



OUR REF T2783.4-01/CWI/FCG
YOUR REF
7 November 2022

The Planning Inspectorate
National Infrastructure Planning
Temple Quay House
2 The Square
Bristol
BS1 6PN

Dear Planning Inspectorate

**The Proposed Net Zero Teesside Project (EN01003) (the “Project”)
Deadline 13 Submission**

1. Introduction

1.1 As set out in our previous submissions, we act on behalf of Teesside Gas Processing Plant Limited (“**TGPP**”) and Teesside Gas & Liquids Processing (“**TGLP**”) in relation to the development consent application by Net Zero Teesside Power Limited and Net Zero North Sea Storage Limited (together the “**Applicants**”) for the Project (the “**Application**” or the “**DCO**”). TGLP and TGPP’s interests are managed by North Sea Midstream Partners (“**NSMP**”) and they will hereafter be referred to for ease of reading as NSMP.

2. Protective Provisions

2.1 Both NSMP and the Applicants submitted their form of protective provisions at Deadline 12 (Appendix 1 of REP12-167 and Part 28 of Schedule 12 of REP12-003 respectively) on Tuesday 1st November. The protective provisions submitted by the Applicants are substantially different from the Applicants’ last form of protective provisions seen by NSMP (being those in Part 27 of Schedule 12 of REP8-003). NSMP did not have sight of these new protective provisions until they were published by the Examining Authority late in the afternoon on Thursday 3rd November. In order to assist the Examining Authority and Secretary of State when comparing the two sets of protective provisions, NSMP have taken the Applicants’ new structure and produced an updated set of protective provisions at Appendix 1 to this submission. A comparison of the Applicants’ proposed protective provisions as included in Part 28 of Schedule 12 of REP12-003 and NSMP’s updated proposed protective provisions are appended to the Statement of Common Ground between the parties which is to be submitted by the Applicants at this deadline and also appended hereto at Appendix 2. As can be seen by the comparison, NSMP have tried to make these documents as similar as possible for ease of review, and to acknowledge the areas where negotiations have advanced. While substantial progress has been made, the following provisions are still not agreed between the Applicants and NSMP:

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Access Road Works

- 2.1.1 As currently drafted, paragraph 389 of the Applicants' proposed protective provisions (Part 28 of Schedule 12 of the draft DCO (REP12-003)) allows the Applicants to undertake any works to the access road on plots 103, 106 and 108 in the event the state of repair is not suitable for HGVs. This access road is the sole access road to NSMP's nationally significant site, and uninterrupted and unimpeded access to this site is a fundamental concern and key required protection for NSMP, as emphasised in our previous submissions. Given this, NSMP cannot accept paragraph 389 as drafted. Practically it would be very challenging for the Applicants to undertake any works to the road and also maintain uninterrupted and unimpeded access. In addition, the reference to "state of repair" is too subjective, especially in light of the importance of NSMP's access concerns.
- 2.1.2 NSMP submit that this provision should be deleted, along with the corresponding paragraph 390(a). Under NSMP's proposed protective provisions, it would still be possible for road repairs to be carried out but these would have to be done in a manner which gives NSMP the ability to approve any such works.

Relevant Works

- 2.1.3 The Applicants' inclusion of two separate works packages into the protective provisions is not accepted by NSMP. NSMP own, operate, use and/or have rights over substantial infrastructure, including major gas and natural gas liquids import and export pipelines which are interconnected with other infrastructure and assets across Teesside. The Project design is still developing and therefore it is not currently fully settled which infrastructure and rights might be affected by the authorised development. The Applicants should therefore be required to obtain NSMP's approval for all proposed works which have potential effect on the operation, safety or maintenance of or access to NSMP's operations, wherever they are situated. The Applicants' proposed form of protective provisions (Part 28 of Schedule 12 of REP12-003) has provided a satisfactory level of protection in this respect (subject to our other comments herein and our updated proposed protective provisions), but limits the satisfactory level of protection to just the works to be undertaken on plots 103, 105, 106 or 108, or access in connection with works on plots 110, 112, 113 and/or 114. Whilst there are provisions to protect NSMP operations contained within a second package of works, the level of protection is not satisfactory for works undertaken outside of the plots mentioned in the previous sentence. NSMP's position remains that any works undertaken in relation to the Project that could have a potential adverse impact on NSMP operations in Teesside will require the same level of approval and be subject to the same conditions as the works to be undertaken in plots 103, 105, 106, 108, 110, 112, 113 and/or 114.
- 2.1.4 To assist the Applicants with understanding where infrastructure and legal rights relevant to NSMP exist, NSMP provided the Applicants with a non-exhaustive list of NSMP rights and infrastructure at Teesside on 30th September (with an updated list being provided on 18th October). NSMP awaits feedback on this list.
- 2.1.5 Given the nationally significant nature of NSMP's operations and the health and safety implications of the works relating to the Project, NSMP require industry standard protections in relation to proximate or interrelated works, including ongoing monitoring rights in respect of the relevant works, notification of practical completion of the relevant works, input to practical completion of the relevant works and remediation of any defects in respect of the relevant works.
- 2.1.6 In addition, NSMP welcomes the inclusion of a requirement that the Applicants comply with various conditions, requirements or regulations as are operated in relation to the NSMP operations. While NSMP is happy to agree to provide details of these conditions, requirements

or regulations on request, the requirement to comply with them must not be subject to receipt by the Applicants of such details in the absence of such a request.

- 2.1.7 Additionally, NSMP do not agree with the deemed approval provisions in the Applicants' proposed form of protective provisions at paragraphs 372, 373, 378 and 384. These should be deleted and in a case of dispute or difference, the arbitration provisions in the protective provisions (paragraph 393 of NSMP's proposed protective provisions at Appendix 1, the text of which is agreed with the Applicants) will apply.

Definition of relevant works

- 2.1.8 NSMP require that any works relating to the Project undertaken by the Applicants which could have an impact on the NSMP operations must be covered by the protective provisions, whether these works are inside the Order limits or outside of them (such as under a voluntary agreement). Without this, NSMP would not be protected in relation to, for example, works pursuant to any voluntary agreement relating to access or otherwise that is agreed by the Applicants and a third party. The protections set out in the protective provisions must holistically cover the Project, especially in light of the still developing scope and impact of the same.

Definition of NSMP operations

- 2.1.9 NSMP appreciate the Applicants' amendments to the definition of NSMP operations and this definition is now agreed. However, it includes reference to "NSMP pipelines", the wording for which as submitted by the Applicants at Deadline 12 is not agreed (see paragraph 2.1.10 below).

