern Powergrid the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Northern Powergrid must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably practicable and at the cost of the undertaker (subject to prior approval by the undertaker of its estimate of costs of doing so) use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Northern Powergrid and the undertaker or in default of agreement settled by arbitration in accordance with paragraph 133.

(5) Northern Powergrid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with paragraph 133, and after the grant to Northern Powergrid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to Northern Powergrid 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 Northern Powergrid, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Northern Powergrid.

(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.

122.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Northern Powergrid facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Northern Powergrid or in default of agreement settled by arbitration in accordance with paragraph 133.

(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.

123.—(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 121(2), the undertaker must submit to Northern Powergrid a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Northern Powergrid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Northern Powergrid is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Northern Powergrid under sub-paragraph (2) must be made within a period of twenty-one 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 116 to 122 apply as if the removal of the apparatus had been required by the undertaker under paragraph (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 twenty-eight days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to Northern Powergrid notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

124.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northern Powergrid the reasonable expenses incurred by Northern Powergrid—

(a) in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 121(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 121(1) having first decommissioned such apparatus.

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal and for the avoidance of doubt, if the apparatus removed under the provisions of this Part of this Schedule has nil value, no sum will be deducted from the amount payable under sub-paragraph (1).

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 133 to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Northern Powergrid by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 121(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.

125.—(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 121(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Northern Powergrid, or there is any interruption in any service provided by Northern Powergrid, the undertaker must—

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

(b) make reasonable compensation to Northern Powergrid for any other expenses, loss, damages, penalty or costs incurred by Northern Powergrid,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Northern Powergrid, its officers, employees, servants, contractors or agents.

(3) Northern Powergrid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Northern Powergrid must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 125 applies. If requested to do so by the undertaker, Northern Powergrid must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 125 for claims reasonably incurred by Northern Powergrid.

126. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Northern Powergrid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

127. Without prejudice to the generality of the protective provisions in this Part of the Schedule, Northern Powergrid must from time to time submit to the undertaker estimates of reasonable costs and expenses it expects to incur in relation to the implementation of any diversions or relocation of apparatus contemplated under this Part of the Schedule including without limitation—

(a) in assessing and preparing a design for its apparatus to address and accommodate the proposals of the undertaker under paragraph 124;

(b) costs incurred in fulfilling its obligations in paragraph 121(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.

128. Northern Powergrid and the undertaker must use their reasonable endeavours to agree the amount of any estimates submitted by Northern Powergrid under paragraph 127 within 15 working days following receipt of such estimates by the undertaker. The undertaker must confirm its agreement to the amount of such estimates in writing and must not unreasonably withhold or delay such agreement. If the parties are unable to agree the amount of an estimate, it will be dealt with in accordance with paragraph 133.

129. 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 121(1) for the benefit of its statutory undertaking.

130. 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.

131. Northern Powergrid may from time to time and at least monthly from the date of this Order issue to the undertaker invoices for costs and expenses incurred up to the date of the relevant invoice, for the amount of the relevant estimate agreed. Invoices issued to the undertaker for payment must—

(a) specify the approved purchase order number; and

(b) be supported by timesheets and narratives that demonstrate that the work invoiced has been completed in accordance with the agreed estimate.

132. The undertaker is not responsible for meeting costs or expenses in excess of an agreed estimate, other than where agreed under paragraph 130 above or determined in accordance with paragraph 133.

133. Any difference under the provisions of this Part of the Schedule, unless otherwise provided for, is to be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by an independent electrical engineer by or on behalf of the President for the time being of the Institute of Engineering and Technology.

PART 12

FOR THE PROTECTION OF NPL WASTE MANAGEMENT LIMITED

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

135. In this Part of this Schedule—

"NPL" means NPL Waste Management Limited (Company number 06112535) and any successor in title or function to the NPL access shafts;

"NPL access shafts" means the shafts within plots 4 and 5 in the Order limits owned and operated by NPL for the purposes of accessing the Billingham Anhydrite Mine; and

"works details" means—

(a) plans and sections;

(b) details of the proposed method of working and timing of execution of works;

(c) details of vehicle access routes for construction and operational traffic; and

(d) any further particulars provided in response to a request under paragraph 136.

Consent under this Part

136. Before commencing any part of the authorised development which would have an effect on the operation or maintenance of the NPL access shafts or access to them, the undertaker must submit to NPL the works details for the proposed works and such further particulars as NPL may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

137. No works comprising any part of the authorised development which would have an effect on the operation or maintenance of the NPL access shafts or access to them are to be commenced until the works details in respect of those works submitted under paragraph 136 have been approved by NPL.

138. Any approval of NPL required under paragraph 137 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as NPL may require to be made for NPL to have reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation of the NPL access shafts.

139.—(1) The authorised development must be carried out in accordance with the works details approved under paragraph 137 and any requirements imposed on the approval under paragraph 138.

(2) Where there has been a reference to an arbitrator in accordance with paragraph 141 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 141.

Indemnity

140.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 136, any damage is caused to the NPL access shafts or property of NPL, or there is any interruption in any service provided, or in the supply of any goods, by NPL, the undertaker must—

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

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

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of NPL, its officers, employees, servants, contractors or agents.

(3) NPL must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) NPL must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 140 applies. If requested to do so by the undertaker, NPL must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 140 for claims reasonably incurred by NPL.

Arbitration

141. Any difference or dispute arising between the undertaker and NPL under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and NPL, be referred to and settled by arbitration in accordance with article 47 (arbitration).

PART 13

FOR THE PROTECTION OF PD TEESPORT LIMITED

142. For the protection of PD Teesport, the following provisions have effect, unless otherwise agreed in writing between the undertaker and PD Teesport.

143. In this Part of this Schedule—

"PD Teesport" means PD Teesport Limited (company number 02636007) and any successor in title or function to the PD Teesport operations;

"the PD Teesport operations" means the port operations or property within the Order limits vested in PD Teesport Limited, including access to and from the port via Tees Dock Road and access and use of the berth at the Redcar Bulk Terminal;

"road user(s)" means any person who has a—

(a) right to use Seal Sands Road or South Gare Road;

(b) need to use Seal Sands Road or South Gare Road to access property or facilities owned, operated or occupied by them; and

(c) need to use Seal Sands Road or South Gare Road in connection with undertaking their business operations or statutory functions;

"Seal Sands Road" means any part of Seal Sands Road within the Order limits;

"South Gare Road" means any part of South Gare Road within the Order limits; and

"works details" means—

(a) plans and sections;

(b) details of the proposed method of working and timing of execution of works;

(c) details of vehicle access routes for construction and operational traffic; and

(d) any further particulars provided in response to a request under paragraph 148.

Regulation of powers

144. 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.

145. Any approval of PD Teesport required under paragraph 144 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 and operational viability of the PD Teesport operations; and

(b) the requirement for PD Teesport to have reasonable access to the PD Teesport operations at all times.

Regulation of powers in relation to Seal Sands Road

146.—(1) The undertaker must not exercise the powers granted under this Order so as to hinder or prevent access via Seal Sands Road such access to be either along the existing highway route at Seal Sands Road, or such diversionary route as the undertaker may provide.

(2) Sub-paragraph (1) is for the benefit of PD Teesport and road users.

Regulation of powers in relation to South Gare Road

147.—(1) The undertaker must not exercise the powers granted under this Order so as to hinder or prevent access via South Gare Road, including access to the protective break water and lighthouse, such access to be either along the existing highway route at South Gare Road, or such diversionary route as the undertaker may provide.

(2) Sub-paragraph (1) is for the benefit of PD Teesport and road users.

Consent under this Part

148. Before commencing any part of the authorised development which would have an effect on the operation or maintenance of the PD Teesport operations or access to them, the undertaker must submit to PD Teesport the works details for the proposed works and such further particulars as PD Teesport may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

149. No works comprising any part of the authorised development which would have an effect on the operation or maintenance of the PD Teesport operations or access to them are to be commenced until the works details in respect of those works submitted under paragraph 148 have been approved by PD Teesport.

150. Any approval of PD Teesport required under paragraph 149 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 and operational viability of the PD Teesport operations; and

(b) the requirement for PD Teesport to have uninterrupted and unimpeded river access to the port within the PD Teesport operations at all times.

151. The authorised development must be carried out in accordance with the works details approved under paragraph 149 and any requirements imposed on the approval under paragraph 150.

152. Where there has been a reference to an arbitrator in accordance with paragraph 156 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 156.

Co-operation

153. Insofar as the construction of any part of the authorised development and the operation or maintenance of the PD Teesport operations or access to them would have an effect on each other, the undertaker and PD Teesport 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 and the PD Teesport operations to continue;

(ii) that access for the purposes of constructing the authorised development is maintained for the undertaker, its employees, contractors and sub-contractors; and

(iii) that operation and access to the PD Teesport operations is maintained for PD Teesport; and

(b) use reasonable endeavours to avoid any conflict arising from the carrying out of the PD Teesport operations and the construction of the authorised development.

154. PD Teesport must consult the undertaker before giving any general direction or adopting any new byelaw which directly affects the construction, operation or maintenance of the authorised development.

Indemnity

155.—(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 148, 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) make reasonable compensation to PD Teesport for any other expenses, loss, damages, penalty or costs incurred by PD Teesport, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of PD Teesport, its officers, employees, servants, contractors or agents.

(3) PD Teesport must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) 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 155 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 155 for claims reasonably incurred by PD Teesport.

Arbitration

156. Any difference or dispute arising between the undertaker and PD Teesport under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and PD Teesport, be referred to and settled by arbitration in accordance with article 47 (arbitration).

PART 14

FOR THE PROTECTION OF REDCAR BULK TERMINAL LIMITED

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

158. In this Part of this Schedule—

"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 operations, such procedure to commence when the undertaker, its employees, contractors or sub-contractors have docked the relevant vessel at the wharf for the purposes of such offloading;

"RBT" means Redcar Bulk Terminal Limited (Company number 07402297) and any successor in title or function to the RBT operations;

"the RBT operations" means the port operations of RBT or property within the Order limits vested in RBT; 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 traffic;

(d) details of lifting and scheduling activities on the wharf, including the programming and access requirements for any offloading procedures; and

(e) any further particulars provided in response to a request under paragraph 162.

Regulation of powers

159. The undertaker must not exercise the powers granted under this Order so as to hinder or prevent the operation or maintenance of the RBT operations or access to them without the prior written consent of RBT.

