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: 9.50 Applicants' Comments on Deadline 12 Submissions & Updates to the Applicants' Draft DCO

The Planning Act 2008

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

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GLOSSARY

Abbreviation	Description
AOD	Above ordnance datum
AS-	Additional Submissions
BAT	Best Available Techniques
BEIS	The Department for Business, Energy and Industrial Strategy
CCGT	Combined Cycle Gas Turbine
CCUS	Carbon Capture, Utilisation and Storage
CEMP	Construction and Environmental Management Plan
CTMP	Construction Traffic Management Plan
CO_2	Carbon dioxide
CPO	Compulsory Purchase Order
dB	Decibels
DCO	Development Consent Order
dDCO	Draft Development Consent Order
EIA	Environmental Impact Assessment
EPC	Engineering, Procurement and Construction
ES	Environmental Statement
ETS	Emissions Trading Scheme
ExA	Examining Authority
FEED	Front end engineering and design
FRA	Flood Risk Assessment
Ha	Hectares
HDD	Horizontal Directional Drilling
HIA	Hydrogeological Impact Appraisal
HoT	Heads of Terms
kV	Kilovolts
MHWS	Mean High Water Springs
MLWS	Mean Low Water Springs

Mt	Million tonnes
NATS	National Air Traffic Services
NSIP	Nationally Significant Infrastructure Project
NWL	Northumbria Water Lagoon
NZT	The Net Zero Teesside Project
NZT Power	Net Zero Teesside Power Limited
NZNS Storage	Net Zero North Sea Storage Limited
PA 2008	Planning Act 2008
PCC	Power Capture and Compressor Site
PDA-	Procedural Deadline A
PINS	Planning Inspectorate
RCBC	Redcar and Cleveland Borough Council
RR	Relevant Representation
SBC	Stockton Borough Council
SEL	Sound Exposure Level
SPA	Special Protection Areas
SoCG	Statement of Common Ground
SoS	Secretary of State
STDC	South Tees Development Corporation
SuDS	Sustainable urban drainage systems
UXO	Unexploded Ordnance
WFD	Water Framework Directive

1.0 INTRODUCTION

1.1 Overview

1.1.1 This document, 'Applicant's Comments on Deadline 12 Submissions & Updates to the Applicants' Draft DCO' (Document Ref. 9.50) has been prepared on behalf of Net Zero Teesside Power Limited and Net Zero North Sea Storage Limited (the 'Applicants'). It relates to the application (the 'Application') for a Development Consent Order (a 'DCO'), that has been submitted to the Secretary of State (the 'SoS') for Business, Energy and Industrial Strategy ('BEIS'), under Section 37 of 'The Planning Act 2008' (the 'PA 2008') for the Net Zero Teesside Project (the 'Proposed Development').

1.1.2 The Application was submitted to the SoS on 19 July 2021 and was accepted for Examination on 16 August 2021. A change requests made by the Applicants in respect of the Application were accepted into the Examination by the Examining Authority on 6 May 2022, 6 September 2022 and 4 November 2022.

1.2 Description of the Proposed Development

1.2.1 The Proposed Development will work by capturing CO_2 from a new the gas-fired power station in addition to a cluster of local industries on Teesside and transporting it via a CO_2 transport pipeline to the Endurance saline aquifer under the North Sea. The Proposed Development will initially capture and transport up to 4Mt of CO_2 per annum, although the CO_2 transport pipeline has the capacity to accommodate up to 10Mt of CO_2 per annum thereby allowing for future expansion.

1.2.2 The Proposed Development comprises the following elements:

- **Work Number ('Work No.') 1** – a Combined Cycle Gas Turbine electricity generating station with an electrical output of up to 860 megawatts and post-combustion carbon capture plant (the **'Low Carbon Electricity Generating Station'**);
- **Work No. 2** – a natural gas supply connection and Above Ground Installations ('AGIs') (the **'Gas Connection Corridor'**);
- **Work No. 3** – an electricity grid connection (the **'Electrical Connection'**);
- **Work No. 4** – water supply connections (the **'Water Supply Connection Corridor'**);
- **Work No. 5** – a waste water disposal connection (the **'Water Discharge Connection Corridor'**);
- **Work No. 6** – a CO_2 gathering network (including connections under the tidal River Tees) to collect and transport the captured CO_2 from industrial emitters (the industrial emitters using the gathering network will be responsible for consenting their own carbon capture plant and connections to the gathering network) (the **'CO_2 Gathering Network Corridor'**);

- **Work No. 7** – a high-pressure CO_2 compressor station to receive and compress the captured CO_2 from the Low Carbon Electricity Generating Station and the CO_2 Gathering Network before it is transported offshore (the **'HP Compressor Station'**);
- **Work No. 8** – a dense phase CO_2 export pipeline for the onward transport of the captured and compressed CO_2 to the Endurance saline aquifer under the North Sea (the **'CO_2 Export Pipeline'**);
- **Work No. 9** – temporary construction and laydown areas, including contractor compounds, construction staff welfare and vehicle parking for use during the construction phase of the Proposed Development (the **'Laydown Areas'**); and
- **Work No. 10** – access and highway improvement works (the **'Access and Highway Works'**).