Definition of NSMP pipelines

- 2.1.10 The Applicants have amended this definition so that the low and high pressure pipelines owned, operated and/or used by NSMP and located outside of the Order limits are included. However, the pipelines which NSMP have rights over are still restricted to those within the Order limits. Since Deadline 12, NSMP have had further engagement with the Applicants who have confirmed that this was an error and "within the Order limits" should have been omitted.

Indemnity

- 2.1.11 NSMP welcome the Applicants' amendment to the protective provisions so that indirect or consequential losses or loss of profits is not excluded; however the indemnity provisions still do not go far enough.
- 2.1.12 "Losses" should be defined so that there is no ambiguity what these include.
- 2.1.13 The indemnity must apply explicitly during not only the construction phase of the Project, but also the subsequent operational phase of the Project. The maintenance and operation of the Project may continue for decades and will include sensitive work which must take into account substantial health and safety considerations, in proximity NSMP's operations which carry equally high-level health and safety considerations, as set out in our previous submissions. It is not correct that the negotiated protections should cease once construction of the Project has completed.
- 2.1.14 Additionally, the indemnity provision needs to apply to a wider category of persons (see paragraphs 2.1.15 and 2.1.16 below).

Definition of NSMP group

- 2.1.15 NSMP acknowledge that the definition of "NSMP entity" has been expanded by the Applicants to include Northern Gas Processing Limited (another NSMP entity who owns freehold land within the Teesside Gas Processing Plant facility); however, as stated in our Deadline 12

submission at paragraph 3.2.5 (REP12-167), the scope of the protection in the protective provisions needs to be expanded to include affiliates, directors, officers, employees, contractors, representatives and agents. As explained at Deadline 12, the operation and management of the NSMP site and NSMP operations is complex and it is standard industry practice to ensure that indemnity protection extends to all of these parties in such circumstances, given these are entities and persons who are likely to be incurring losses in the event of an incident relating to the Project.

- 2.1.16 NSMP have sought to effect this by creating a new “NSMP group” defined term so that this broader definition can be used for the provisions where the protection of these categories of persons who may actually be affected by the Project is needed (such as the indemnity and access provisions) and the narrower “NSMP entity” can be used where such a level of protection is not needed by these categories of persons.

Compulsory Acquisition of rights

- 2.1.17 The voluntary land agreement and heads of terms have not been agreed between the Applicants and NSMP. NSMP remain open and willing to agree a voluntary land agreement after the close of the Examination and are optimistic that, with the Applicants’ continued collaboration, negotiations will continue and this can be achieved.
- 2.1.18 In light of the above and the complexity of the arrangements involved, NSMP maintain their position (see paragraph 3.2.6 of REP12-167 and paragraph 3.1.6 of Appendix 1 of REP11-040) that the Applicants should not have compulsory acquisition rights and instead should have to seek the rights voluntarily, with the usual proviso that such consent will not be unreasonably withheld.
- 2.1.19 The provisions included in paragraphs 397 to 402 in the appended protective provisions are based on the Wilton protective provisions contained in Part 6 of Schedule 12 of the Dogger Bank Teesside A and B Offshore Wind Farm Order 2015 (REP12-141) which were recommended by the Examining Authority in that Examination and accepted by the Secretary of State.

CATS access

- 2.1.20 NSMP welcome the inclusion of paragraphs 399 to 401 of Part 28 of Schedule 12 of the draft DCO which confirms that the Applicants are not to use plots 105 or 106 to access plots 110, 112, 113 or 114 and that, if an alternative access agreement is concluded, the Applicants will not use plots 103 or 108 to access the foregoing plots. However, these provisions do not go far enough.
- 2.1.21 As NSMP have stated in all of their previous submissions, NSMP have substantial concerns over potential impacts to the access road to the NSMP site (parts of which road run through plots 108, 103 and 106) and the potential risk to NSMP’s ability to maintain safe and continuous operation of its facilities, as well as potential damage to the same. Therefore, the Applicants should be required to use all reasonable endeavours to complete a voluntary agreement for alternative access, in line with their stated commercial position.

Pipeline Crossing Agreement

- 2.1.22 There is a web of infrastructure around Teesside, including pipelines that are critical for NSMP operations. NSMP therefore require the protective provisions to include provisions for it to be reasonable for NSMP withhold consent to any works being undertaken by the Applicants that would impact NSMP operations where such works include crossing of any such pipeline and the Applicants have not entered a pipeline crossing agreement. Such agreements are industry standard and we would expect the Applicants to enter into a pipeline crossing agreement in such circumstances in any case.

- 2.2 Additionally, at Deadline 12 the Applicants did not move any of the definitions contained in the protective provisions into Article 2 of the draft DCO (REP12-003), contrary to indications prior such submission. NSMP understand from the Applicants that a decision was latterly taken to move the definitions back into the protective provisions. Therefore, NSMP have reverted back to the original defined terms in the protective provisions in those appended at Appendix 1, which matches those found in the Applicants' protective provisions at Part 28 of Schedule 12 of the draft DCO.
- 2.3 A copy of the updated protective provisions appended hereto have also been sent to the Applicants.

3. Book of Reference (REP12-008)

- 3.1 The registered office addresses for TGLP, TGPP and Northern Gas Processing have recently changed to: Suite 1, 7th Floor 50 Broadway, London, United Kingdom, SW1H 0BL. This was not updated in the Book of Reference at Deadline 12 (REP12-008) but was correctly updated in the draft DCO (REP12-003).

Yours faithfully



For and on behalf of Shepherd and Wedderburn LLP

Appendix 1 – Updated Protective Provisions

PART 28

FOR THE PROTECTION OF TEESSIDE GAS & LIQUIDS PROCESSING,
TEESSIDE GAS PROCESSING PLANT LIMITED & NORTHERN GAS
PROCESSING LIMITED

370. For the protection of TGLP, TGPP and NGPL, the following provisions have effect, unless otherwise agreed in writing between the undertaker and TGLP, TGPP and NGPL.