160. Any approval of RBT required under paragraph 159 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as RBT may require to be made for—

(a) the continuing safety and operational viability of the RBT operations; and

(b) the requirement for RBT to have reasonable access to the RBT operations at all times.

161. Without limiting paragraph 160, it is not reasonable for RBT to give approval pursuant to paragraph 160 subject to requirements which restrict or interfere with the undertaker's access to the wharf within the RBT operations during an offloading procedure.

Consent under this Part

162. Before commencing—

(a) any part of the authorised development which would have an effect on the operation or maintenance of the RBT operations or access to them; or

(b) any activities on the wharf within the RBT operations,

the undertaker must submit to RBT the works details for the proposed works or activities and such further particulars as RBT may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

163. No—

(a) works comprising any part of the authorised development which would have an effect on the operation or maintenance of the RBT operations or access to them; or

(b) activities on the wharf within the RBT operations,

are to be commenced until the works details in respect of those works or activities submitted under paragraph 162 have been approved by RBT.

164. Any approval of RBT required under paragraph 163 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as RBT may require to be made for—

(a) the continuing safety and operational viability of the RBT operations; and

(b) the requirement for RBT to have reasonable access to the RBT operations at all times.

165. Without limiting paragraph 164, it is not reasonable for RBT to give approval pursuant to paragraph 164 subject to requirements which restrict or interfere with the undertaker's access to the wharf within the RBT operations during an offloading procedure.

166.—(1) The authorised development and activities on the wharf within the RBT operations must be carried out in accordance with the works details approved under paragraph 163 and any requirements imposed on the approval under paragraph 164.

(2) Where there has been a reference to an arbitrator in accordance with paragraph 169 and the arbitrator gives approval for the works details, the authorised development and activities on the wharf within the RBT operations must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 169.

Co-operation

167. Insofar as the construction of any part of the authorised development or activities on the wharf within the RBT Operations, 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 (including offloading procedures) and the RBT operations to continue;

(ii) that access for the purposes of constructing the authorised development and the undertaker's activities on the wharf (including offloading procedures) is maintained for the undertaker, its employees, contractors and sub-contractors; and

(iii) that operation and access to the RBT operations is maintained for RBT; 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 within the RBT operations (including offloading procedures).

Indemnity

168.—(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 162, any damage is caused to the RBT

operations, or there is any interruption in any service provided, or in the supply of any goods, by RBT, the undertaker must—

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

(b) make reasonable compensation to RBT for any other expenses, loss, damages, penalty or costs incurred by RBT, 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 RBT, its officers, employees, servants, contractors or agents.

(3) RBT 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) 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 168 applies. If requested to do so by the undertaker, RBT 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 168 for claims reasonably incurred by RBT.

Arbitration

169. Any difference or dispute arising between the undertaker and RBT under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and RBT, be referred to and settled by arbitration in accordance with article 47 (arbitration).

PART 15

FOR THE PROTECTION OF SABIC UK PETROCHEMICALS LIMITED

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

171. In this Part of this Schedule—

"Sabic" means Sabic UK Petrochemicals Limited (Company number 03767075) and any successor in title or function to the Sabic pipeline;

"the Sabic pipeline" means the pipeline crossing the Order limits owned or operated by Sabic used at various times for the passage of multi-purpose hydrocarbon fuels and all ancillary apparatus including such works and apparatus properly appurtenant to the pipelines as are specified by section 65(2) (meaning of "pipe-line") of the Pipe-Lines Act 1962; and

"works details" means—

(a) plans and sections;

(b) details of the proposed method of working and timing of execution of works;

(c) details of vehicle access routes for construction and operational traffic; and

(d) any further particulars provided in response to a request under paragraph 172.

Consent under this Part

172. Before commencing any part of the authorised development which would have an effect on the operation or maintenance of the Sabic pipeline or access to it, the undertaker must submit to Sabic the works details for the proposed works and such further particulars as Sabic may, within

28 days from the day on which the works details are submitted under this paragraph, reasonably require.

173. No works comprising any part of the authorised development which would have an effect on the operation or maintenance of the Sabic pipeline or access to it are to be commenced until the works details in respect of those works submitted under paragraph 172 have been approved by Sabic.

174. Any approval of Sabic required under paragraph 173 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as Sabic may require to be made for—

(a) the continuing safety and operational viability of the Sabic pipeline; and

(b) the requirement for Sabic to have reasonable access to the Sabic pipeline at all times.

175.—(1) The authorised development must be carried out in accordance with the works details approved under paragraph 173 and any requirements imposed on the approval under paragraph 174.

(2) Where there has been a reference to an arbitrator in accordance with paragraph 176 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 176.

Indemnity

176.—(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 172, any damage is caused to the Sabic pipeline 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.

(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 Sabic, its officers, employees, servants, contractors or agents.

(3) Sabic 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) Sabic must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 176 applies. If requested to do so by the undertaker, Sabic must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 176 for claims reasonably incurred by Sabic.

Arbitration

177. Any difference or dispute arising between the undertaker and Sabic under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Sabic, be referred to and settled by arbitration in accordance with article 47 (arbitration).

PART 16

FOR THE PROTECTION OF SEMBCORP UTILITIES (UK) LIMITED

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

179. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to serve the owner of the apparatus in question in a manner no less efficient than previously;

"apparatus" means mains, pipes, cables, sewers, drains, ditches, watercourses or other apparatus operated by Sembcorp or (so far as it is within sub-paragraphs (a) to (c) of the definition of the Sembcorp operations) others and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"third party owner or operator" means an owner or operator of apparatus other than Sembcorp and which is comprised within the Sembcorp operations; 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 183.

Separate approvals by third party owners or operators

180.—(1) Paragraphs 181 to 186 apply except to the extent that the undertaker obtains the approval of a third party owner or operator.

(2) Nothing in sub-paragraph (1) removes any obligation on the undertaker to seek consent from Sembcorp pursuant to paragraphs 181 to 186 in respect of any apparatus owned or operated other than by the relevant third party owner or operator.

(3) Where the undertaker seeks consent from a third party owner or operator the undertaker must provide Sembcorp with—

(a) the same information provided to the third party owner or operator to the extent that it is relevant to the Sembcorp operations; and

(b) a copy of any approval from the third party owner or operator.

Removal of apparatus

181.—(1) If, in exercise of the powers conferred by this Order, the undertaker acquires any estate, interest or right in any land in which any apparatus is placed, the apparatus must not be removed, and any right to maintain the apparatus in the land must not be extinguished, until alternative apparatus has been constructed and is in operation and equivalent rights for the alternative apparatus have been granted to 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 or to be 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 of the relevant apparatus 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 the necessary facilities and rights for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and replacement of alternative apparatus in other land of the undertaker and subsequently for the maintenance of the apparatus.

(3) Any alternative apparatus to be constructed in land of the undertaker under this Part must be constructed in such manner and in such line or situation as may be agreed between the relevant owner or operator and the undertaker or in default of agreement settled by an arbitrator appointed under paragraph 195.

(4) The relevant owner or operator must, after the alternative apparatus to be provided or constructed has been agreed or determined by an arbitrator under paragraph 195, and after the grant to the owner of any such facilities and rights as are referred to in sub-paragraph (2) and after the expiration of any applicable notice period in respect of the works under the Pipelines Safety Regulations 1996, proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under this Part.

(5) Notwithstanding sub-paragraph (4), if the undertaker gives notice in writing to the relevant owner or 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 owner or operator, must be executed by the undertaker without unnecessary delay to an appropriate standard and in a safe manner.

(6) If works are executed by the undertaker in accordance with sub-paragraph (5), the owner or operator of the apparatus 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 300 millimetres of the apparatus, without the written agreement of the owner or operator, such agreement not to be unreasonably withheld.

Alternative apparatus

182.—(1) Where, in accordance with this Part, the undertaker affords to an owner or 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 relevant owner or operator or in default of agreement determined by arbitration under paragraph 195, such terms to be no less favourable as a whole than the terms and conditions which applied to the apparatus to be removed.

(2) In settling the terms and conditions in respect of alternative apparatus to be constructed in or along the authorised development, the arbitrator must—

(a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus that may be required to prevent interference with any proposed works of the undertaker; and

(b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or along the authorised development for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator materially worse than the rights enjoyed by them in respect of the apparatus to be removed, the arbitrator must make such provision for the payment of compensation by the undertaker to the owner or operator as appears to the expert to be reasonable, having regard to all the circumstances of the particular case.

Consent under this Part in connection with Sembcorp operations

183. Before commencing any part of the authorised development which would have an effect on the operation or maintenance of the Sembcorp operations or access to them, the undertaker must submit to Sembcorp the works details for the proposed works and such further particulars as Sembcorp may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

184. No works comprising any part of the authorised development which would have an effect on the operation or maintenance of the Sembcorp operations or access to them are to be commenced until the works details in respect of those works submitted under paragraph 183 have been approved by Sembcorp.

185. Any approval of Sembcorp required under paragraph 183 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as Sembcorp may require to be made for—

(a) the continuing safety and operational viability of the Sembcorp operations; and

(b) the requirement for Sembcorp to have reasonable access to the Sembcorp operations at all times.

186.—(1) The authorised development must be carried out in accordance with the works details approved under paragraph 183 and any requirements imposed on the approval under paragraph 185.

(2) Where there has been a reference to an arbitrator in accordance with paragraph 195 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 195.

Insurance

187.—(1) Before carrying out any works forming part of the authorised development which are within the Sembcorp operations, the undertaker must put in place a policy of insurance with a reputable insurer in respect of public liability and contamination of land, 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 which are within the Sembcorp operations 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 must maintain insurance in relation to works or the use of the authorised development which are within the Sembcorp operations, during the operation of the authorised development at the level specified in the notice of proposed insurance or as determined by arbitration.

(4) If there is a dispute in relation to the proposed insurance including the terms or level of cover to be provided, Sembcorp or the undertaker may refer the matter to arbitration under paragraph 195.