1.2.3 The electricity generating station, its post-combustion carbon capture plant and the CO_2 compressor station will be located on part of the South Tees Development Corporation (STDC) Teesworks area (on part of the former Redcar Steel Works Site). The CO_2 export pipeline will also start in this location before heading offshore. The generating station connections and the CO_2 gathering network will require corridors of land within the administrative areas of both Redcar and Cleveland and Stockton-on-Tees Borough Councils, including crossings beneath the River Tees.

1.3 The Purpose and Structure of this document

1.3.1 The purpose of this document is to summarise the Applicants' comments on the submissions made by Interested Parties at Deadline 12 (1 November 2022) and updates to the Applicants' draft DCO. The document is structured to provide comments on the following Interested Parties' Deadline 12 submissions and comments on the position as regards some other Interested Parties:

- Section 2 – Anglo American
- Section 3 – Marine Management Organisation
- Section 4 – North Tees Group
- Section 5 – Northumbrian Water Limited
- Section 6 – Orsted Hornsea Project Four Limited
- Section 7 – Redcar Bulk Terminal Limited
- Section 8 – Sembcorp Utilities (UK) Limited
- Section 9 – South Tees Development Corporation
- Section 10 – Teesside Gas & Liquids Processing and Teesside Gas Processing Plant Limited

2.0 ANGLO AMERICAN ("AA")

2.1.1 The Deadline 12 submission by AA [REP12-135] includes a joint statement between AA and the Applicants.

2.2 Applicants' Response

2.2.1 The Applicants submitted the same joint statement at Deadline 12 [REP12-130].

2.2.2 In this respect, the Applicants note that the Deadline 12 DCO mistakenly included Anglo American's preferred wording of the Protective Provisions providing at paragraph 232(3)(j)-(s) that Anglo American should be required to consent to the use of the land powers in the DCO.

2.2.3 As set out in the Joint Statement and for the avoidance of doubt, the Applicants do not agree to the inclusion of these provisions in the DCO for the reasons set out in the Joint Statement, and do not consider that they should form part of the DCO if made.

3.0 MARINE MANAGEMENT ORGANISATION

3.1.1 The Examining Authority is directed to the Statement of Common Ground signed by both the MMO and Applicants at Deadline 13 (Document Reference 8.4). This confirms that the MMO is content with the entirety of the drafting in the deemed marine licences in Schedules 10 and 11 of the final DCO [REP12-003] with the exception of Part 1, paragraph 7.

3.1.2 Whilst the MMO has not commented upon this provision previously, the Applicants anticipate that comments from the MMO may be received at Deadline 13 or, even in the absence of further comments from the MMO, it may assist the Examining Authority and Secretary of State to understand the Applicants' position on this matter prior to the end of the Examination.

3.1.3 Paragraph 7 makes clear that the general position is that section 72 (variation, suspension, revocation and transfer of licence) of the Marine and Coastal Access Act 2009 ("MCA 2009") applies to the deemed marine licences ("DMLs"). It follows that the entirety of the MMO's powers to revoke, suspend, transfer or vary a licence generally have effect. The Applicants agree this is appropriate and any issue with respect to the management and enforcement of the DMLs is a matter for the MMO.

3.1.4 The latter part of paragraph 7 deals specifically with the process for the *transfer* of the DMLs. It states that s72(7) (power of MMO to transfer or vary a licence following an application) and s72(8) (prohibition on transfer except by way of an approval under 72(7)) of the MCA 2009 would <u>not</u> apply where Article 8 (consent to transfer benefit of this NZT Order) of the NZT DCO [REP12-003] has effect.

3.1.5 The Applicants had included this drafting in the draft DCO [APP-005] that was submitted with the DCO application in July 2021. The drafting of this provision has not changed since this date and no substantive comments on this matter have been received from the MMO throughout the entirety of the Examination. Nevertheless, the Applicants address the MMO's position below.

3.1.6 Article 8(2) is the key provision. This states that the undertaker may transfer the whole of a DMLs with the consent of the Secretary of State (SoS). Article 8(3) specifies that the SoS must consult the MMO prior to approving such transfer. Article 8(13) specifies that the undertaker must also notify the MMO within ten days of the transfer taking effect.

3.1.7 The MMO advised on 4th November that it did not agree to the disapplication of sections 72(7) and (8) of the MCA 2009 where Article 8 of the Order has effect. The MMO advised that its position is that the entirety of s72 of the MCA must have effect, and that therefore any transfer of the DMLs must be decided by the MMO pursuant to an application under section 72(7) of the MCA 2009.

3.1.8 Together Article 8 ensures that the MMO will have an opportunity to advise the SoS as to whether or not a transfer should be approved (where such approval of a transfer of powers is required under Article 8). The expectation must be that the SoS will then take into consideration the advice of its marine advisors in making the determination. The provisions of Article 8 also ensure that no "partial" transfer can

be made so as to create uncertainty over enforcement of the DML by the MMO (note the reference in Art 8(2) to "whole of" the DML). Article 8 further ensures that the MMO have early notice of a transfer taking effect (which the Applicants recognise is important from an enforcement perspective).

3.1.9 The Applicants' position is that the process under Article 8 is a reasonable alternative to the transfer process under s72(7) and (8). It avoids duplication of procedures between Article 8 and the MCA 2009, and ensures that all powers under the DCO can be transferred pursuant to a single application to the SoS. That simplifies transfer arrangements for undertakers but also reduces the administrative burden on regulatory bodies (whilst ensuring appropriate safeguards for the MMO).