371. In this Part of this Schedule—

“alternate access agreement” means a contractually binding agreement providing the undertaker with an alternative access to plots 110, 112, 113 and 114, utilising land outside of plots 103, 105, 106 and 108;

“affiliates” means, as to a specified party, any other party that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with such specified party. For the purposes of this definition, the concept of "control," when used with respect to any specified party, shall signify the possession of the power to direct the management and policies of such party, whether through the ownership of voting securities or partnership or other ownership interests;

“design package” means the package of documents to be provided to the NSMP entity for consultation and agreement in accordance with the design approval process in paragraphs 375 to 379 comprising of—

- (a) the design documents, being all plans, levels and setting out information, drawings, specifications, details, reports, calculations, records and other construction and design and related documents and information (including any software necessary to view them) prepared or to be prepared by or on behalf of the undertaker in relation to the relevant works and/or the site of the relevant works;
- (b) a detailed methodology of the proposed method of working including timing of execution of the relevant works; and
- (c) the traffic management plan or detail demonstrating how the relevant works would be delivered in accordance with an already approved traffic management plan,

which package shall be updated from time to time with the approval of the NSMP entity in accordance with the provisions of this Part;

“includes” or “including” shall means includes without limitation or including without limitation, as applicable;

“losses” means all costs (including costs of enforcement), expenses, liabilities (including any tax liability), direct, indirect or consequential losses, damages (whether in contract or in tort), claims, demands, proceedings or legal costs and judgments suffered, directly or indirectly and whether or not foreseeable, including loss of revenue and profits;

“NGPL” means Northern Gas Processing Limited (Company number 2866642) of Suite 1, 7th Floor 50 Broadway, London, United Kingdom, SW1H 0BL;

“NGPL freehold” means the freehold property registered under Land Registry title number CE160127;

“NSMP entity” means together TGLP, TGPP and NGPL and any successor in title or function to the NSMP operations in whole or in part from time to time. Reference to an NSMP entity shall be to one or more of these entities and reference to NSMP entities will be to all of the foregoing, as the context admits;

“NSMP group” means the NSMP entity and its affiliates and its and their directors, officers, employees, contractors, sub-contractors, representatives and agents;

“NSMP operations” means all or any part of operations of the NSMP entities within Teesside from time to time including the ownership and enjoyment of all NSMP rights and NSMP property and the operation of all energy and other infrastructure at or relating to NSMP property, which currently comprises a plant to process gas from the UK North Sea and includes the NSMP pipelines;

“NSMP pipelines” means the low and high pressure pipelines owned and/or operated and/or used by the NSMP entities and/or over which the NSMP entities have rights from time to time within

Teesside which are used (or have been used or are intended to be used) at various times for the passage of natural gas and/or liquid natural gas and/or other products (including butane, propane and condensate output) and all ancillary apparatus including such works and apparatus properly appurtenant to the pipelines as are specified by section 65(2) (meaning of “pipe-line”) of the Pipelines Act 1962;

“NSMP property” means all property owned and/or enjoyed by an NSMP entity within Teesside from time to time, including the TGLP freehold and NGPL freehold itself together with the NSMP rights;

“NSMP requirements” means —

- (a) the continuing safety and uninterrupted and unimpeded operation and perpetuation of the NSMP operations;
- (b) uninterrupted and unimpeded emergency access with or without vehicles to the NSMP operations and the NSMP pipelines; and
- (c) the requirement for the NSMP group and its assigns to have at all times during the construction of the authorised development 24 hour unhindered access, utilities and servicing to all parts of the NSMP operations and the NSMP pipelines including in relation to access on foot, and with cars, light commercial vehicles and heavy goods vehicles with abnormal loads;

“NSMP rights” means without limitation all rights, benefits and privileges owned or enjoyed by an NSMP entity or in relation to which an NSMP entity has a benefit, whether legal, equitable, contractual or otherwise in existence from time to time relating to the NSMP entities, their business, operations and property including access, utilities, services (including surface water drainage) and all rights relating to the NSMP pipelines in each case within Teesside;

“parties” means the relevant NSMP entity and the undertaker;

“relevant works” mean any part of the authorised development (whether within the TGLP freehold, within the Order limits or otherwise) which would have a potential effect on the operation, safety or maintenance of or access to the NSMP operations;

“TGLP” means Teesside Gas & Liquids Processing (Company number 02767808) of Suite 1, 7th Floor 50 Broadway, London, United Kingdom, SW1H 0BL and any successor in title or function and any successor in title to the TGLP freehold;

“TGLP freehold” means the freehold properties registered under Land Registry title numbers CE160125 and CE168304, within which plots 105, 106 and 103 are situated;

“TGPP” means Teesside Gas Processing Plant Limited (Company number 05740797) of Suite 1, 7th Floor 50 Broadway, London, United Kingdom, SW1H 0BL; and

“traffic management plan” means the undertaker’s detailed traffic management plans for the relevant works and which will set out access arrangements for the relevant works in relation to plot 103, plot 105, plot 106, plot 108, and access in connection with works on plot 110, plot 112, plot 113, and plot 114, and Seal Sands Road (including but not limited to plans for ensuring 24 hour unhindered access during the period of construction of the relevant works for the NSMP group whether by cars, light commercial vehicles, heavy vehicles carrying abnormal loads and emergency services vehicles) for each stage or phase of the relevant works ensuring the achievement of the NSMP requirements.

372. No relevant works are to be commenced until the design package has been developed and submitted by the undertaker and approved by the NSMP entity (or determined) in accordance with the design approval process at paragraphs 375 to 379 below.

373. Following approval (or determination) of the design package, the undertaker will submit any proposed changes (other than those which will have no adverse impact on the NSMP operations) to any of the documentation or drawings comprising the approved design package in accordance with the change approval process at paragraphs 380 to 383 below and prior to the changes being implemented. The undertaker shall only implement such changes to the documentation or drawings (as applicable) as are agreed in writing in advance with the NSMP entity under the change approval process. Following any such changes to the design package having been approved (or determined) the undertaker shall provide the NSMP entity with an updated electronic copy of the design package as changed.

374. The undertaker will design and carry out or will procure that the relevant works are designed and carried out in all respects in accordance with the approved design package (subject to any changes agreed as part of the change approval process).

Approval Process

Part A – Design Approval Process

375. This Part A sets out the approval process to be followed in respect of the consultation and agreement of the design package.

376. The undertaker shall submit the design package to the NSMP entity for consultation, review and approval at least forty business days before commencing any relevant works.

377. Following submission of the design package to the NSMP entity, the parties agree to actively consult with each other so as to achieve approval by the NSMP entity within twenty business days of receipt by the NSMP entity of the design package. As part of that consultation the parties agree to adhere to the following—

- (a) the NSMP entity must, within twenty business days of the date of receipt of the design package, notify in writing the undertaker;
 - (i) of its approval of all or any part of the design package; or
 - (ii) of its disapproval of all or any part of the design package and the reasons for disapproval of any part of the design package; or
 - (iii) any further or other information, data and documents that the NSMP entity reasonably requires, including, without limitation any modified documents or drawings,
- (b) Within twenty business days of the undertaker providing any further information pursuant to sub-paragraph (a)(iii) above or providing material reasons why any changes requested by the NSMP entity (as part of its response pursuant to sub-paragraph (a)(ii) or (iii)) cannot be implemented or further information cannot be provided, the NSMP entity and the undertaker will actively consult with each other for the purposes of agreeing the design package.
- (c) If agreement on the design package and approval by the NSMP entity cannot be reached before the relevant period pursuant to sub-paragraph (a) or (b) above (or such alternate timescales as are agreed between the parties), the matter will be treated as a dispute to be resolved in accordance with paragraph 393 of this Part unless otherwise agreed by the parties.