Expenses

188.—(1) Subject to the provisions of this paragraph, the undertaker must pay to Sembcorp the reasonable expenses incurred by Sembcorp under this Part in connection with—

(a) the inspection, removal and relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus or alternative apparatus under any provision of this Part;

(b) the cutting off of any apparatus from any other apparatus, or the making safe of any redundant apparatus in consequence of the exercise by the undertaker of any power under this Order;

(c) the survey of any land, apparatus or works, the watching, inspection, superintendence and monitoring of works or the installation or removal of any temporary works in consequence of the exercise by the undertaker of any power under this Order;

(d) the design, project management, supervision and implementation of works;

(e) the negotiation and grant of necessary rights for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and replacement of alternative apparatus;

(f) monitoring the effectiveness of any requirements referred to in paragraph 185 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;

(g) the service by the undertaker of any notice, plan, section or description,

within a reasonable time of being notified by the owner or operator that it has incurred such expenses, such notification to be provided by the owner or operator in advance of the expenses to be incurred.

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under this Part, that value being calculated after removal.

(3) If in accordance with this Part—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by an arbitrator under paragraph 195 to be necessary, then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the owner in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) 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 (3), regard must be had to current health and safety requirements, current design standards, relevant good practice and process design specification.

(5) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

(6) An amount which apart from this sub-paragraph would be payable to Sembcorp in respect of works by virtue of sub-paragraph (1) must, if it confers a financial benefit on Sembcorp by deferment of the time for renewal of the apparatus in the ordinary course of Sembcorp's business practice, be reduced by the amount that represents that benefit.

Indemnity

189.—(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 181 (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 Sembcorp, or there is any interruption in any service provided, or in the supply of any goods, by Sembcorp, the undertaker must—

(a) bear and pay the cost reasonably incurred by Sembcorp in making good such damage or restoring the service, supply or operations; and

(b) make reasonable compensation to Sembcorp for any other expenses, loss, damages, penalty or costs incurred by Sembcorp, 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 Sembcorp, its officers, employees, servants, contractors or agents.

(3) Sembcorp 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) Sembcorp 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 189 applies. If requested to do so by the undertaker, Sembcorp 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 189 for claims reasonably incurred by Sembcorp.

Participation in community groups

190. Before undertaking any works or exercising any powers in this Order relating to or affecting the Sembcorp operations, the undertaker must participate in any relevant consultation groups established or co-ordinated by Sembcorp.

191. Before undertaking any construction works affecting the Sembcorp operations, where any of these might reasonably be expected to give rise to significantly perceptible effects beyond the Order limits in terms of—

(a) construction noise and vibration management;

(b) air quality, including dust emissions;

(c) waste management;

(d) traffic management and materials storage on site;

(e) surface water and groundwater management; or

(f) artificial light emissions,

the undertaker must participate in any relevant community environmental liaison group that may be established or co-ordinated by Sembcorp with local residents.

192. The undertaker must co-operate with Sembcorp to respond promptly to any complaints raised in relation to the construction or operation of the authorised development or the traffic associated with the authorised development.

193. The undertakers' obligations in paragraphs 190 and 191 are subject to Sembcorp providing reasonable notice to them of the existence of a relevant consultation group or a relevant community environmental liaison group and reasonable notice of the arrangements for meetings of those groups.

Notice of start and completion of commissioning

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

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

Arbitration

195. Any difference or dispute arising between the undertaker and Sembcorp under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Sembcorp, be referred to and settled by arbitration in accordance with article 47 (arbitration).

PART 17

FOR THE PROTECTION OF YORK POTASH

196. The provisions of this Part apply for the protection of York Potash unless otherwise agreed in writing between the undertaker and York Potash.

197. In this Part—

"apparatus" means the pipeline, cables, structures or other infrastructure owned, occupied or maintained by York Potash or its successor in title within the shared area;

"construction" includes execution, placing, altering, replacing, reconstruction, relaying, maintenance, extensions, enlargement and removal; and "construct" and "constructed" must be construed accordingly;

"Net Zero Teesside specified works" means so much of any works or operations authorised by this Order (or authorised by any planning permission intended to operate in conjunction with this Order) as is within the shared area;

"plans" includes sections, drawings, specifications, designs, 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;

"the respective authorised developments" means the developments authorised by the Order (or authorised by any planning permission intended to operate in conjunction with this Order) and the York Potash Order (or authorised by any planning permission intended to operate in conjunction with the York Potash Order) respectively;

"shared area" means the land within plots 219, 220, 221, 222, 223, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 259, 261, 262, 263, 264, 272, 273, 275, 276, 277, 278, 280, 281, 284, 285, 286, 288, 289, 294, 301, 302, 303, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 324, 325, 328, 329, 330, 331, 332, 333, 343, 344, 345, 347, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 365, 366, 368, 370, 373, 374, 376, 381, 382, 383, 384, 395, 397, 401, 405, 417, 418, 419, 427, 428, 432, 435, 436, 437, 439, 441, 443, 453, 459, 486, 489, 510, 511, 514, 517, 523 as shown on the land plans;

"York Potash" means an undertaker with the benefit of all or part of the York Potash Order for the time being and at this time being Anglo American Woodsmith Limited (company number 07251600) and Anglo American Crop Nutrients Limited (company number 04948435) both of 17 Charterhouse Street, London, EC1N 6RA;

"York Potash Order" means the York Potash Harbour Facilities Order 2016; and

"York Potash specified works" means so much of any works or operations authorised by the York Potash Order (or authorised by any planning permission intended to operate in conjunction with the York Potash Order) as is within the shared area.

Consent under this Part

198. The consent of York Potash under this Part is not required where the York Potash Order has expired without the authorised development having been commenced pursuant to requirement 1 of Schedule 2 to the York Potash Order.

199. Where conditions are included in any consent granted by York Potash pursuant to this Part, 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 York Potash.

200. Wherever in this Part provision is made with respect to the approval or consent of York Potash, that approval or consent must be in writing (and subject to such reasonable terms and conditions as York Potash may require), but must not be unreasonably withheld or delayed.

201. In the event that York Potash does not respond in writing to a request for approval or consent within 28 days of receipt of such a request, York Potash is deemed to have given its consent, without any terms or conditions.

Co-operation

202. Insofar as the construction of the York Potash specified works is or may be undertaken concurrently with the Net Zero Teesside specified works, the undertaker must—

(a) co-operate with York Potash with a view to ensuring—

(i) the co-ordination of construction programming and the carrying out of works; and

(ii) that access for the purposes of constructing the respective authorised developments is maintained for the undertaker and York Potash and their respective contractors, employees, contractors and sub-contractors; and

(b) use reasonable endeavours to avoid any conflict arising from the carrying out of the respective authorised developments.

Regulation of powers over the shared area

203. The undertaker must not exercise the powers granted under this Order so as to hinder or prevent the construction, use or maintenance of the York Potash specified works without the prior written consent of York Potash.

Regulation of works within the shared area

204.—(1) The undertaker must not carry out any Net Zero Teesside specified works without the consent of York Potash.

(2) Subject to obtaining consent pursuant to sub-paragraph (1) and before beginning to construct any Net Zero Teesside specified works, the undertaker must submit plans of the Net Zero Teesside specified works to York Potash and must submit such further particulars available to it that York Potash may reasonably require.

(3) Any Net Zero Teesside specified works must be constructed without unreasonable delay in accordance with the plans approved in writing by York Potash.

(4) Any approval of York Potash required under this paragraph may be made subject to such reasonable conditions as may be required for the protection or alteration of or access to any York Potash specified works.

(5) Where York Potash 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 York Potash's reasonable satisfaction.

(6) 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 Net Zero

Teesside specified works, new plans instead of the plans previously submitted, and the provisions of this paragraph shall apply to and in respect of the new plans.

205.—(1) The undertaker must give to York Potash not less than 28 days' written notice of its intention to commence the construction of the Net Zero Teesside specified works and, not more than 14 days after completion of their construction, must give York Potash written notice of the completion.

(2) The undertaker is not required to comply with paragraph 204 or sub-paragraph (1) in a case of emergency, but in that case it must give to York Potash 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 paragraph 204 in so far as is reasonably practicable in the circumstances.

206. The undertaker must at all reasonable times during construction of the Net Zero Teesside specified works allow York Potash and its officers, employees, servants, contractors and agents access to the Net Zero Teesside specified works and all reasonable facilities for inspection of the Net Zero Teesside specified works.

207.—(1) 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 York Potash requiring the undertaker to do so, remove the temporary works in, on, under, over, or within the shared area.

(2) If the undertaker fails to remove the temporary works within a reasonable period of receipt of a notice pursuant to sub-paragraph (1), York Potash may remove the temporary works and may recover the reasonable costs of doing so from the undertaker.

208. The undertaker must not exercise the powers conferred by this Order or undertake the Net Zero Teesside specified works to prevent or interfere with the access by York Potash to the York Potash specified works.

209. If in consequence of the exercise of the powers conferred by this Order or the undertaking of the Net Zero Teesside specified works the access to any York Potash specified works is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable York Potash to maintain or use the apparatus no less effectively than was possible before the obstruction.

210. To ensure its compliance with this Part, the undertaker must before carrying out any Net Zero Teesside specified works request up-to-date written confirmation from York Potash of the location of any apparatus.

Miscellaneous provisions

211. The undertaker and York Potash must each act in good faith and use reasonable endeavours to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this Part.

212. The undertaker must pay to York Potash the reasonable expenses incurred by York Potash in connection with the approval of plans, inspection of any Net Zero Teesside specified works or the alteration or protection of any apparatus.

213.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any Net Zero Teesside specified works, any damage is caused to any apparatus or York Potash specified works or there is any interruption in any service provided, or in the supply of any goods, by York Potash, or York Potash becomes liable to pay any amount to any third party, the undertaker must—

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

(b) compensate York Potash for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from York Potash, by reason or in consequence of any such damage or interruption or York Potash becoming liable to any third party as aforesaid.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of York Potash, its officers, employees, servants, contractors or agents.

(3) York Potash must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made, unless payment is required in connection with a statutory compensation scheme without first consulting the undertaker and considering its representations.

(4) York Potash 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 213 applies. If requested to do so by the undertaker, York Potash 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 213 for claims reasonably incurred by York Potash.

(5) The fact that any work or thing has been executed or done with the consent of York Potash and in accordance with any conditions or restrictions prescribed by York Potash or in accordance with any plans approved by York Potash or to its satisfaction or in accordance with any directions or award of any arbitrator does not relieve the undertaker from any liability under this Part.

Arbitration

214. Any difference or dispute arising between the undertaker and York Potash under this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and York Potash, be referred to and settled by arbitration in accordance with article 47 (arbitration).