3.1.10 The arrangements in paragraph 7 are very well established in DMLs. They have been accepted by the Secretary of State in many recent DCOs, including Article 5(14) of The East Anglia TWO Offshore Wind Farm Order 2022, paragraph 7 of Schedule 11 of The Hornsea Project Three Wind Farm Order 2020 and Article 8(10 of The York Potash Harbour Facilities Order 2016. Furthermore, the Applicants have undertaken a review of DCOs with DMLs that have been made since 2015. This provision or similar wording is contained in twelve out of the fourteen DCOs that the Applicants identified (either in the DML itself or in the transfer of benefit article in the DCO).

3.1.11 The MMO have provided no explanation as to why the NZT Order is different to other DCOs such that this provision is not appropriate in the NZT Order. No explanation has been provided by the MMO as to why the Secretary of State is not capable of determining a transfer application subject to consultation with the MMO, or why the MMO considers that the Secretary of State would not adequately consider the advice of his marine advisors in making a determination on the transfer of one of the DMLs under Article 8 of the Order.

3.1.12 The Applicants' position is that this provision should be included in the final NZT Order, in line with precedent in other DCOs and taking into account the Applicants' clear rationale for including this provision.

4.0 NORTH TEES GROUP ("NTG")

4.1.1 The Deadline 12 submission by NTG [REP12-136] includes an update on discussions and a set of NTG's preferred protective provisions.

4.1.2 **Applicants' Response**

4.1.3 NTG have provided their timeline of events. The Applicants consider it may be of benefit to the Examining Authority to provide their timeline of events relating to the protective provisions, and this is set out below. In terms of the Applicants' timeline of engagement for the Heads of Terms, the Applicants refer to table 2.2 of the Statement of Common Ground with the NTG that was submitted at Deadline 12 [REP12-125]. In addition to this record of main meetings and calls, the Applicants note that there have been a significant number of emails exchanged other calls between the Parties (including their representatives) on a regular basis.

4.1.4 As is demonstrated in the timeline and the record of engagement, the Applicants have consistently sought to engage with NTG, including providing two fully considered sets of protective provisions along with a detailed mark-up in response to the draft that was provided by NTG at [REP11-043] and [REP12-136] which closely matched the protective provisions sought by Sembcorp.

4.1.5 The Applicants have carefully considered the positions that have been put by NTG and have responded with drafts that are proportionate, based on relevant precedents and relevant to NTG's ownership and operations. The Applicants will continue to make concerted efforts to negotiate with NTG however the Applicants' position is that the protective provisions provided at Part 27 of Schedule 12 offer appropriate protection for NTG's interests.

4.1.5.1. It is important that the Applicants clarify a comment that has been made by NTG at ISH5 and in REP12-136 at paragraph 1.4. The draft protective provisions provided by the Applicants on 16th August do provide protection for land within the Order Limits. This is demonstrated in paragraphs 366 and 367(1) of the protective provisions provided for the benefit of NTG within the draft Order at Part 27 of Schedule 12 [REP12-003]. Paragraph 367(1) states: "*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*". The term 'operations' is defined under paragraph 366 to mean "*for each of NTL, NTR and NTLL, their respective freehold land within the Order limits*" [emphasis added]. The Applicants' have explained this previously directly to NTG (including on a call on 24 October) however no response addressing or acknowledging this has been provided by NTG.

4.1.6 Applicants' Timeline with regard to Protective Provisions

4.1.6.1. REP12-136 para 1.1 agreed (project engagement and kick off meetings between Applicants and NTG – 8th December 2020).

4.1.6.2. REP12-136 para 1.2 agreed (First land plans and Heads of Terms circulated from the Applicants' agent – 22nd February 2020).

4.1.6.3. REP12-136 para 1.3 agreed (First protective provisions were provided by the Applicants to NTG – 16th August 2022).

4.1.6.4. The Applicants sent a follow-up email then received a first response from NTG's solicitor on 13th September. This reply comprised an email providing a high-level summary of NTG's overall position on the approach to the draft protective provisions, not a mark-up.

4.1.6.5. The Applicants responded on 16th September to state the Applicants were considering NTG's position and would respond fully once instructions had been taken.

4.1.6.6. The Applicants provided a further full set of protective provisions taking into account NTG's comments to NTG on 14th October.

4.1.6.7. NTG responded on 19th October following ISH5. Their response comprised a set of protective provisions based very heavily on the protective provisions sought by Sembcorp, and this has subsequently been annexed to NTG's submissions at [REP11-043] and [REP12-136].

4.1.6.8. The Applicants undertook a detailed review of this set of protective provisions and returned their detailed comments including a mark-up to NTG on 28th October.

4.1.6.9. The Applicants have not received written comments on their draft provided on 28th October.

4.1.6.10. A call between the Applicants and NTG to discuss protective provisions was held on 4th November.

4.1.6.11. The Applicants have never expressed a refusal to engage with NTG and the Applicants note that no mark-up has been provided by NTG to the Applicants' draft protective provisions provided in August or October. The Applicants reiterate that they have consistently undertaken detailed consideration of NTG's comments and have, to-date, provided two drafts and one written mark-up of draft protective provisions. The Applicants remain committed to negotiations with NTG and will continue to seek an agreed position with NTG following the close of Examination.