378. Once approved, the undertaker shall issue one paper copy and one electronic copy of the documents comprised within the approved design package and shall compile and maintain a register of the date and contents of the submission of the design package.

379. The undertaker may either submit the traffic management plan for agreement as part of the design package, or it may submit the traffic management plan in advance of a design package in which case the design approval process set out in Part A and the change approval process set out in Part B of this Part of this Schedule shall apply as though references to “design package” were to “traffic management plan”.

Part B – Change Approval Process

380. This Part B sets out the approval process to be followed in respect of the consultation and agreement of any changes (other than those which will have no adverse impact on the NSMP operations) required to the design package after its approval under the design approval process above.

- 381.** The undertaker shall submit any such change required to the design package (other than those which will have no adverse impact on the NSMP operations) (a “change request”) to the NSMP entity for consultation, review and approval.
- 382.** Following submission of the change request to the NSMP entity, the parties agree to actively consult with each other so as to achieve approval by the NSMP entity of the change request within ten business days of receipt by the NSMP entity of the change request. As part of that consultation the parties agree to adhere to the following—
- (a) the NSMP entity must, within ten business days of the date of receipt of the change request, notify in writing the undertaker—
 - (i) of its approval of all or any part of the change request;
 - (ii) of its disapproval of all or any part of the change request including the reasons for disapproval of any part of the change request; or
 - (iii) any further or other information, data and documents that the NSMP entity reasonably requires, including, without limitation any modified documents or drawings;
 - (b) within five business days of the undertaker providing any further information pursuant to sub-paragraph (a)(iii) above, or providing material reasons why any changes requested by the NSMP entity (as part of its response pursuant to sub-paragraph (a)(ii) or (iii)) cannot be implemented or further information cannot be provided, the NSMP entity and the undertaker will actively consult with each other for the purposes of agreeing the change request; and
 - (c) if agreement between the parties cannot be reached before the end of the relevant period pursuant to sub-paragraph (a) or (b) above (or such alternate timescales as are agreed between the parties) the matter will be treated as a dispute to be resolved in accordance with paragraph 393 of this Part.
- 383.** Once approved, the undertaker shall issue one (1) paper copy and one (1) electronic copy of the documents comprising any approved change request and compile and maintain a register of the date and contents of any such change request.

Part C – Approval Principles

- 384.** Any approval of the NSMP entity required under Part A or Part B of this Part of this Schedule must not be unreasonably withheld or delayed but may be given subject to the NSMP requirements and in considering any request to agree or approve details under Part A or B the NSMP entity must make its decision in accordance with the approval principles set out at paragraphs 385 to 387 of this Part;

Approval Principles:

- 385.** Where the NSMP entity can reasonably demonstrate that any part of the relevant works will materially adversely affect the uninterrupted and unimpeded operation, safety and maintenance of, or access to, the NSMP operations it is entitled to withhold its authorisation until the undertaker can demonstrate to the reasonable satisfaction of the NSMP entity that such part of the relevant works will not materially adversely affect the uninterrupted and unimpeded operation, safety and maintenance of, or access to, the NSMP operations, having regard to the measures of any approved traffic management plan to the extent applicable to the part of the relevant works. A material adverse effect includes any impediment, diminution, restriction or interruption on the NSMP group’s access to the access road which runs across plots 108, 103 and 106.
- 386.** Without limitation, it shall be reasonable for the NSMP entity to withhold approval to any works comprised in the relevant works —
- (a) which shall include physical works on, depositing of materials on or stopping up of plots 108, 103, 106 and 105, which cause or are reasonably likely to cause any interruption or impediment, even if temporary, to the operation of or access to the NSMP operations; the passage of reasonable construction traffic over (i) plots 103 and 108 and (ii) in relation only to construction of Work Number 2A within plot 105, plots 106 and 105 (which in each case shall be subject to the traffic management plan) shall not in itself constitute ground for the NSMP entity to withhold approval under this sub paragraph 386(a);
 - (b) which involve any resurfacing or redevelopment of the access road between the TGLP freehold and Seal Sands Road and the continuation of that access road within the TGLP freehold unless

a working method has been submitted and approved by the NSMP entity which amongst any other requirements of the NSMP entity demonstrates access will be continuously maintained and will be no less convenient for the NSMP group;

(c) which require access for construction traffic over the access road between the TGLP freehold and Seal Sands Road and the continuation of that access road within the TGLP freehold, other than—

(i) over plots 98, 108, 103, 105 and 106 as strictly required for construction of Work Number 2A within plot 105; or

(ii) over plots 98, 108 and 103 as strictly required for the implementation of Work Numbers 2 and 10 on plots 110, 112, 113 and 114,

in each case subject to the approved traffic management plan or any proposed traffic management plan submitted as part of the relevant design package;

(d) which include any construction or laydown area on the TGLP freehold, other than a temporary laydown area within plot 105 for materials required for the construction of Work Number 2A within plot 105;

(e) which requires the stopping up of Seal Sands Road or the private road (parts of which runs through plots 103, 106 and 108) either temporarily or permanently; or

(f) which include construction works crossing any of the pipelines on which the NSMP entity relies for the NSMP operations, where a pipeline crossing agreement has not been agreed on terms reasonably satisfactory to the NSMP entity.

387. The undertaker and the NSMP entity must, in carrying out their obligations in relation to the traffic management plan and approval of the design package for the relevant works —

(a) co-operate with each other with a view to ensuring—

(i) the compatibility of the authorised development and the NSMP operations;

(ii) the co-ordination of the construction programming of the authorised development and the NSMP operations; and

(iii) the achievement of the NSMP requirements; and

(b) use reasonable endeavours to avoid any conflict arising from the carrying out of the authorised development and the NSMP operations, having regard always to the NSMP requirements.

Compliance with requirements, etc. applying to the NSMP operations

388. The undertaker shall: (i) provide regular written updates and reports as to progress of the works approved under paragraph 372; (ii) give the NSMP entity at least five working days' prior written notice of any inspection of practical completion or the relevant works or works package with the right for the NSMP entity or its nominated representative to attend such inspection; (iii) procure that the party certifying practical completion has reasonable regard to any reasonable representations of the NSMP entity or its nominated representative; and (iv) procure the remediation of any defects reasonably identified having regard to the works details approved under this Part at practical completion or being identified within five years of practical completion.