PART 18

FOR THE PROTECTION OF SUEZ RECYCLING AND RECOVERY UK LIMITED

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

216. In this Part of this Schedule—

"the respective authorised developments" means the authorised development and the Suez energy from waste facility respectively;

"Suez" means Suez Recycling and Recovery UK Limited (Company number 02291198) and any successor in title;

"the Suez energy from waste facility" the proposed energy from waste facility authorised by planning permission [ref 14/1454/EIA] granted by Stockton-on-Tee Borough Council to be situated on the Suez site;

"Suez site" means the land within the Order limits owned by Suez; and

"works details" means—

(a) plans and sections;

(b) details of the proposed method of working and timing of execution of works;

(c) details of vehicle access routes for construction and operational traffic; and

(d) any further particulars provided in response to a request under paragraph 218.

Consent under this Part

217. Paragraphs 218 to 221 of this Part only apply where prior to the undertaker commencing any part of Work Number 6 Suez has either begun or completed construction of the Suez energy from waste facility anywhere within the Order limits.

218. Before commencing any part of the authorised development which would have an effect on the operation or maintenance of the Suez energy from waste facility or access to it, the undertaker must submit to Suez the works details for the proposed works and such further particulars as Suez may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

219. No works comprising any part of the authorised development which would have an effect on the operation or maintenance of the Suez energy from waste facility or access to it are to be commenced until the works details in respect of those works submitted under paragraph 218 have been approved by Suez.

220. Any approval of Suez required under paragraph 219 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as Suez may require to be made to ensure that the respective authorised developments can co-exist within the Suez site.

221.—(1) The authorised development must be carried out in accordance with the works details approved under paragraph 219 and any requirements imposed on the approval under paragraph 220.

(2) Where there has been a reference to an arbitrator in accordance with paragraph 224 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 224.

Co-operation

222.—(1) This paragraph applies insofar as—

(a) the construction of the respective authorised developments may be undertaken within the Order limits concurrently; or

(b) the construction of one of the respective authorised developments would have an effect on the operation or maintenance of the other respective authorised development or access to it.

(2) Where this paragraph applies the undertaker and Suez must—

(a) co-operate with each other with a view to ensuring—

(i) the co-ordination of construction programming and the carrying out of the respective authorised developments;

(ii) that access for the purposes of constructing the respective authorised developments is maintained for the undertaker, Suez and their respective employees, contractors and sub-contractors; and

(iii) that operation, maintenance and access to the respective authorised developments is maintained for the undertaker and Suez; and

(b) use reasonable endeavours to avoid any conflict arising from the carrying out of the respective authorised developments.

Indemnity

223.—(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 218, any damage is caused to the Suez site, or there is any interruption in any service provided, or in the supply of any goods, by Suez, the undertaker must—

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

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

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

(a) any damage or interruption to the extent that it is attributable to the act, neglect or default of Suez, its officers, employees, servants, contractors or agents; or

(b) any indirect or consequential loss or loss of profits by Suez.

(3) Suez must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Suez must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 223 applies. If requested to do so by the undertaker, Suez must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 223 for claims reasonably incurred by Suez.

Arbitration

224. Any difference or dispute arising between the undertaker and Suez under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Suez, be referred to and settled by arbitration in accordance with article 47 (arbitration).

PART 19

FOR THE PROTECTION OF SOUTH TEES DEVELOPMENT CORPORATION

225. For the protection of South Tees Development Corporation, Teesworks Limited and South Tees Developments Limited, the following provisions have effect, unless otherwise agreed in writing between the undertaker and South Tees Development Corporation, South Tees Developments Limited and Teesworks Limited.

226. In this Part of this Schedule—

"AIL access route land" means plot 290, 291 and 299, so far as required in relation to Work No. 10;

"AIL access route works" means Work No. 10 within the AIL access route land;

"discharge outfall land" means plots 297 and 308, so far as required in relation to Work No. 5A;

"discharge outfall works" means Work No. 5A within the discharge outfall land;

"diversion condition" means that in relation to the relevant diversion work—

(a) in relation to a proposed work which is required for the construction of the authorised development, that it is in the reasonable opinion of the undertaker adequate to enable the authorised development to be constructed and commissioned;

(b) in relation to a proposed work which is required for the maintenance or operation of the authorised development, that it is in the reasonable opinion of the undertaker adequate to enable 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 cost of the relevant proposed work;

(d) planning permission is not required or has been granted and such other consents, licences or authorisations as are required for the diversion work have been obtained;

(e) the Teesworks entity can grant adequate interest in land 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;

(f) the diversion work is already constructed and available for use by the undertaker or where a diversion work is to be carried out by the Teesworks entity a programme for carrying out and completing the diversion work and, whether a diversion work is to be carried out by the Teesworks entity or the undertaker, it can be carried out and completed in accordance with the undertakers' programme for the construction of the authorised development;

(g) in relation only to the AIL access route work that abnormal indivisible loads can be transported efficiently and safely from Redcar Bulk Terminal at plot 223 to the areas of Work Nos. 1, 7 and 9A;

(h) in relation only to the southern access route work that heavy goods vehicles can access from the public highway through the Lackenby Gate and to the areas of Work Nos.1, 3, 7 and 9A; and

(i) in relation only to the parking diversion works that 1,200 car parking spaces will be available to the undertaker to use during construction and commissioning of the authorised development and at a location that is suitable for that purpose and enables the authorised development to be carried out reasonably efficiently;

"diversion notice" means a notice from the Teesworks entity to the undertaker under paragraph 238;

"diversion work" means works, development or use of land;

"diversion works agreement" means an agreement between the Teesworks entity and the undertaker in relation to a diversion work which provides—

(a) adequate interest in land to allow the undertaker to use and where relevant maintain and operate the diversion work for its intended purpose as part of or in connection with the authorised development; and

(b) where relevant, that the undertaker can carry out the diversion work or that the Teesworks entity must carry out the diversion work, in either case in accordance with the undertakers' programme for the construction of the authorised development;

"identified power" means a power conferred by the following in relation to a proposed work—

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

(b) article 23 (power to override easements and other rights);

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

(d) article 26 (private rights);

(e) article 28 (acquisition of subsoil and airspace only);

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

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

(h) article 33 (statutory undertakers),

or the powers conferred by section 11(3) (powers of entry) of the 1965 Act or the 1981 Act as applied by this Order;

"information notice" means a notice issued by the undertaker under paragraph 240(c) that additional information is required before it can decide whether to agree to a diversion work;

"Lackenby Gate" means the entrance to the Teesworks site located on the A1085 Trunk Road and known as Lackenby Gate;

"parking land" means part of each of plots 289, 292, 293, 298 and 300 being the area shown hatched green on the parking plan, so far as required in relation to Work No. 9A;

“parking plan” means the plan which is certified as the parking plan by the Secretary of State under article 45 (certification of plans etc.) for the purposes of this Order;

“parking works” means use of the parking land within part of Work No. 9A for parking;

“PCC site access plan” means the plan which is certified as the PCC site access plan by the Secretary of State under article 45 (certification of plans etc.) for the purposes of this Order;

“PCC site access route land” means parts of plots 425, 459, 485 and 488, and plots 425a, 458, 458a, 467, 470, 473, 493, 496, 500, 502, 504, 505 and 508, being the area shown hatched green on the PCC site access plan so far as required in relation to Work No. 10;

“PCC site access route works” means Work No. 10 within the PCC site access route land;

“proposed land” means one of the AIL access route land, the southern access route land, the water connection land, the parking land, the PCC site access route land, or the discharge outfall land;

“proposed work” means one of the AIL access route works, the discharge outfall works, the parking works, the southern access route works, the PCC site access route works or the water connection works;

“proposed work programme” means a programme for the construction and use of a proposed work;

“the respective authorised developments” means the authorised development and the Teesworks development respectively;

“southern access route land” means plots 274, 279, 282, 283, 287, 296, 348, 362, 363, 367, 370, 373, 374, 376 and 381 so far as required in relation to Work No. 10;

“southern access route works” means Work No. 10 within the southern access route land;

“South Tees Developments Limited” means South Tees Developments Limited (Company number 11747311) whose registered office is at Teesside Airport Business Suite, Teesside International Airport, Darlington, United Kingdom, DL2 1NJ;

“the Teesworks development” means development authorised by any planning permission granted in relation to the Teesworks site;

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

“Teesworks entity” means subject to paragraph 254 Teesworks Limited, STDC and South Tees Developments Limited and any successor in title to the freehold interest in the Teesworks site;

“the Teesworks site” means the land within the limits shown on the works plans for numbered works 2A, 3, 4A, 5, 6, 8, 9 and 10 owned by STDC and South Tees Developments Limited;

“water connection land” means part of plot 473 and plots 409a, 425a, 458, 461, 463, 467, 470, 472, 498, 509, 512, 515, 516, 518, 519, 521, 522, 524, 525, 531, 532, 533, 534, 535, 536, 537, 538, being the area shown hatched green on the water connection plan, and so far as required in relation to Work No. 4;

“water connection plan” means the plan which is certified as the water connection plan by the Secretary of State under article 45 (certification of plans etc.) for the purposes of this Order;

“water connection works” means Work No. 4 within the water connection land;

“works details” means—

(a) plans and sections;

(b) details of the proposed method of working;

(c) details of the programme and timing of execution of the works;

(d) details of vehicle access routes for construction and operational traffic;

(e) details of the location within the Teesworks site of a corridor situated within the limits shown on the works plans for numbered works 2A, 3, 4A, 5, 6 and 8 within which the corresponding works are proposed to be carried out;

(f) details of the location within the Teesworks site of a corridor situated within the limits shown on the works plans for numbered works 2A, 3, 4A, 5, 6 and 8 within which the permanent corresponding works will be placed; and

(g) any further particulars provided in response to a request under paragraph 227; and

"works notice" means a notice setting out details of a proposed work (sufficient to allow consideration of a potential diversion work and including a programme) and the exercise of an identified power in respect of any part of the proposed land.

Consent for works

227. Before commencing the construction of any part of numbered works 2A, 3, 4A, 5, 6, 8, 9 and 10 within the Teesworks site, the undertaker must first submit to the Teesworks entity for its approval the works details for the work and such further particulars as the Teesworks entity may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

228. No works comprising any part of numbered works 2A, 3, 4A, 5, 6, 8, 9 and 10 within the Teesworks site are to be commenced until the works details in respect of those works submitted under paragraph 227 have been approved by the Teesworks entity.