4.1.6.12. The fact that the negotiations with NTG have not, as yet, resulted in an agreement being entered into is precisely why the Applicants require compulsory acquisition powers in order to secure the deliverability of the Proposed Development. The Applicants' fuller explanation of its overarching compulsory acquisition case is set out in its (i) Statement of Reasons [REP12-010] and (ii) the written summary of oral submission for Compulsory Acquisition Hearing 1 [REP1-037]. Reference is provided below to the various documents in which the Applicants have responded to matters raised by NTG.

4.1.7 <u>Applicants' response to comments made in [REP12-136]</u>

4.1.8 The Applicants note that NTG have explained at paragraph 1.8 of [REP12-136] that the Applicants draft protective provisions provided on 28th October is marked 'without prejudice'. The Applicants agree – such matters are not therefore disclosable, the concept of such negotiations being important to allow parties to carry out confidential negotiations, without prejudice to their position in open correspondence or submissions.

4.1.9 The Applicants respond to those comments made by NTG in REP12-136 where it considers it is appropriate to do so. Where comments are made by NTG with regard to points arising in commercial negotiations, the Applicants note that individual comments should not be considered in isolation, but rather as they are intended, within the context of a wider package of proposed terms and agreements that remain under negotiation with NTG.

4.1.10 The Applicants' response in this submission is to consider points thematically rather than by paragraph and does not duplicate or repeat comments it has made in previous submissions. For convenience, the Applicants note that their previous replies to NTG's representations are provided at [REP3-012], [REP6-122], [REP7-009], [REP8-049], [REP11-014] and [REP12-133], the last of which responds to NTG's additional submissions [AS-207] and [AS-208].

4.1.11 Protection of NTG assets and operations, including its land interests and infrastructure – the protective provisions provided at Part 27 of Schedule 12 of the draft Order [REP12-003] set out that no works comprising any part of the authorised development which would have an effect on NTG's operations (their respective freehold land within the Order Limits) or access to any land owned by the NT Group that is adjacent to the Order Limits may commence, until works details prepared by the undertaker have been approved by NTG (see paragraph 367(2)).

4.1.12 The works details are to comprise plans and sections, details of proposed methods of working and timing of works, details of vehicle access routes and any further particulars requested by NTG. The preparation of the works details is to be made subject to reasonable requirements made by NTG with regard to access (see paragraph 367(3)).

4.1.13 The Applicants require the ability to exercise compulsory acquisition of rights as they must be able to execute the development should the parties not reach voluntary agreement. If a voluntary agreement is reached, the Applicants need to retain compulsory acquisition powers where NTG is in breach or where there is a need to acquire or suspend third party rights. However, the Applicants consider that the draft protective provisions provide adequate protection for the concerns outlined by NTG in paragraph 2.1 of their submission [REP12-136].

4.1.14 Compulsory acquisition powers are needed to ensure that the nationally significant infrastructure project can be delivered; the protective provisions however protect NTG's interests by requiring the consent of NTG and their approval of works details.

4.1.15 The provision of works details as drafted by the Applicants provide suitable flexibility to encompass whichever topics those details need to cover at the relevant point in

future including (in response to [REP12-136]) matters relating to interactions with assets and infrastructure, access, detailed design of the proposed pipeline, methods of working, and where appropriate taking into account NTG's existing contractual obligations. NTG can request further information and its consent is required before the relevant access or works can be implemented.

4.1.16 In order to provide further comfort to NTG however, the Applicants are prepared to add an additional protective provision, as drafted in bold below. This means that if any apparatus of NTG's is impacted by the Proposed Development, then contingency arrangements must be made by the undertaker to NTG's approval (acting reasonably). This mechanism facilitates flexibility so that a suitable arrangement can be made at the relevant point in time. This would allow for apparatus to be replaced where required or for no replacement to be made where, for instance, apparatus is still in situ but is no longer required or in use and which there is clearly no benefit or need to replace.

Apparatus

370. Where, in exercise of powers conferred by the Order, the undertaker acquires any interest in land in which any apparatus owned by NTL, NTR or NTLL is placed and such apparatus is to be relocated, extended, removed or altered in any way, no relocation, extension, removal or alteration shall take place until NTL, NTR or NTLL (as the case may be) has approved contingency arrangements in order to conduct its operations, such approval not to be unreasonably withheld or delayed.

4.1.17 Matters relevant to protective provisions - The Applicants note that the protective provisions provided by NTG at [REP12-136] include provisions relating to land contamination (several, see paragraph 319), repair and condition (318) and decommissioning (321). These are matters otherwise covered by the draft Order, or which are not relevant to or appropriate to include in the protective provisions. See further the Applicants' comments on NTG's submissions in [REP11-014] and [REP12-133].

4.1.18 The width and extent of compulsory acquisition rights – in response to comments made by NTG regarding the width of the Order limits / pipeline and their request that "efficient and economic use" of the Sembcorp pipeline corridor is made (see paragraphs 309(1) and 315(c) of Annex 1 to [REP12-136]), the Applicants note firstly that their justification for the full extent of compulsory acquisition required is made in the Applicants' deadline 8 submission Justification of Corridor Widths [REP8-051]. Secondly, the Applicants note that they require compulsory acquisition powers that are adequate to deliver the Proposed Development, having regard to a wide array of considerations going beyond efficiency and economy, including health and safety considerations. The Applicants cannot be limited where there is a need to construct the Proposed Development in a safe manner or where there is a need to otherwise deliver the Proposed Development. Work No. 6 remains subject to detailed design, and the Applicants consider that the protective provisions, including approval of works details by NTG (incorporating approvals of plans and sections showing Work

No. 6), is the appropriate mechanism for managing and controlling the detail of the pipeline.