389. If any circumstance arises resulting from relevant works which causes any interruption to the operation or maintenance of or access to the NSMP operations or damage to the NSMP property the undertaker shall procure its immediate remediation.

390. In undertaking any works in relation to the NSMP operations or exercising any rights relating to or affecting the NSMP operations, the undertaker must comply with such conditions, requirements or regulations relating to uninterrupted operation and access, health, safety, security and welfare as are operated in relation to access to or activities in the NSMP operations. The NSMP entity will on request promptly provide the same to the undertaker prior to approval of the design package.

391. For the benefit of NSMP, the undertaker must not exercise the powers granted under this Order so as to hinder or prevent access via the access road between the TGLP freehold and Seal Sands Road and the continuation of that access road within the TGLP freehold other than as expressly provided for in an approved traffic management plan or approved design package.

Indemnity

392. (1) Subject to sub-paragraphs (2) and (3), the undertaker shall be liable for, and shall release, indemnify and hold harmless the NSMP group for all losses incurred or suffered by the NSMP group caused by reason or in consequence to the carrying out of any of the works referred to in paragraph 372, any works relating to the authorised development or the subsequent operation of such works or otherwise exercising its rights under this Order.

(2) The NSMP group must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the undertaker having been given the opportunity to make reasonable representations to the NSMP group.

(3) The NSMP group must use its reasonable endeavours to mitigate in whole or in part any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 392 applies.

Arbitration

393. Any difference or dispute arising between the undertaker and the NSMP entity under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and the NSMP entity, be referred to and settled by arbitration in accordance with article 47(arbitration).

Access to plots 110, 112, 113 or 114

394. The undertaker shall not use plots 105 or 106 to access plots 110, 112, 113 or 114.

395. The undertaker will use all reasonable endeavours to secure an alternate access agreement.

396. The undertaker must not use plots 103 or 108 to access plots 110, 112, 113 or 114 if an alternate access agreement has been concluded as referred to in paragraph 395.

Consent

397. The undertaker shall not exercise the identified powers in relation to the NSMP land without the consent in writing of the owner of that land.

398. Where a person is asked to give consent for the purposes of paragraph 397, the consent must not be unreasonably withheld.

399. If the undertaker considers that consent has been unreasonably withheld, the undertaker may refer the request for consent to an expert appointed under paragraph 393 for determination.

400. If an owner or operator fails to respond to a request for consent within thirty days after the day on which the request is made, consent is deemed to have been unreasonably withheld, and the undertaker may refer the request for consent to an expert appointed under paragraph 393 for determination.

401. Except in an emergency, or as otherwise provided in this Part, the undertaker must give at least thirty days' notice of the proposed exercise of the identified powers to affected owners of the NSMP land.

402. In paragraphs 397 and 401, "identified powers" means the powers conferred by the following:-

- (a) article 10 (power to alter layout etc. of streets)
- (b) article 13 (temporary stopping up of streets, public rights of way and access land);
- (c) article 14 (access to works);
- (d) article 17 (discharge of water);
- (e) article 20 (authority to survey and investigate land);
- (f) article 22 (compulsory acquisition of land);
- (g) article 23 (power to override easements and other rights);
- (h) article 25 (compulsory acquisition of rights etc.);
- (i) article 26 (private rights);

- (j) article 28 (acquisition of subsoil and airspace only);
- (k) article 30 (rights under or over streets);
- (l) article 31 (temporary use of land for carrying out authorised development); and
- (m) article 32 (temporary use of land for maintaining the authorised development).

**Appendix 2 – Comparison of the Applicants' Deadline 12 Protective Provisions and NSMP's
Deadline 13 Protective Provisions**

PART 28

FOR THE PROTECTION OF TEESSIDE GAS & LIQUIDS PROCESSING,
TEESSIDE GAS PROCESSING PLANT LIMITED & NORTHERN GAS
PROCESSING LIMITED

370. For the protection of TGLP, TGPP and NGPL, the following provisions have effect, unless otherwise agreed in writing between the undertaker and TGLP, TGPP and NGPL.

371. In this Part of this Schedule—

“alternate access agreement” means a contractually binding agreement providing the undertaker with an alternative access to plots 110, 112, 113 ~~or~~ and 114, utilising land outside of plots 103, 105, 106 and 108;

“affiliates” means, as to a specified party, any other party that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with such specified party. For the purposes of this definition, the concept of “control,” when used with respect to any specified party, shall signify the possession of the power to direct the management and policies of such party, whether through the ownership of voting securities or partnership or other ownership interests;

“design package” means the package of documents to be provided to the NSMP entity for consultation and agreement in accordance with the design approval process in paragraphs 375 to ~~380~~379 comprising of—

- (a) the design documents, being all plans, levels and setting out information, drawings, specifications, details, reports, calculations, records and other construction and design and related documents and information (including any software necessary to view them) prepared or to be prepared by or on behalf of the undertaker in relation to the relevant works and/or the site of the relevant works;
- (b) a detailed methodology of the proposed method of working including timing of execution of the relevant works; and
- (c) ~~for relevant works package A~~ the traffic management plan or detail demonstrating how the relevant works would be delivered in accordance with an already approved traffic management plan,

which package shall be updated from time to time with the approval of the NSMP ~~Entity~~entity in accordance with the provisions of this Part;

“includes” or “including” shall means includes without limitation or including without limitation, as applicable;

“losses” means all costs (including costs of enforcement), expenses, liabilities (including any tax liability), direct, indirect or consequential losses, damages (whether in contract or in tort), claims, demands, proceedings or legal costs and judgments suffered, directly or indirectly and whether or not foreseeable, including loss of revenue and profits;

“NGPL” means Northern Gas Processing Limited (Company number 2866642) of Suite 1, 7th Floor 50 Broadway, London, United Kingdom, SW1H 0BL;

“NGPL freehold” means the freehold property registered under Land Registry title number CE160127;

“NSMP entity” means together TGLP, TGPP and NGPL and any successor in title or function to the NSMP operations in whole or in part from time to time. Reference to an NSMP entity shall be to one or more of these entities and reference to NSMP entities will be to all of the foregoing, as the context admits;

“NSMP group” means the NSMP entity and its affiliates and its and their directors, officers, employees, contractors, sub-contractors, representatives and agents;

“NSMP operations” means all or any part of operations of the NSMP entities within Teesside from time to time including the ownership and enjoyment of all NSMP rights and NSMP property and the operation of all energy and other infrastructure at or relating to NSMP property, which currently comprises a plant to process gas from the UK North Sea and includes the NSMP pipelines;