229. Any approval of the Teesworks entity required under paragraph 227 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as the Teesworks entity may require to be made to ensure that the respective authorised developments can co-exist within the Teesworks site.

230. The authorised development must be carried out in accordance with the works details approved under paragraph 227 and any requirements imposed on the approval under paragraph 229 or where there has been a reference to an arbitrator in accordance with paragraph 253 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.

Co-operation

231. The Teesworks entity must provide the undertaker with information the undertaker requests in relation to the Teesworks development and which the undertaker reasonably needs (and which is reasonably available to the Teesworks entity) in order to understand the interactions between the respective authorised developments or to design, build and operate the authorised development.

232. The undertaker must provide the Teesworks entity with information the Teesworks entity requests in relation to the authorised development and which the Teesworks entity reasonably needs in order to understand the interactions between the respective authorised developments or to design, build and operate the Teesworks development.

233.—(1) This paragraph applies insofar as—

(a) the construction of the authorised development may be undertaken on the Teesworks site concurrently with demolition or site preparation works undertaken by the Teesworks entity;

(b) the construction of the respective authorised developments may be undertaken on the Teesworks site concurrently; or

(c) the construction of one of the respective authorised developments would have an effect on the operation or maintenance of the other respective authorised development or access to it.

(2) Where this paragraph applies the undertaker and the Teesworks entity must—

(a) co-operate with each other with a view to ensuring—

(i) the co-ordination of construction programming and the carrying out of the respective authorised developments;

(ii) that access for the purposes of constructing the respective authorised developments is maintained for the undertaker, the Teesworks entity and their respective employees, contractors and sub-contractors; and

(iii) that operation, maintenance and access to the respective authorised developments is maintained for the undertaker and the Teesworks entity;

(b) use reasonable endeavours to avoid any conflict arising from the carrying out of the respective authorised developments.

Expenses

234. Subject to the following provisions of this paragraph, the undertaker must repay to Teesworks Limited, South Tees Developments Limited and STDC the reasonable costs and expenses incurred by them in, or in connection with—

(a) the authorisation of works details in accordance with paragraphs 227 to 230;

(b) the process in relation to proposed works and diversion works set out in paragraphs 236 to 247;

(c) where the relevant diversion work is provided by the Teesworks entity and solely for the use of the undertaker in connection with the authorised development, the construction of a diversion work provided instead of the AIL access route works, the parking works, the outfall discharge works, the PCC site access route works or the water connection works;

(d) where the relevant work is provided for the use of the undertaker in connection with the authorised development and for use in connection with or as part of the wider Teesworks site, a proportion of the cost of construction of a diversion work provided instead of the AIL access route works, the parking works, the southern access route works, the outfall discharge works, the PCC site access route works or the water connection works, such proportion to be agreed between the undertaker and the Teesworks entity or to be determined by arbitration pursuant to paragraph 253.

(2) Prior to incurring any expenses associated with the activities outlined in sub-paragraph 234, Teesworks Limited, South Tees Developments Limited and STDC 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.

Indemnity

235.—(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 227 and approved under paragraph 228, any damage is caused to the Teesworks site, or there is any interruption in any service provided, or in the supply of any goods, by the Teesworks entity, the undertaker must—

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

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

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of the Teesworks entity, its officers, employees, servants, contractors or agents.

(3) The Teesworks entity must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker

which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) The Teesworks entity must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 235 applies. If requested to do so by the undertaker, the Teesworks entity must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to paragraph (1). The undertaker shall only be liable under this paragraph 235 for claims reasonably incurred by the Teesworks entity.

Provision for diversion works

236. The undertaker must—

(a) at any time prior to commencing any part of a proposed work or exercising an identified power provide details of its proposed works programme and such further particulars relating to the proposed works as the Teesworks entity may reasonably request and must provide the details reasonably available to the undertaker within a period of 30 days or such longer period as the Teesworks entity and the undertaker may agree; and

(b) prior to exercising an identified power in respect of any part of the proposed land issue a works notice to the Teesworks entity for that part.

237. If the undertaker intends to change the timing of the proposed work as set out in a proposed works programme issued to the Teesworks entity or the timing of the proposed works set out in a work notice the undertaker must notify the Teesworks entity as soon as reasonably practicable and where the undertaker decides to change timing which was specified in a work notice it must issue a revised work notice to the Teesworks entity.

238. The Teesworks entity may issue a 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 236(b); or

(b) the date of issue of the most recent work notice under paragraph 237.

239. 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.

240. If a diversion notice is issued to the undertaker before the expiry of the period under paragraph 238, the undertaker must notify the Teesworks entity no later than 30 days after the date of receipt of the diversion notice confirming whether the undertaker—

(a) agrees to diversion work;

(b) does not agree to the diversion work; or

(c) requires additional information to consider whether it agrees to the diversion work.

241. In making the decision under paragraph 240 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.

242. Where the undertaker gives an information notice to the Teesworks entity, that notice must set out what additional information is required by the undertaker to decide whether or not it agrees to the diversion notice.

243. Where the undertaker notifies the Teesworks entity under paragraph 240(b) that it does no 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.

244. If the undertaker issues an information notice to the Teesworks entity, the Teesworks entity may submit further information to the undertaker within 30 days of receipt of the information notice.

245. If the Teesworks entity submits further information to the undertaker within 30 days of receipt of the information notice, the undertaker must consider the further information and paragraph 240 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 notice issued by the undertaker under paragraph 240; or

(b) in any case 150 days from the date of the undertaker's works notice under paragraph 236(b) or if relevant 150 days from the date of any further works notice issued by the undertaker under paragraph 237.

246. If the undertaker issues notice to the Teesworks entity under paragraph 240 confirming that it does not agree to the diversion notice, the Teesworks entity may submit a further diversion notice to the undertaker to address the undertaker's reasons for refusal under paragraph 243, 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 240; or

(b) in any case 150 days from the date of the undertaker's works notice under paragraph 236(b) or if relevant 150 days from the date of any further works notice issued by the undertaker under paragraph 237.

247. If the undertaker issues a notice under paragraph 240(a) the Teesworks entity and the undertaker must use reasonable endeavours to enter into a diversion works agreement within 30 days of the notice on such terms as may be agreed between them.

248. If a diversion works agreement is not entered into within the 30 day period set out in paragraph 247 the Teesworks entity or the undertaker may within 5 days of the end of that period refer the matter to arbitration under paragraph 253.

249. If a reference is made to arbitration under paragraph 253 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.

250. Where the arbitrator determines that the terms of the diversion works agreement can be in accordance with the diversion condition the Teesworks entity and the undertaker must use best endeavours to enter into the diversion works agreement on the terms determined by the arbitrator within 10 days of the arbitrator's decision.

251. If—

(a) a diversion works agreement is entered into within the 30 day period set out in paragraph 247; or

(b) a reference to arbitration is made in accordance with paragraph 253 and a diversion works agreement is entered into within the 10 day period in paragraph 250,

the undertaker must not exercise the identified powers in respect of the relevant proposed land.

252. If—

(a) no diversion notice is issued by the Teesworks entity to the undertaker before the expiry of the period under paragraph 238;

(b) a diversion notice is issued by the Teesworks entity to the undertaker, the undertaker issues a notice not agreeing to the diversion work under paragraph 240(b), and no further

diversion notice is issued by the Teesworks entity to the undertaker prior to the dates set out in paragraph 246;

(c) a diversion notice is issued by the Teesworks entity to the undertaker, the undertaker issues an information notice, and no further information is provided by the Teesworks entity to the undertaker prior to the dates set out in paragraph 245;

(d) paragraph 247 applies and the Teesworks entity and the undertaker do not enter into a diversion works agreement within the 30 day period set out in that paragraph and no reference to arbitration is made prior to the expiry of the period in paragraph 248;

(e) the arbitrator determines under paragraph 253 that the terms of the diversion works agreement cannot reasonably by in accordance with the diversion condition; or

(f) paragraph 250 applies and the Teesworks entity has not executed and unconditionally released for completion a diversion works agreement within the 10 day period set out in that paragraph,

the undertaker may exercise the identified powers in respect of the relevant proposed land in order to (as relevant) carry out, use, maintain, operate or decommission the relevant proposed work.

Arbitration

253. Any difference or dispute arising between the undertaker and the Teesworks entity under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and the Teesworks entity, be referred to and settled by arbitration in accordance with article 47 (arbitration).

Interpretation

254. Any reference to the Teesworks entity in this Part means the freehold owner of the relevant part of the Teesworks site.

255. Where a notice or information is provided by the undertaker to any of STDC, South Tees Developments Limited or Teesworks Limited under this Part, a copy of that notice or information must also be sent to the other parties.

PART 20

FOR THE PROTECTION OF THE BREAGH PIPELINE OWNERS

256. 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.

257. In this Part of this Schedule—

"Breagh Pipeline" means the twenty inch (20") diameter pipeline and associated three inch (3") monoethylene glycol pipeline and fibre-optic cable extending from the field known as the Breagh field located in UKCS blocks 42/12a and 42/13a to the onshore gas reception and processing terminal known as the Teesside Gas Processing Plant (located in Seal Sands, Teesside) owned by the Breagh Pipeline Owners and operated by the Breagh Pipeline Operator used at various times for the passage of natural gas and all ancillary apparatus including such works and apparatus properly appurtenant to the pipelines as are specified by section 65(2) (meaning of "pipe-line") of the Pipe-lines Act 1962;

"Breagh Pipeline Operations" means the operations or property, including the leasehold interests, rights of access and easements relating to the construction and operation of the Breagh Pipeline, within the Order limits vested in the Breagh Pipeline Owners and/or the Breagh Pipeline Operator;

"Breagh Pipeline Operator" means the person, firm or company designated by the Breagh Pipeline Owners to operate the Breagh Pipeline on their behalf, being, at the date of this

Order, INEOS UK SNS Limited (Company number 01021338) and including any successor or assign in such capacity;

"Breagh Pipeline Owners" means any company that owns the Breagh Pipeline being, at the date of this Order, INEOS UK SNS Limited (Company number 01021338) and ONE-DYAS UK LIMITED (Company number 03531783), 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 258.

Consent under this Part

258. 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.

259. 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 258 have been approved by the Breagh Pipeline Owners.