4.1.19 Temporary possession – the Applicants' position with regard to temporary possession is set out in previous submissions for instance in [REP12-133]. The Applicants consider that paragraph 331 of NTG's draft protective provisions provided in [REP12-136] is unnecessary and if it were to be included would duplicate the protection already provided for under the approval of works details mechanisms in the Applicants' draft protective provisions at part 27 of schedule 12 of REP12-003.

4.1.20 To put the position beyond doubt, the Applicants are though content to amend the 'works details' definition so that this specifically references areas in which temporary possession may be taken, as follows (amendments shown in **bold**):

"works details" means**, including for land of which the undertaker intends to take only temporary possession under the Order**-

(a) Plans and sections;
(b) Details of the proposed method of wording and timing of execution of works;
(c) Details of vehicle access routes for construction and operational traffic;
(d) Any further particulars provided in response to a request under paragraph 367.

4.1.21 Participation in community groups – the Applicants note that paragraphs 324 – 327 of the draft protective provisions annexed to NTG's submission [REP12-136] provide a duplication of the 'participation of community groups' provisions at paragraph 224 of the draft Order [REP12-003] for the protection of Sembcorp.

4.1.22 The Applicants are not aware of any community groups that are established or co-ordinated by NTG, and in any event the Applicants would already be obliged to participate in any such groups under the Sembcorp protective provisions. The Applicants therefore consider the inclusion of paragraph 324 – 327 to be not relevant to the NTG protective provisions and an unnecessary duplication.

4.1.23 6 months notification – A 6-month notification period is inconsistent with other protective provisions contained in Schedule 12 and with the Order, which has been drafted based on relevant precedent and granted DCOs. This provision should not be provided for in the protective provisions and the Applicants are not aware of any relevant explanation that has been made to justify its inclusion.

4.1.24 Paragraph 3 on the Statement of Commonality [REP9-012]

4.1.25 The Applicants have submitted a final Statement of Commonality at Deadline 13 (Document Ref. 8.36) and addressed NTG's comments in this update.

4.1.26 Paragraph 4 on the Compulsory Acquisition Schedule [REP11-020]

4.1.27 In relation to NTG's comments on the Compulsory Acquisition Schedule submitted at Deadline 11 [REP11-020], the reference to the SoCG was updated in the Deadline 12 submission [REP12-131]. The next steps remain accurate - the Applicants remain committed to pursuing a voluntary agreement with NTG and will continue to engage with NTG to progress these matters.

5.0 NORTHUMBRIAN WATER LIMITED ("NWL")

5.1.1 The Deadline 12 submission by NWL [REP12-137] includes a response to the ExA's Third Written Questions. The Applicants have also provided an update on the protective provisions for the benefit of NWL.

5.2 Applicants' Response

5.2.1 The Applicants would note that NWL's response to WE.3.1 contains common wording to the Applicants' response submitted at Deadline 11. This reflects the continued engagement between the parties, and alignment on current status and next steps.

5.3 Protective Provisions with NWL

5.3.1 REP12-137 does not comment on the protective provisions between NWL and the Applicants.

5.3.2 However, since Deadline 12 NWL and the Applicants have agreed the form of the side agreement annexing protective provisions to be entered into between the parties. The side agreement is now undergoing final approvals and the signing process before being completed.

5.3.3 Further to that agreed position, the Applicants wish to make an update to the form of protective provisions for the protection of NWL, which are provided for at Part 25 of Schedule 12 to the draft Order [REP12-003]. The update is to one paragraph only (paragraph 340) and identified in the **Bold** text:

340. 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) if applicable, the undertaker has made the appropriate application under sections 106 (right to communicate with public sewers), 112 (requirement that proposed drain or sewer be constructed so as to form part of the general system) or 185 (duty to move pipes, etc.) of the Water Industry Act 1991 as may be required by those provisions and has provided a plan of the works proposed to NW and NW has given the necessary consent or approval under the relevant provision, such agreement not to be unreasonably withheld or delayed,

and **in the event that** such works are to be executed **by the undertaker, they are to be executed** only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by NW for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

6.0 ØRSTED HORNSEA PROJECT FOUR LIMITED ("ORSTED")

6.1.1 The Deadline 12 submission by Orsted [REP12-138] includes responses to the Applicants' submissions at Deadline 8 and 11.

6.2 The Applicants' Response to Orsted's Deadline 12 Submissions

6.2.1 At Deadline 12, Orsted Hornsea Project Four Limited ("Orsted") commented on certain of the Applicants' previous submissions into the examination, specifically responding to:

6.2.1.1. Elements of the Applicants' submissions at Deadlines 8 [REP8-049] and 11 [REP11-014], which were themselves responses to Orsted's previous submissions into the examination and particularly the advice of Richard Harwood KC ("the RHKC Advice") regarding the Project's approach to its environmental impact assessment, how the same considers the impact on Hornsea Project Four Offshore Wind Farm ("Hornsea Four") and the asserted need for protective provisions to be included in the NZT DCO for the benefit of Hornsea Four; and

6.2.1.2. A response to the Applicants other response to Orsted's Deadline 9 submissions at Deadline 11 [REP11-014], which focussed on responding to the additional legal submissions from James Maurici KC [REP9-032, Appendix 1].