“NSMP pipelines” means the low and high pressure pipelines owned and/or operated and/or used by the NSMP entities and/or over which the NSMP entities have rights from time to time within ~~the Order limits~~ Teesside which are used (or have been used or are intended to be used) at various times for the passage of natural gas and/or liquid natural gas and/or other products (including butane, propane and condensate output) and all ancillary apparatus including such works and apparatus properly appurtenant to the pipelines as are specified by section 65(2) (meaning of “pipe-line”) of the Pipe-lines Act 1962;

“NSMP property” means all property owned and/or enjoyed by an NSMP entity within Teesside from time to time, including the TGLP freehold and NGPL freehold itself together with the NSMP rights;

“NSMP requirements” means, ~~with respect to relevant works package A~~ —

- (a) the continuing safety and uninterrupted and unimpeded operation and perpetuation of the NSMP operations;
- (b) uninterrupted and unimpeded emergency access with or without vehicles to the NSMP operations and the NSMP pipelines; and
- (c) the requirement for the NSMP entity group and its ~~employees, contractors, sub-contractors, agents and~~ assigns to have at all times during the construction of the authorised development 24 hour unhindered access, utilities and servicing to all parts of the NSMP operations and the NSMP pipelines including in relation to access on foot, and with cars, light commercial vehicles and heavy goods vehicles with abnormal loads;

“NSMP rights” means without limitation all rights, benefits and privileges owned or enjoyed by an NSMP entity or in relation to which an NSMP entity has a benefit, whether legal, equitable, contractual or otherwise in existence from time to time relating to the NSMP entities, their business, operations and property including access, utilities, services (including surface water drainage) and all rights relating to the NSMP pipelines in each case within Teesside;

“parties” means the relevant NSMP entity and the undertaker;

“relevant works” mean any part ~~of relevant works package A and relevant works package B~~;

~~“relevant works package A” means works included in Work Number 2 or 10 of the authorised development or access in connection with those works numbers, on plots 103, 105, 106 or 108, and access in connection with works on plots 110, 112, 113, 114;~~

~~“relevant works package B” means those parts of the authorised development (whether within the TGLP freehold, within the Order limits or otherwise) which would have a potential effect on the operation, safety, or maintenance of or access to the NSMP operations, excluding relevant works package A;~~

“TGLP” means Teesside Gas & Liquids Processing (Company number 02767808) of Suite 1, 7th Floor 50 Broadway, London, United Kingdom, SW1H 0BL and any successor in title or function and any successor in title to the TGLP freehold;

“TGLP freehold” means the freehold properties registered under Land Registry title numbers CE160125 and CE168304, within which plots 105, 106 and 103 are situated;

“TGPP” means Teesside Gas Processing Plant Limited (Company number 05740797) of Suite 1, 7th Floor 50 Broadway, London, United Kingdom, SW1H 0BL; and

“traffic management plan” means the undertaker’s detailed traffic management plans for the relevant works ~~package A~~ and which will set out access arrangements for the relevant works ~~package A~~ in relation to plot 103, plot 105, plot 106, plot 108, and access in connection with works on plot 110, plot 112, plot 113, and plot 114, and Seal Sands Road (including but not limited to plans for ensuring 24 hour unhindered access ~~for~~ during the period of construction of the relevant works ~~package A~~ for the NSMP ~~entity, its employees, contractors, sub-contractors, agents and~~ assigns group whether by cars, light commercial vehicles, heavy vehicles carrying abnormal loads and emergency services vehicles) for each stage or phase of the relevant works ~~package A~~ ensuring the achievement of the NSMP requirements.

372. No relevant works are to be commenced until the design package has been developed and submitted by the undertaker and approved ~~or deemed approved~~ by the NSMP entity (or determined) in accordance with the design approval process at paragraphs ~~374~~ 375 to 379 below.

373. Following approval (or ~~deemed approval~~determination) of the design package, the undertaker will submit any proposed changes (other than those which will have no adverse impact on the NSMP operations) to any of the documentation or drawings comprising the approved design package in accordance with the change approval process at paragraphs 380 to ~~384~~383 below and prior to the changes being implemented. The undertaker shall only implement such changes to the documentation or drawings (as applicable) as are agreed in writing in advance with the NSMP entity under the change approval process. Following any such changes to the design package having been approved (or ~~deemed approved~~determined) the undertaker shall provide the NSMP entity with an updated electronic copy of the design package as changed.

~~374.~~

374. The undertaker will design and carry out or will procure that the relevant works are designed and carried out in all respects in accordance with the approved design package (subject to any changes agreed as part of the change approval process).

Approval Process

Part A – Design Approval Process

375. This Part A sets out the approval process to be followed in respect of the consultation and agreement of the design package.

376. The undertaker shall submit the design package to the NSMP entity for consultation, review and approval:

~~377.~~ at least forty business days before commencing any relevant works.

377. Following submission of the design package to the NSMP entity, the parties agree to actively consult with each other so as to achieve approval by the NSMP entity within twenty business days of receipt by the NSMP entity of the design package. As part of that consultation the parties agree to adhere to the following—

- (a) the NSMP entity must, within twenty business days of the date of receipt of the design package, notify in writing the undertaker;
 - (i) of its approval of all or any part of the design package; or
 - (ii) of its disapproval of all or any part of the design package and the reasons for disapproval of any part of the design package; or
 - (iii) any further or other information, data and documents that the NSMP entity reasonably requires, including, without limitation any modified documents or drawings,
- (b) Within twenty business days of the undertaker providing any further information pursuant to sub-paragraph (a)(iii) above or providing material reasons why any changes requested by the NSMP entity (as part of its response pursuant to sub-paragraph (a)(ii) or (iii)) cannot be implemented or further information cannot be provided, the NSMP entity and the undertaker will actively consult with each other for the purposes of agreeing the design package.
- (a) If agreement on the design package and approval by the NSMP entity cannot be reached before the relevant period pursuant to sub-paragraph (a) or (b) above (or such alternate timescales as are agreed between the parties), the matter will be treated as a dispute to be resolved in accordance with paragraph ~~398~~393 of this Part unless otherwise agreed by the parties.

~~378. In the event the NSMP entity does not provide any response to the undertaker in accordance with the timescale set out in paragraph 377(a) or (b) the NSMP entity shall be deemed to have given their approval to the design package.~~

~~379.~~

378. Once approved, the undertaker shall issue one paper copy and one electronic copy of the documents comprised within the approved design package and shall compile and maintain a register of the date and contents of the submission of the design package.