260.—(1) Any approval of the Breagh Pipeline Owners required under paragraph 259 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as the Breagh Pipeline Owners may require to be made for—

(a) the continuing safety and operational viability of the Breagh Pipeline; and

(b) the requirement for the Breagh Pipeline Owners to have—

(i) uninterrupted and unimpeded emergency access with or without vehicles to the Breagh Pipeline and the Breagh Pipeline Operations at all times; and

(ii) reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the Breagh Pipeline and the Breagh Pipeline Operations.

(2) Where the Breagh Pipeline Owners can reasonably demonstrate that the authorised development will significantly adversely affect the safety of the Breagh Pipeline and the Breagh Pipeline Operations they are entitled to withhold their authorisation until the undertaker can demonstrate to the reasonable satisfaction of the Breagh Pipeline Owners that the authorised development will not significantly adversely affect the safety of the Breagh Pipeline and the Breagh Pipeline Operations.

(3) The authorised development must be carried out in accordance with the works details approved under paragraph 259 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 263 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 263.

Compliance with requirements, etc. applying to the Breagh Pipeline and the Breagh Pipeline Operations

261. 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

262.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 258, 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 any damage or interruption to the extent that it is attributable to the act, neglect or default of the Breagh Pipeline Owners, its officers, employees, servants, contractors or agents.

(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 262 applies. If requested to do so by the undertaker, the Breagh Pipeline Owners must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 262 for claims reasonably incurred by the Breagh Pipeline Owners.

Arbitration

263. Any difference or dispute arising between the undertaker and the Breagh Pipeline Owners under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and the Breagh Pipeline Owners, be referred to and settled by arbitration in accordance with article 47 (arbitration).

PART 21

FOR THE PROTECTION OF TEESSIDE WINDFARM LIMITED

264. For the protection of Teesside Windfarm, the following provisions have effect, unless otherwise agreed in writing between the undertaker and Teesside Windfarm.

265. In this Part of this Schedule—

"Teesside Windfarm" means Teesside Windfarm Limited (Company number 06708759) of Alexander House, 1 Mandarin Road, Rainton Bridge Business Park, Houghton Le Spring, DH4 5RA and any successor in title or function to the Teesside Windfarm operations;

"the Teesside Windfarm operations" means the operations or property within the Order limits vested in Teesside Windfarm including the electric line (as defined in the Electricity Act 1989) crossing the Order limits owned and operated by Teesside Windfarm used at various times for carrying electricity and all ancillary apparatus including such works and apparatus properly appurtenant to the electricity line; and

"works details" means—

(a) plans and sections;

(b) details of the proposed method of working and timing of execution of works;

(c) details of vehicle access routes for construction and operational traffic; and

(d) any further particulars provided in response to a request under paragraph 266.

Consent under this Part

266. Before commencing any part of the authorised development which would have an effect on the operation or maintenance of the Teesside Windfarm operations or access to them, cross any infrastructure owned or operated by Teesside Windfarm, the undertaker must submit to Teesside Windfarm the works details for the proposed works and such further particulars as Teesside Windfarm may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

267. No works comprising any part of the authorised development which would have an effect on the operation or maintenance of the Teesside Windfarm operations or access to them, or cross any infrastructure owned or operated by Teesside Windfarm, are to be commenced until the works details in respect of those works submitted under paragraph 266 have been approved by Teesside Windfarm.

268. Any approval of Teesside Windfarm required under paragraph 267 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as Teesside Windfarm may require to be made for—

(a) the continuing safety, uninterrupted use and operational viability of the Teesside Windfarm operations; and

(b) the requirement for Teesside Windfarm to have reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety uninterrupted use and operation or viability of the Teesside Windfarm operations.

269.—(1) The authorised development must be carried out in accordance with the works details approved under paragraph 267 and any requirements imposed on the approval under paragraph 268.

(2) Where there has been a reference to an arbitrator in accordance with paragraph 271 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 271.

Indemnity

270.—(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 266, any damage is caused to the Teesside Windfarm operations, or there is any interruption in any service provided, or in the supply of any goods, by Teesside Windfarm, the undertaker must—

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

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

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Teesside Windfarm, its officers, employees, servants, contractors or agents.

(3) Teesside Windfarm must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) If the Undertaker becomes responsible for a claim or demand pursuant to sub-paragraph (3) it must—

(a) keep Teesside Windfarm fully informed of the developments and material elements of the proceedings;

(b) take account of the views of Teesside Windfarm before taking any action in relation to the claim;

(c) not bring the name of the Teesside Windfarm on any related company into disrepute and act in an appropriate and professional manner when disputing any claim; and

(d) not pay or settle such claims without the prior written consent of Teesside Windfarm, such consent not to be unreasonably withheld or delayed.

(5) Teesside Windfarm must use their reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 270 applies. If requested to do so by the undertaker, Teesside Windfarm must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 270 for claims reasonably incurred by Teesside Windfarm.

Arbitration

271. Any difference or dispute arising between the undertaker and Teesside Windfarm under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Teesside Windfarm, be referred to and settled by arbitration in accordance with article 47 (arbitration).

PART 22

FOR THE PROTECTION OF HUNTSMAN POLYURETHANES (UK) LIMITED

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

273. In this Part of this Schedule—

"HPU" means Huntsman Polyurethanes (UK) Limited (company number 03767067) and any successor in title or function to the HPU operations;

"the HPU operations" means the operations or property within Order limits vested in Huntsman Polyurethanes (UK) Limited including the pipeline crossing the Order limits owned and operated by HPU used at various times for the passage of multi-purpose hydrocarbon fuels and all ancillary apparatus including such works and apparatus properly appurtenant to the pipelines as are specified by section 65(2) (meaning of "pipe-line") of the Pipe-lines Act 1962; and

"works details" means—

(a) plans and sections;

(b) details of the proposed method of working and timing of execution of works;

(c) details of vehicle access routes for construction and operational traffic; and

(d) any further particulars provided in response to a request under paragraph 274.

Consent under this Part

274. Before commencing any part of the authorised development which would have an effect on the operation or maintenance of the HPU operations or access to them, the undertaker must submit to HPU the works details for the proposed works and such further particulars as HPU may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

275. No works comprising any part of the authorised development which would have an effect on the operation or maintenance of the HPU operations or access to them are to be commenced until the works details in respect of those works submitted under paragraph 274 have been approved by HPU.

276.—(1) Any approval of HPU required under paragraph 275 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as HPU may require to be made for—

(a) the continuing safety and operational viability of the HPU operations; and

(b) the requirement for HPU to have—

(i) uninterrupted and unimpeded emergency access with or without vehicles to the HPU 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 HPU operations.

(2) Where HPU can reasonably demonstrate that the authorised development will significantly adversely affect the safety of the HPU operations it is entitled to withhold its authorisation until the undertaker can demonstrate to the reasonable satisfaction of HPU that the authorised development will not significantly adversely affect the safety of the HPU operations.

(3) The authorised development must be carried out in accordance with the works details approved under paragraph 275 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 278 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 278.

Indemnity

277.—(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 274, any damage is caused to the HPU operations, or there is any interruption in any service provided, or in the supply of any goods, by HPU, the undertaker must—

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

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

(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 HPU, its officers, employees, servants, contractors or agents.

(3) HPU 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) HPU must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 277 applies. If requested to do so by the undertaker, HPU must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 277 for claims reasonably incurred by HPU.

Arbitration

278. Any difference or dispute arising between the undertaker and HPU under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and HPU, be referred to and settled by arbitration in accordance with article 47 (arbitration).

PART 23

FOR THE PROTECTION OF NAVIGATOR TERMINALS NORTH TEES LIMITED

279. For the protection of Navigator Terminals, the following provisions have effect, unless otherwise agreed in writing between the undertaker and Navigator Terminals.

280. In this Part of this Schedule—

"Navigator Terminals" means Navigator Terminals North Tees Limited (company number 09889506) and any successor [in title or function] to the Navigator Terminals operations;

"the Navigator Terminals operations" means the operations within the Order limits vested in Navigator Terminals including the pipeline crossing the Order limits operated by Navigator Terminals used at various times for the passage of multi-purpose hydrocarbon fuels and all ancillary apparatus including such works and apparatus properly appurtenant to the pipelines as are specified by section 65(2) (meaning of "pipe-line") of the Pipe-lines Act 1962; and

"works details" means—

(a) plans and sections;

(b) details of the proposed method of working and timing of execution of works;

(c) details of vehicle access routes for construction and operational traffic; and

(d) any further particulars provided in response to a request under paragraph 281.

Consent under this Part

281. Before commencing 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, 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.

282. No works comprising any part of the authorised development which would have an effect on the operation or maintenance of the Navigator Terminals operations or access to them are to be commenced until the works details in respect of those works submitted under paragraph 281 have been approved by Navigator Terminals.

283. Any approval of Navigator Terminals required under paragraph 282 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as Navigator Terminals may require to be made for—

(a) the continuing safety and operational viability of the Navigator Terminals operations; and

(b) the requirement for Navigator Terminals to have reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the Navigator Terminals operations.

284.—(1) The authorised development must be carried out in accordance with the works details approved under paragraph 282 and any requirements imposed on the approval under paragraph 283.

(2) Where there has been a reference to an arbitrator in accordance with paragraph 285 and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 285.

Indemnity

285.—(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 281, any damage is caused to the Navigator Terminals operations or property of Navigator Terminals, or there is any interruption in any service provided, or in the supply of any goods, by Navigator Terminals, the undertaker must—

(a) bear and pay the cost 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 285 applies. 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). The undertaker shall only be liable under this paragraph 7 for claims reasonably incurred by Navigator Terminals.

Arbitration

286. Any difference or dispute arising between the undertaker and Navigator Terminals under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Navigator Terminals, be referred to and settled by arbitration in accordance with article 47 (arbitration).