6.2.2 It is clear the parties have a divergence of views on the matters subject to these submissions and much of what is said by Orsted in their Deadline 12 submissions has been addressed by the Applicants extensively in this examination already, and indeed, where relevant, within submissions made into the Hornsea Four DCO examination. The Applicants do not propose to repeat the substance of those submissions in this response, but have instead provided the ExA with examination library references for its previous submissions and further supplemented those submissions where this is thought likely to be helpful or relevant for the ExA's consideration of these points.

6.3 Response to Section 2 of Orsted's Deadline 12 Submissions

6.3.1 The Applicants' responses to Orsted's various submissions regarding the Project's approach to the matters considered within the RHKC advice are set out within Section 9.4 of its Deadline 11 response [REP11-014, e-pages 39 to 44] and Section 6.2 of its Deadline 8 response [REP8-049, e-page 18], which also cross-referred to its previous submissions on the matter and which also inform the Applicants' position:

6.3.1.1. Applicants' Written Summary of Oral Submission for Issue Specific Hearing 1 [REP1-035], e-pages 9 – 13, Appendix 6 (Applicants' Response to Action 2 (in consideration of the overlap with Hornsea Four)) and Appendix 7 (Applicants' Response to Action 4 (options for the SoS on Hornsea 4));

6.3.1.2. Applicants' Comments on Deadline 1 Submissions [REP2-060] Section 6, particularly sub-section 6.3 (e-page 11);

6.3.1.3. Applicants' response to Orsted's Deadline 3 Submission [REP4-030]. This includes an assessment of the impact of the offshore elements of the NEP Project on Hornsea Four at Appendix 1;

6.3.1.4. Position statement between the Applicants and Orsted [REP5-022];

6.3.1.5. The Applicants' Written Summary of Oral Submission for Issue Specific Hearing 3 [REP5-025], e-pages 11 – 16 and 21 to 23;

6.3.1.6. Applicants' Response to Second Written Questions COM.2.2, DCO.2.14 – DCO.2.19 [REP6-121], e-pages 28 – 29, 52 - 56;

6.3.1.7. Applicants' Responses to Deadline 5 Submissions [REP6-122], particularly section 8.4 (The Proposed Development and the Endurance Store), e-page 20; and

6.3.1.8. Applicants' Comments on Deadline 6 Submissions [REP7-009], e-pages 23 – 25.

6.3.2 The submissions listed above represent a complete and comprehensive response to all of the submissions made by Orsted on these matters, including at Deadline 12.

6.3.3 Regardless of the various counter-submissions that have been made on behalf of Orsted, the simple position is:

6.3.3.1. The Applicants have provided an assessment of the impact of the offshore elements of the NEP Project on Hornsea Four (Appendix 1 to its Deadline 4 submission [REP4-030]). Orsted have made repeated submissions about the definition of the 'Project' and how that relates to this DCO application; however, that assessment of the impact of the overall project (including all the offshore infrastructure which will be subject to a further consenting process covered by EIA) on Hornsea Four has been provided, including an assessment of the unmitigated impact.

6.3.3.2. There is no gap in the information before this examination, only a dispute between the parties as to whether Orsted has provided any adequate and persuasive justification for seeking protective provisions under this DCO as a result of the impact identified in that assessment.

6.3.3.3. The Applicants have set out in their previous submissions referenced above (most recently sections 9.4.10 to 9.4.13 of its Deadline 11 submission) their position as to why such protections are neither justified, nor necessary, in this DCO.

6.3.3.4. For the avoidance of doubt, the submissions made in paragraph 9.4.9 of the Applicants' Deadline 11 response are accurate in respect of both the CO2 emissions captured from the NZT power station and the other emitters considered as part of Phase 1 of the ECC plan. The storage of all such Phase 1 emissions (to which the Proposed Development relates) is proposed to be located within the residual 30% capacity of the Endurance Store outside of the Overlap Zone.

6.4 Response to Section 3 of Orsted's Deadline 12 Submissions

6.4.1 Orsted submit in paragraph 3.2.4 of their response that:

> *"On an objective assessment of the material submitted, Hornsea Four considers that the Applicant has failed to provide any clear evidence that the terms agreed as part of the Interface Agreement would render the ECC Plan unviable. In particular, the Applicant has failed to (i) demonstrate that co-existence is not possible and (ii) evidence that the other provisions in the interface agreement including the compensation provisions would operate in a way that would frustrate the ECC plan even in circumstances where physical co-existence is not preferred."*

6.4.2 These are matters clearly central to the extensive submissions made into the Hornsea Project DCO examination and the ExA will be well aware of the Applicants' position that they do not consider it necessary or appropriate to re-litigate the same points in this examination, for reasons which have been rehearsed extensively both orally and in writing.

6.4.3 The Applicants' written summaries of oral submissions from ISH3 [REP5-025, e-pages 11 – 15] and, most recently, ISH5 [REP11-015, e-pages 14 to 22] provide the Applicants' relevant submissions on the matter. Those submissions also include the justification for imposition of Articles 49 and 50 in the draft DCO (which is a relevant matter for this examination). These Articles replicate drafting from the protective provisions proposed by bp into the Hornsea Four DCO examination to address the stated risk created by the interface agreement (as further detailed in paragraphs 3.7.15 to 3.7.20 of the Explanatory Memorandum (most recently submitted at REP8-006, e-page 36), adapted as necessary for the different context.