~~379. 380. With respect to the relevant works package A, the~~ The undertaker may either submit the traffic management plan for agreement as part of the design package, or it may submit the traffic management plan in advance of a design package in which case the design approval process set out in Part A and the change approval process set out in Part B of this Part of this Schedule shall apply as though references to “design package” were to “traffic management plan”.

Part B – Change Approval Process

380. 381. This Part B sets out the approval process to be followed in respect of the consultation and agreement of any changes (other than those which will have no adverse impact on the NSMP operations) required to the design package after its approval under the design approval process above.

~~382.~~

381. The undertaker shall submit any such change required to the design package (other than those which will have no adverse impact on the NSMP operations) (a “change request”) to the NSMP entity for consultation, review and approval.

382. ~~383.~~ Following submission of the change request to the NSMP entity, the parties agree to actively consult with each other so as to achieve approval by the NSMP entity of the change request within ten business days of receipt by the NSMP entity of the change request. As part of that consultation the parties agree to adhere to the following—

- (a) the NSMP entity must, within ten business days of the date of receipt of the change request, notify in writing the undertaker—
 - (i) of its approval of all or any part of the change request;
 - (ii) of its disapproval of all or any part of the change request including the reasons for disapproval of any part of the change request; or
 - (iii) any further or other information, data and documents that the NSMP entity reasonably requires, including, without limitation any modified documents or drawings;
- (b) within five business days of the undertaker providing any further information pursuant to sub-paragraph (a)(iii) above, or providing material reasons why any changes requested by the NSMP entity (as part of its response pursuant to sub-paragraph (a)(ii) or (iii)) cannot be implemented or further information cannot be provided, the NSMP entity and the undertaker will actively consult with each other for the purposes of agreeing the change request; and
- (c) if agreement between the parties cannot be reached before the end of the relevant period pursuant to sub-paragraph (a) or (b) above (or such alternate timescales as are agreed between the parties) the matter will be treated as a dispute to be resolved in accordance with paragraph ~~398~~393 of this Part.

~~384. In the event the NSMP entity does not provide a response to the undertaker in accordance with the timescales set out in paragraph 383(a) or (b) above, the NSMP entity shall be deemed to have given their approval to the change request.~~

~~385.~~

383. Once approved, the undertaker shall issue one (1) paper copy and one (1) electronic copy of the documents comprising any approved change request and compile and maintain a register of the date and contents of any such change request.

Part C – Approval Principles

384. ~~386.~~ Any approval of the NSMP entity required under Part A or Part B of this Part of this Schedule must not ~~(subject to paragraphs 387 and 388 below)~~ be unreasonably withheld or delayed but may be given subject to the NSMP requirements ~~(with respect to relevant works package A)~~ and in considering any request to agree or approve details under Part A or B the NSMP ~~Entity~~entity must make its decision in accordance with—

~~(a) with respect to relevant works package A, the approval principles set out at paragraphs 385 to 387 to 391 of this Part; and~~

~~(b) with respect to relevant works package B, with the approval principles set out at paragraphs 392 and 393 of this Part.~~

Approval Principles: ~~Relevant Works Package A~~

385. ~~387.~~ Where the NSMP entity can reasonably demonstrate that any part of the relevant works ~~package A~~ will materially adversely affect the uninterrupted and unimpeded operation, safety and maintenance of, or access to, the NSMP operations it is entitled to withhold its authorisation until the undertaker can demonstrate to the reasonable satisfaction of the NSMP entity that such part of the relevant works ~~package A~~ will not materially adversely affect the uninterrupted and unimpeded operation, safety and maintenance of, or access to, the NSMP operations, having regard to the measures of any approved ~~or proposed~~ traffic management plan to the extent applicable to the part of the relevant works. A material adverse effect includes any impediment, diminution, restriction or interruption on the NSMP ~~entity~~entitygroup's access to the access road which

runs across plots 108, 103 and 106.

~~386. 388. Subject to paragraphs 389 and 390 below~~ Without limitation, it shall be reasonable for the NSMP entity to withhold approval to any works comprised in the relevant works ~~package A~~—

- (a) which shall include physical works on, depositing of materials on or stopping up of plots 108, 103, 106 and ~~106 but not~~ 105, which cause or are reasonably likely to cause any interruption or impediment, even if temporary, to the operation of or access to the NSMP operations; the passage of reasonable construction traffic over ~~these~~ (i) plots 103 and 108 and (ii) in relation only to construction of Work Number 2A within plot 105, plots 106 and 105 (which in each case shall be subject to any approved the traffic management plan ~~or any traffic management plan submitted as part of the design package~~) shall not in itself constitute ground for the NSMP entity to withhold approval under this sub paragraph 386(a);
- (b) which involve any resurfacing or redevelopment of the access road between the TGLP freehold and Seal Sands Road and the continuation of that access road within the TGLP freehold unless a working method has been submitted and approved by the NSMP entity which amongst any other requirements of the NSMP entity demonstrates access will be continuously maintained and will be no less convenient for the NSMP ~~entity~~ group;
- (c) which require access for construction traffic over the access road between the TGLP freehold and Seal Sands Road and the continuation of that access road within the TGLP freehold, other than—
 - (i) over plots 98, 108, 103, 105 and 106 as strictly required for construction of Work Number 2A within plot 105; or
 - (ii) over plots 98, 108 and 103 as strictly required for the implementation of Work Numbers 2 and 10 on plots 110, 112, 113 and 114,in each case subject to the approved traffic management plan or any proposed traffic management plan submitted as part of the relevant design package;
- (d) which include any construction or laydown area on the TGLP freehold, other than a temporary laydown area within plot 105 for materials required for the construction of Work Number 2A within plot 105; ~~or~~
- (e) which requires the stopping up of Seal Sands Road or the private road (parts of which runs through plots 103, 106 and 108) either temporarily or permanently.

~~389. The undertaker must not carry out works comprised in Work No. 10 of the authorised development with respect to plots 103, 106 and 108 unless the NSMP entity has failed to maintain the access road within plots 103, 106 and 108 to a state of repair suitable for use by HGVs.~~

~~390. It will be unreasonable for the NSMP entity to withhold approval for—~~

- ~~(a) under sub paragraphs 388(a), (b), (d) or (e); or~~
- ~~(f) which include construction works comprised in Work No. 10 crossing any of the authorised development which the undertaker is permitted to carry out pursuant to paragraph 389 due to the failure of the NSMP entity to maintain the access road as required under that sub paragraph; and~~
- ~~(b) under sub paragraphs 388(a) and (c), on grounds relating to access to the NSMP operations (as required under the NSMP requirements) if the design package submitted demonstrates that relevant works package A will be undertaken in accordance with any approved traffic management plan.~~

~~391 pipelines on which the NSMP entity relies for the NSMP operations, where a pipeline crossing agreement has not been agreed on terms reasonably satisfactory to the NSMP entity.~~

387. The undertaker and the NSMP entity must, in carrying out their obligations in relation to the traffic management plan and approval of the design package for the relevant works ~~package A~~—

- (a) co-operate with each other with a view to ensuring—
 - (i) the compatibility of the authorised development and the NSMP operations;
 - (ii) the co-ordination of the construction programming of the authorised development and the NSMP operations; and

- (iii) the achievement of the NSMP requirements; and
- (b) use reasonable endeavours to avoid any conflict arising from the carrying out of the authorised development and the NSMP operations, having regard always to the NSMP requirements.