PART 24

FOR THE PROTECTION OF NORTHUMBRIAN WATER LIMITED

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

288. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable NW to fulfil its statutory functions in no less efficient a manner than previously;

"apparatus" means any works, mains, pipes, wells, boreholes, tanks, service reservoirs, pumping stations (and any accessories to those items) or other apparatus, structures, tunnels, shafts or treatment works belonging to or maintained by NW for the purposes of water supply and includes a water main, resource main or trunk main and any inspection chambers, wash-out pipes, pumps, ferrules or stopcocks for the main or works (within the meaning of section 219 of the Water Industry Act 1991);

"functions" includes powers and duties;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

"NW" means Northumbrian Water Limited, company number 02366703, whose registered office is at Northumbria House, Abbey Road, Pity Me, Durham, DH1 5FJ;

"plan" includes sections, drawings, specifications and method statements; and

"the standard protection strips" means strips of land falling within the following distances to either side of the medial line of any relevant pipe or apparatus—

(a) 2.25 metres where the diameter of the pipe is less than 150 millimetres;

(b) 3 metres where the diameter of the pipe is between 150 and 450 millimetres;

(c) 4.5 metres where the diameter of the pipe is between 450 and 750 millimetres; and

(d) 6 metres where the diameter of the pipe exceeds 750 millimetres.

289. The undertaker must not within the standard protection strips interfere with or build over any apparatus within the Order limits or execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within the standard protection strips unless otherwise agreed in writing with NW, such agreement not to be unreasonably withheld or delayed, and this provision must be brought to the attention of any contractor responsible for carrying out any part of the authorised development on behalf of the undertaker.

290. The alteration, extension, removal or re-location of any apparatus shall not be implemented until—

(a) any requirement for any permits under the Environmental Permitting Regulations 2016 or other replacement legislation and any other associated consents are obtained; and

(b) the undertaker has made the appropriate application under section 185 (duty to move pipes, etc.) of the Water Industry Act 1991 as may be required by that provision and has provided a plan of the works proposed to NW and NW has given the necessary consent or approval under that provision, such agreement not to be unreasonably withheld or delayed,

and such works are to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by NW for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

291. In the situation, where in exercise of the powers conferred by the Order, the undertaker acquires any interest in any land in which any apparatus is placed and such apparatus is to be relocated, extended, removed or altered in any way, no alteration or extension shall take place until NW has established to its reasonable satisfaction, without unnecessary delay, contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus.

292. Regardless of any provision in this Order or anything shown on any plan, the undertaker must not acquire any apparatus otherwise than by agreement, and before extinguishing any existing rights for NW to use, keep, inspect, renew and maintain its apparatus in the Order land, the undertaker must, with the agreement of NW, create a new right to use, keep, inspect, renew

and maintain the apparatus that is reasonably convenient for NW, such agreement not to be unreasonably withheld or delayed.

293. If in consequence of the exercise of the powers conferred by the Order the access to any apparatus is materially obstructed the undertaker shall provide such alternative means of access to such apparatus as will enable NW to maintain or use the apparatus no less effectively than was possible before such obstruction.

294. If in consequence of the exercise of the powers conferred by the Order, previously unmapped sewers, lateral drains or other apparatus are identified by the undertaker, notification of the location of such assets will immediately be given to NW and afforded the same protection as other NW assets.

295.—(1) Subject to sub-paragraphs (2) and (3), if for any reason or in consequence of the construction of any of the works referred to in paragraphs 289 to 291 any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of NW, or there is any interruption in any service provided, or in the supply of any goods, by NW, the undertaker must—

(a) bear and pay the cost reasonably incurred by NW in making good any damage or restoring the supply; and

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

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of NW, its officers, employees, servants, contractors or agents.

(3) NW must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) NW must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 295 applies. If requested to do so by the undertaker, NW must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 295 for claims reasonably incurred by NW.

296. Any dispute arising between the undertaker and NW under this Part of this Schedule must be referred to and settled by arbitration under article 47 (arbitration).

PART 25

FOR THE PROTECTION OF NORTHERN GAS NETWORKS LIMITED

Application

297. For the protection of the Northern Gas Networks Limited the following provisions shall, unless otherwise agreed in writing between the undertaker and Northern Gas Networks Limited, have effect.

Interpretation

298. In this Part of this Schedule—

"alternative apparatus" means appropriate alternative apparatus to the reasonable satisfaction of Northern Gas Networks to enable Northern Gas Networks to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means any mains, pipes or other apparatus belonging to Northern Gas Networks which it uses for the purposes of its undertaking;

"functions" includes powers and duties;

"in" in a context referring to works, apparatus or alternative apparatus in land includes a reference to such works, apparatus or alternative apparatus under, over, across, along or upon such land;

"maintain" and "maintenance" shall include the ability and right to do any of the following: construct, use, repair, alter, inspect, renew or remove;

"Northern Gas Networks" means Northern Gas Networks Limited (Company Number 05167070) whose registered office is at 1100 Century Way, Colton, Leeds, LS15 8TU;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed; and

"works" means all works carried out by the undertaker to construct, lay, render operational, maintain, repair, renew, inspect and replace the authorised development or any part thereof including without limitation ancillary works of excavation, resurfacing, protecting, testing and drainage works, as affect the apparatus.

299. Except for paragraphs 300 (apparatus of statutory undertaker in stopped up streets), 304 (retained apparatus: protection), 305 (expenses) and 306 (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

300. Notwithstanding the temporary stopping up or diversion of any street under the powers conferred by article 13 (temporary stopping up of streets, public rights of way and access land), Northern Gas Networks is at liberty at all times to take all necessary access across any such stopped up street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that street, subject always to the undertaker's unimpeded ability to carry out the works.

Acquisition of land

301. Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker shall not acquire any apparatus otherwise than by agreement.

Removal or diversion of apparatus

302.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in land in which the apparatus is placed, that apparatus must not be removed under this Part, 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 (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 or diversion of any apparatus placed in that land, it shall 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 shall reasonably approve these details. The undertaker must afford to Northern Gas Networks, to their reasonable satisfaction, the necessary facilities and rights for—

(a) the construction of alternative apparatus in other land of the undertaker; and

(b) the maintenance of that apparatus,

and after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 47 (arbitration) and after the grant to Northern Gas Networks of any such facilities and rights, Northern Gas Networks shall complete the works and bring the alternative apparatus into operation and subsequently remove any apparatus required to be removed by the undertaker and shall use its reasonable endeavours to meet the undertaker's proposed timeline, and in any event shall 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 shall 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 shall reasonably approve these details and shall afford to Northern Gas Networks, to their reasonable satisfaction, the necessary facilities and rights for—

(a) the construction of alternative apparatus in other land of the undertaker; and

(b) the maintenance of that apparatus,

and after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 47 and after the grant to Northern Gas Networks of any such facilities and rights, Northern Gas Networks shall 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 Northern Gas Networks fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable, any proposed details relating to required removal or diversion works under sub-paragraph (2) within [70] days of receiving a notice of the required works from the undertaker, then such details are deemed to have been approved, provided that the undertaker has first taken reasonable steps to contact the relevant representatives of Northern Gas Networks in order to elicit such a response.

(5) Regardless of anything in sub-paragraphs (2) and (3), if the undertaker gives notice in writing to Northern Gas Networks that it desires itself to execute any works, or part of any works, in connection with the construction or removal of apparatus in any land controlled by the undertaker, those works, instead of being executed by Northern Gas Networks, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Northern Gas Networks.

(6) 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 to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(7) Paragraphs 305 (expenses) and 306 (indemnity) of this Part of this Schedule apply to removal or diversions works under this paragraph 302, subject to Northern Gas Networks providing to the undertaker in advance and in writing a reasonable cost estimate for works that it proposes to carry out.

Facilities and rights for alternative apparatus

303.—(1) Where, in accordance with the provisions of this Part, the undertaker affords to Northern Gas Networks facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker

and Northern Gas Networks or in default of agreement settled by arbitration in accordance with article 47 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus in the land of the undertaker, and the terms and conditions to which those facilities and rights are to be granted, are less favourable on the whole to Northern Gas Networks than the facilities and rights enjoyed by it in respect of the apparatus to be removed (as agreed between the undertaker and Northern Gas Networks, or failing agreement, in the opinion of the arbitrator), then the undertaker and Northern Gas Networks shall agree appropriate compensation for the extent to which the new facilities and rights render Northern Gas Networks less able to effectively carry out its undertaking or require it to do so at greater cost. If the amount of compensation cannot be agreed, the matter must be settled by arbitration in accordance with article 47 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

304.—(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 302(2) or otherwise or by Northern Gas Networks under paragraph 302(3), the undertaker must submit to Northern Gas Networks a plan showing the works and the apparatus.

(2) The plan to be submitted to Northern Gas Networks under sub-paragraph (1) shall be detailed including a method statement and describing—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant etc;

(d) the position of all apparatus; and

(e) by way of detailed drawings, every alteration proposed to be made to or close to any apparatus.

(3) Subject to sub-paragraph (4) the undertaker shall not commence the construction or renewal of any works to which sub-paragraphs (1) or (2) apply until Northern Gas Networks has given written approval of the plan so submitted.

(4) Any approval of Northern Gas Networks undertaker required under sub-paragraph (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7);

(b) shall not be unreasonably withheld or delayed; and

(c) is deemed to be granted after the expiry of [70] days from receipt by Northern Gas Networks of the plan if no material response to the request for approval has been provided by Northern Gas Networks, provided that the undertaker must have first taken reasonable steps to contact the relevant representatives of Northern Gas Networks in order to elicit such a response.

(5) In relation to works to which sub-paragraph (1) applies, Northern Gas Networks may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under this Order to which this paragraph 304 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 shall 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 shall 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, shall 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 shall 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 shall not be required to comply with sub-paragraphs (1) or (2) in the case of emergency but in that case it shall 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 shall 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

305.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northern Gas Networks the charges, costs and expenses reasonably incurred by Northern Gas Networks in, or in connection with, the inspection, removal or diversion, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus which may be reasonably required and necessary in consequence of the execution of any such works as are required and approved under this Part.

(2) Northern Gas Networks shall use its reasonable endeavours to mitigate in whole or in part, and in any event to minimise, any costs, expenses, loss, demands and penalties capable of being claimed under sub-paragraph (1). If requested to do so by the undertaker, Northern Gas Networks must provide an explanation of how the claimed expenses have been minimised or details to substantiate the cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable to pay expenses that have been reasonably incurred by Northern Gas Networks.

(3) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part and which is not re-used as part of the

alternative apparatus, that value being calculated after removal and not including the costs (if any) of disposing that apparatus.

(4) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

then, if this incurs greater expense than would have been incurred by a like-for-like (or as close as practicable to like-for like) replacement at the same depth, the undertaker shall not be liable for this additional expense.

(5) For the purposes of sub-paragraph (4) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to and approved under this Part.