6.4.4 Orsted now submit in paragraph 3.2.6 that they do not consider it would be *"rational for the Secretary of State to conclude that there is substantial public interest in preserving the viability of the ECC plan"* or that, in the event the SoS concludes that there is, *"that this may justify an interference with Orsted's contractual rights under the Interface Agreement"*.

6.4.5 Although these are points for the Secretary of State to address when determining the Hornsea Four DCO application, it should be noted that Orsted does not seek to elaborate, explain or substantiate the submission that if the SoS were to conclude that there is substantial public interest in preserving the viability of the ECC plan he would be acting irrationally in the *Wednesbury* sense.

6.4.6 That new submission is extreme and it is surprising. It is not a submission that Orsted has made at any stage during the six-month HP4 examination, or that any advocate acting on its behalf has made during any one of the three ISHs held during the NZT examination at which these issues have been discussed. Had that been done, any such submission would have had to be explained and justified, and questions could have been put to Orsted to elucidate its position and test what lay behind it. It is now belatedly made in written form, at the very end of the NZT examination, without providing the Applicants or the ExA with any explanation or attempted justification that can be assessed and analysed.

6.4.7 The absence of any explanation or attempted justification for this new submission is most likely explained by its patent and total lack of merit. Any objective analysis of

the position would recognise that the ECC plan would deliver significant public interest benefits. That can be seen from the summary of bp's position in a joint position statement originally produced for the Hornsea Four examination, but re-submitted into this examination as REP2-021 (e-pages 115 +) at sections 1 to 4 and 14 to 15, the Project Need Statement [AS-015], and Planning Statement APP-070 and within REP1-035 (e-pages 9 to 13) and Appendices 3 and 4. Indeed Orsted's own submissions recognise the importance of such carbon capture and storage projects and their viability in the public interest (see REP2-021 Orsted Policy Summary at e-page 99 (Executive Summary paragraph 1.3, recognising that CCUS is "*of critical importance to both the UK's green recovery plan and the national need to meet Net Zero commitments by 2050*") and in more detail at e-pages 108 to 111 (section 9.2)). It necessarily follows that there is substantial public interest in preserving the viability of the ECC Plan. Thus, a conclusion by the Secretary of State that there is substantial public interest in preserving the viability of the ECC plan would not just be well within the range of rational responses, it would be obviously (indeed incontestably) correct.

6.4.8 Against that background, the question for the Secretary of State is whether that substantial public interest justifies the proposed interference with Orsted's contractual rights under the Interface Agreement. As a matter of law, the weight that attaches to the public interest in preserving the viability of the ECC plan is quintessentially a matter of judgment for the decision-maker.

6.4.9 Having regard to the clear and obvious lack of merit in Orsted's new 'irrationality' submission and the lack of any explanation or justification for it, the decision to advance that submission at this very late stage represents an implicit recognition of the underlying weakness of its case.

6.4.10 Paragraph 3.2.8 of Orsted's response makes various submissions regarding why it is said to be important for Orsted to have certainty on the level of compensation payable to them in the event they are excluded from the Overlap Zone (or rather, the Exclusion Area (as a sub-part to the Overlap Zone) as proposed by bp in its protective provisions in the Hornsea Four DCO examination).

6.4.11 The effect of bp's protective provisions, as incorporated into Articles 49 and 50 (as either/or options) in the NZT DCO is that the level of compensation due will be confirmed either on the face of the DCO (Article 49(3)) or by the SoS within 2 months of the making of the DCO (Article 50(3)). Paragraphs 3.7.15 to 3.7.20 of the Explanatory Memorandum (detailed above) explain how these provisions are intended to operate and interact with the decision/equivalent provisions in the Hornsea Four DCO.

6.4.12 The Applicants' stated preference is that the quantum of compensation is confirmed on the face of the Hornsea Four DCO, which would allow Orsted to immediately plan and progress their project upon receiving consent in that context (or within 2 months thereafter if the SoS elects to defer such award until after the making of the DCO). If that is not possible, the proposed approach would facilitate a rapid determination of the appropriate quantum following a fair and transparent process. In the unusual

circumstances that have arisen here, that represents a reasonable balance between the legitimate public and private interest considerations in play. In any event, these are matters for the Secretary of State to grapple with and determine as part of his decision-making on the HP4 application. No separate and distinct issues as to compensation arise in the context of the NZT examination.

6.4.13 Finally, paragraph 3.2.12 repeats Orsted's previous submissions regarding the inadequacies they perceive to exist in the consenting regime that Parliament has established for the offshore consents associated with the wider NEP project.

6.4.14 The Applicants' position is as previously summarised, including at sections 6.2.41 to 6.2.46 of its Deadline 8 response [REP8-049, e-pages 24 and 25] and they have nothing to add in response to Orsted's most recent comments, other than to note the submissions remain superficial and have not been elaborated upon or explained in any further detailed in this examination. Orsted's criticism of a legislative regime which has been judged by Parliament to be appropriate and proportionate as a means of making decisions on the relevant underlying application is very unlikely to be accepted by the SoS, and, in any event, the determination of an individual application for development consent under the Planning Act 2008 regime is not an appropriate vehicle for reviewing the merits of that separate legislative regime.