Approval Principles: Relevant Works Package B

~~392. It shall be reasonable for the NSMP entity to withhold approval to any works comprised in relevant works package B, or to impose conditions on any approval having regard to the requirement for—~~

- ~~(a) uninterrupted and unimpeded emergency access with or without vehicles to the NSMP operations at all times; and~~
- ~~(b) reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the NSMP operations.~~

~~393. The undertaker and the NSMP entity must, in carrying out their obligations in relation to the approval of the design package for relevant works package B—~~

- ~~(a) — co-operate with each other with a view to ensuring—~~
 - ~~(i) — the compatibility of the authorised development and the NSMP operations; and~~
 - ~~(ii) — the co-ordination of the construction programming of the authorised development and the NSMP operations; and~~
- ~~(b) — use reasonable endeavours to avoid any conflict arising from the carrying out of the authorised development and the NSMP operations, having regard always to the approval principles in paragraph 392.~~

Compliance with requirements, etc. applying to the NSMP operations

388. ~~394.~~ The undertaker shall: (i) provide regular written updates and reports as to progress of the works approved under paragraph 372; (ii) give the NSMP entity at least five working days' prior written notice of any inspection of practical completion or the relevant works or works package with the right for the NSMP entity or its nominated representative to attend such inspection; (iii) procure that the party certifying practical completion has reasonable regard to any reasonable representations of the NSMP entity or its nominated representative; and (iv) procure the remediation of any defects reasonably identified having regard to the works details approved under this Part at practical completion or being identified within five years of practical completion.

389. If any circumstance arises resulting from relevant works ~~package A~~ which causes any interruption to the operation or maintenance of or access to the NSMP operations or damage to the NSMP property the undertaker shall procure its immediate remediation.

390. ~~395.~~ In undertaking any works in relation to the NSMP operations or exercising any rights relating to or affecting the NSMP operations, the undertaker must comply with such conditions, requirements or regulations relating to uninterrupted operation and access, health, safety, security and welfare as are operated in relation to access to or activities in the NSMP operations; ~~provided.~~ The NSMP entity will on request promptly provide the same ~~are provided~~ to the undertaker prior to approval of the design package.

~~396.~~

391. For the benefit of NSMP, the undertaker must not exercise the powers granted under this Order so as to hinder or prevent access via the access road between the TGLP freehold and Seal Sands Road and the continuation of that access road within the TGLP freehold other than as expressly provided for in an approved traffic management plan or approved design package.

Indemnity

392. ~~397.~~ (1) Subject to sub-paragraphs (2) and (3), if the undertaker shall be liable for, and shall release, indemnify and hold harmless the NSMP group for all losses incurred or suffered by the NSMP group caused

by reason or in consequence ~~of~~to the ~~construction~~carrying out of any of the works referred to in paragraph 372 ~~any damage is caused to NSMP operations or there is any interruption in any service provided, or in the supply of any goods, by the NSMP entity, the undertaker must—~~

- ~~(a) bear and pay the cost reasonably incurred by the NSMP entity in making good such damage or restoring the supply; and~~
- ~~(b) make reasonable compensation to the NSMP entity for any other expenses, loss, damage, penalty or costs incurred by the NSMP entity, by reason or in consequence of any such damage or interruption.~~

~~(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of the NSMP entity or its agents, any works relating to the authorised development or the subsequent operation of such works or otherwise exercising its rights under this Order.~~

~~(2) (3)~~ The NSMP entity group 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~~ having been given the opportunity to make reasonable representations to the NSMP group.

~~(3) (4)~~ The NSMP entity group must use its reasonable endeavours to mitigate in whole or in part any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph ~~397~~392 applies.

Arbitration

393. ~~398.~~ Any difference or dispute arising between the undertaker and the NSMP entity under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and the NSMP entity, be referred to and settled by arbitration in accordance with article 47 (arbitration).

Access to plots 110, 112, 113 or 114

394. ~~399.~~ The undertaker ~~must~~shall not use plots 105 or 106 to access plots 110, 112, 113 or 114.

395. The undertaker will use all reasonable endeavours to secure an alternate access agreement.

396. ~~400.~~ The undertaker must not use plots 103 or 108 to access plots 110, 112, 113 or 114 if an alternate access agreement has been concluded as referred to in paragraph 395.

Consent

397. The undertaker shall not exercise the identified powers in relation to the NSMP land without the consent in writing of the owner of that land.

398. ~~401.~~ ~~Where an alternate access agreement has been concluded, reference to plots 110, 112, 113 and 114 in the definitions of “relevant works package A” and “traffic management plan” is taken to be deleted.~~ Where a person is asked to give consent for the purposes of paragraph 397, the consent must not be unreasonably withheld.

399. If the undertaker considers that consent has been unreasonably withheld, the undertaker may refer the request for consent to an expert appointed under paragraph 393 for determination.

400. If an owner or operator fails to respond to a request for consent within thirty days after the day on which the request is made, consent is deemed to have been unreasonably withheld, and the undertaker may refer the request for consent to an expert appointed under paragraph 393 for determination.

401. Except in an emergency, or as otherwise provided in this Part, the undertaker must give at least thirty days’ notice of the proposed exercise of the identified powers to affected owners of the NSMP land.

402. In paragraphs 397 and 401, “identified powers” means the powers conferred by the following:-

- (a) article 10 (power to alter layout etc. of streets)
- (b) article 13 (temporary stopping up of streets, public rights of way and access land);
- (c) article 14 (access to works);
- (d) article 17 (discharge of water);
- (e) article 20 (authority to survey and investigate land);
- (f) article 22 (compulsory acquisition of land);
- (g) article 23 (power to override easements and other rights);
- (h) article 25 (compulsory acquisition of rights etc.);
- (i) article 26 (private rights);
- (j) article 28 (acquisition of subsoil and airspace only);
- (k) article 30 (rights under or over streets);
- (l) article 31 (temporary use of land for carrying out authorised development); and
- (m) article 32 (temporary use of land for maintaining the authorised development).