(6) An amount which apart from this sub-paragraph would be payable to Northern Gas Networks in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than seven years and six months earlier so as to confer on Northern Gas Networks any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

Indemnity

306.—(1) Subject to sub-paragraphs (2), (3) and (4), and without detracting from paragraph 305 above, if by reason or in consequence of the construction of any works referred to and approved under this Part, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Northern Gas Networks, or there is any interruption in any service provided, or in the supply of any goods, by Northern Gas Networks, the undertaker must—

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

(b) make reasonable compensation to Northern Gas Networks for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker, by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by Northern Gas Networks on behalf of the undertaker or in accordance with a plan approved by Northern Gas Networks or in accordance with any requirement of Northern Gas Networks as a consequence of the authorised development or under its supervision shall not (subject to sub-paragraph (4)), excuse the undertaker from liability under the provisions of this sub-paragraph (2) unless Northern Gas Networks fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Northern Gas Networks must use its reasonable endeavours to mitigate in whole or in part, and to minimise any costs, expenses, loss, demands, penalties etc. capable of being claimed under sub-paragraph (1). If requested to do so by the undertaker, Northern Gas Networks must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 306 for claims reasonably incurred by Northern Gas Networks.

(4) Nothing in sub-paragraph (1) shall impose any liability on the undertaker with respect to 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.

(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

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

307. Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and Northern Gas Networks in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

308. Where in consequence of the proposed construction of any of the works under this Part, the undertaker or Northern Gas Networks requires the removal of apparatus in accordance with the provisions of this Part, each party shall 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

309. If in consequence of the powers granted under this Order, the access to any apparatus is materially obstructed, the undertaker shall 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

310. Any difference or dispute arising between the undertaker and Northern Gas Networks under this Part must, unless otherwise agreed in writing between the undertaker and Northern Gas Networks, be determined by arbitration in accordance with the article 47 (arbitration).

Works falling outside of development authorised by the Order

311. Nothing in this Schedule shall require the undertaker to carry out works, or requires the undertaker to enable Northern Gas Networks to carry out works, that are not authorised by the Order. Northern Gas Networks must not request any alteration, diversion, protective work or any other work which is not authorised to be carried out under this Order (but for the avoidance of doubt, it may elect to carry out such works itself under any other planning permission, permitted development rights or statutory powers (including those of compulsory acquisition) available to it).

Cathodic protection testing

312. Where in the reasonable opinion of either party—

(a) the authorised development might interfere with the existing cathodic protection forming part of the apparatus; or

(b) the apparatus might interfere with the proposed or existing cathodic protection forming part of the authorised development,

the parties shall co-operate in undertaking the tests which they consider reasonably necessary for ascertaining the nature and extent of such interference and measures for providing or preserving cathodic protection.

PART 26

FOR THE PROTECTION OF NORTH TEES LIMITED, NORTH TEES RAIL LIMITED AND NORTH TEES LAND LIMITED

313. 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.

314. In this Part of this Schedule—

"NTL" means North Tees Limited (company number 05378625) and any successor in title to it;

"NTR" means North Tees Rail Limited (company number 10664592) and any successor in title to it;

"NTLL" means North Tees Land Limited (company number 08301212) and any successor in title to it;

"NT Group" means NTL, NTR and NTLL;

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

"works details" means—

(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 315.

Consent under this Part

315.—(1) Before commencing any part of the authorised development which would have an effect on the operations or access to any land owned by NTL, NTR or NTLL which is adjacent to the Order limits, the undertaker must submit to the NT Group the works details for the proposed works and such further particulars as the NT Group may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

(2) No works comprising any part of the authorised development which would have an effect on the operations or access to any land owned by NTL, NTR or NTLL which is adjacent to the Order limits are to be commenced until the works details in respect of those works submitted under sub-paragraph (1) have been approved by the NT Group.

(3) Any approval of the NT Group under sub-paragraph (2) must be given in respect of NTL, NTR and NTLL together, must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as the NT Group may require to be made for them to have reasonable access with or without vehicles to the operations and any land owned by NTL, NTR or NTLL which is adjacent to the Order limits.

(4) The authorised development must be carried out in accordance with the works details approved under sub-paragraph (2) and any requirements imposed on the approval under sub-paragraph (3).

(5) Where there has been a reference to an arbitrator in accordance with article 47 (arbitration) and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under article 47.

Indemnity

316.—(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 315, any damage is caused to the

operations or access to any land owned by NTL, NTR or NTLL which is adjacent to the Order limits is obstructed, the undertaker must—

(a) bear and pay the cost reasonably incurred by NTL, NTR or NTLL in making good any such damage; and

(b) make reasonable compensation to NTL, NTR or NTLL for any other expenses, loss, damages, penalty or costs incurred by each of them, by reason or in consequence of any such damage or interruption.

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

(a) 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; or

(b) any indirect or consequential loss or loss of profits by the NT Group.

(3) Each of NTL, NTR and NTLL must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Each of NTL, NTR and NTLL must use their reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands and penalties to which the indemnity under this paragraph 316 applies. If requested to do so by the undertaker, NTL, NTR and NTLL must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 316 for claims reasonably incurred by NTL, NTR and NTLL.

Arbitration

317. Any difference or dispute arising between the undertaker and the NT Group under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and the NT Group (acting together), be referred to and settled by arbitration in accordance with article 47 (arbitration).

SCHEDULE 13

Article 44

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 regulation 16(1)(b) of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012(**a**) (as may be amended or replaced from time to time) is to apply and must be paid to the relevant planning authority for each application.

(2) Any fee paid under this Schedule must be refunded to the undertaker within four weeks of—

(a) the application being rejected as invalidly made; or

(b) the relevant planning authority failing to determine the application within eight weeks from the relevant date in paragraph 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) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant planning authority and any requirement consultee;

(**a**) S.I. 2012/2920.

(b) the Secretary of State must appoint a person to determine the appeal as soon as reasonably practicable after receiving the appeal documentation and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person's attention should be sent;

(c) the relevant planning authority and any requirement consultee must submit written representations to the appointed person in respect of the appeal within 10 working days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;

(d) the appeal parties must make any counter-submissions to the appointed person within 10 working days of receipt of written representations pursuant to sub-paragraph (c);

(e) the appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within 30 working days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (d); and

(f) the appointment of the person pursuant to paragraph (b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(3) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal the appointed person must, within five working days of the appointed person's appointment, notify the appeal parties in writing specifying the further information required.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the relevant party to the appeal to the appointed person and the other appeal parties on the date specified by the appointed person (the "specified date"), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within 10 working days of the specified date, but otherwise the process and time limits set out in paragraphs (c) to (e) of sub-paragraph (2) apply.

(5) The appointed person may—

(a) allow or dismiss the appeal; or

(b) reverse or vary any part of the decision of the relevant planning authority (whether the appeal relates to that part of it or not), and may deal with the application as if it had been made to [him] in the first instance.

(6) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits.

(7) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears that there is sufficient material to enable a decision to be made on the merits of the case.

(8) The decision of the appointed person on an appeal is to be final and binding on the parties, unless proceedings are brought by a claim for judicial review.

(9) If an approval is given by the appointed person pursuant to this Schedule, it is deemed to be an approval for the purpose of Schedule [2] (requirements) as if it had been given by the relevant planning authority. The relevant planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) does not affect or invalidate the effect of the appointed person's determination.

(10) Save where a direction is given pursuant to sub-paragraph (11) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be met by the undertaker.

(11) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on

which it is to be made, the appointed person must have regard to the advice on planning appeals and award costs published on 3 March 2014 by what was then the Department for Communities and Local Government or any circular or guidance which may from time to time replace it.

SCHEDULE 14

Article 45

DOCUMENTS AND PLANS TO BE CERTIFIED

Table 13

(1) *Document name*	*(2)* *Document reference*	*(3)* *Revision number*	*(4)* *Date*
access and rights of way plans	4.5	4	August 2022
application guide	1.2	5	August 2022
book of reference	3.1	4	August 2022
design and access statement	5.4	3	August 2022
environmental statement	Non-technical summary, 6.1 Volume 1, 6.2 Volume 2, 6.3 Volume 3, 6.4 Non-Technical Summary of Environmental Statement Addendum, 7.7 Environmental Statement Addendum – Volume I, 7.8.1 Environmental Statement Addendum – Volume II, 7.8.2 Non-Technical Summary of Second Environmental Statement Addendum, 7.10 Second Environmental Statement Addendum – Volume 1, 7.11.1 Second Environmental Statement Addendum – Volume II, 7.11.2	- - - - - - - - - -	As listed in the application guide
framework construction environmental management plan	6.45	2	August 2022
indicative lighting strategy	5.11	1	May 2021
indicative landscaping and biodiversity strategy	5.12	2	August 2022
land plans	4.2	4	August 2022
parking plan	4.16.2	2	August 2022
PCC site access plan	4.16.3	2	August 2022
updated landscape and biodiversity plan	4.15.1	3	August 2022
water connection plan	4.16.4	2	August 2022
works plans	4.4	4	August 2022

SCHEDULE 15

Requirement 3

DESIGN PARAMETERS

Table 14

Component	*Maximum Length (m)*	*Maximum Width (m)*	*Maximum Height (m AOD)*
Gas turbine hall	76	76	43
Heat recovery steam generator building	63	28	63
Heat recovery steam generator stack		6.5 m (inner diameter)	98
Steam turbine hall	64	54	43
Absorber tower	35	25	93
Absorber stack		6.6 m (inner diameter)	128
Low carbon electricity generating station electrical substation	130	120	42
New electrical substation at Tod Point			22
National Grid Tod Point substation extension (northern bay)			22
National Grid Tod Point substation extension (southern bay)			22

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Net Zero Teesside Power Limited and Net Zero North Sea Storage Limited (together referred to in this Order as the undertaker) to construct, operate and maintain a gas-fired power station with an electrical output of up to 860 megawatts together with equipment required for the capture and compression of carbon dioxide emissions from both the generating station and a wider industrial carbon capture network in Teesside. The Order also authorises the undertaker to construct, operate and maintain infrastructure for the high-pressure compression of carbon dioxide and the landward part of an offshore carbon dioxide export pipeline. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 45 (certification of plans etc.) of this Order may be inspected free of charge during working hours at bp ICBT Chertsey Road Sunbury on Thames Middlesex TW16 7BP.