7.0 REDCAR BULK TERMINAL LIMITED ("RBT")

7.1.1 The Deadline 12 submission by RBT [REP12-139] includes a set of protective provisions.

7.2 Applicants' Response

7.2.1 The Applicants and RBT continue to discuss the suite of Agreements (including property agreements) sought to be negotiated between them. Although they have not yet completed, only a few issues remain, and the Applicants anticipate agreement should be reached in a short timescale.

7.2.2 As discussed below, an agreed position has been reached on Protective Provisions, but in the absence of the Agreements being complete, the Applicants continue to seek temporary possession powers over RBT's land; as explained and justified in its response to RBT's Written Representation at Deadline 3 [REP3-012] (see pages 77-78).

7.2.3 In respect of the Protective Provisions, following RBT's Deadline 12 submission, the Parties have continued to discuss the concerns expressed in respect of the Protective Provisions. Those discussions have resulted in the relevant paragraph of the Protective Provisions being agreed between the parties, meaning that the Protective Provisions as a whole are agreed.

7.2.4 As such, the agreed set of Protective Provisions are as set out in the Applicants' Deadline 12 DCO [REP12-003] save that paragraph 184 (Indemnity) should read as follows:

184.—(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 177 or by the use of the RBT site by the undertaker any damage is caused to the RBT site (including the wharf, roadways, any RBT buildings, plant or machinery on the RBT site) or to the RBT operations, or there is any interruption in any service provided, or in the provision by RBT or denial of any services, or in any loss of service from apparatus that is affected by the authorised development the undertaker must—

(a) bear and pay the cost reasonably incurred by RBT in making good such damage or restoring the provision by RBT of any services; and

(b) make compensation to RBT for any other expenses, loss, damages, penalty or costs reasonably incurred by RBT (including, without limitation, all costs for the repair or replacement necessitated by physical damage), by reason or in consequence of any such damage or interruption or denial of any service provided by RBT.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of RBT, its officers, employees, servants, contractors or agents.

(3) RBT must give the undertaker reasonable notice of any claim or demand that has been made against it in respect of the matters in sub-paragraph (1)(a) and (b) and no settlement or compromise of such a claim is to be made without the consent of the undertaker such consent not to be unreasonably withheld.

(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 184 applies. If requested to do so by the undertaker, RBT must provide a reasonable explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 184 for claims reasonably incurred by RBT.

8.0 Sembcorp Utilities (UK) Limited ("Sembcorp")

8.1.1 The Deadline 12 submission by Sembcorp [REP12-140 to REP12-163] includes a position statement, explanatory memorandum, set of protective provisions and supporting plans.

8.2 Applicants' Response

8.2.1 Sembcorp submitted a number of protective provisions supporting plans at Deadline 12.

8.2.1.1. Key Plan & Sheets 1-15 – These show the extent of Sembcorp's interests in the Teesside region bordered in a red outline. The Applicants would clarify that although the legend on the Key Plan [REP12-146] is labelled as "NZT Order Land (illustrative rep)", this does not reflect the Applicants' Order Limits. The legend should be labelled as "Sembcorp Interests" or similar.

8.2.1.2. Sembcorp also submitted a supporting plan for the Wilton complex [REP12-162] and Sembcorp's existing 24" pipeline [REP12-163].

8.2.1.3. The Applicants submitted the Sembcorp Pipeline Corridor Protective Provisions Plan at Deadline 12 [REP12-029]. This is a certified document and shows the physical extent of the Sembcorp Pipeline Corridor shaded in yellow and bordered in grey. This plan supplements Schedule 12 Part 17 of the draft DCO by marking the extent of the Sembcorp Pipeline Corridor that is a defined term within the protective provisions. The Wilton and Billingham sites are also marked on the plan with a blue outline.

8.2.1.4. The Applicants have not included Sembcorp's other interests on the Sembcorp Pipeline Corridor Protective Provisions Plan as this is beyond the purpose of the document. Sembcorp's other interests are addressed within wider definition of Sembcorp operations within Schedule 12 Part 17 of the draft DCO.

8.2.2 With respect to Sembcorp's proposed protective provisions [REP12-144], as expanded upon in Sembcorp's position statement [REP12-143] and explanatory memorandum [REP12-142], the protective provisions included at Part 17 of Schedule 12 of the Applicants' draft DCO submitted at Deadline 12 [REP12-003] are to a significant degree aligned with those proposed by Sembcorp, with some key differences, which are covered below.

8.2.3 The definitions included in the Sembcorp protective provisions are agreed. The Applicants' draft DCO [REP12-003] did not include the definition of "Sembcorp" in error, and **the Applicants agree with the definition as proposed by Sembcorp and this should be included in paragraph 213 as follows: " "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 and any successor in title or function to the Sembcorp operations in, under or over the Sembcorp Pipeline Corridor;"**.

8.2.4 **The Applicants agree with the inclusion of "and is not a third party owner or operator" at the end of the definition for "operator". The Applicants also agree**

that in the definition of "owner" the words "but who is not a third party owner or operator" should appear below sub-paragraph (b) in that definition (as per Sembcorp's drafting), not as part of sub-paragraph (b). The Applicants agree to the inclusion of "(as defined in article 2(1) of the Order)" in the definition of "owner", after the words "Wilton Complex, any owner".

8.2.5 In terms of Sembcorp's proposed paragraph A(4), disapplying the application of Article 44, the Applicants do not consider that this should be included, as Article 44 provides an important backstop position ensuring that the nationally significant infrastructure project cannot be held up.

8.2.6 The drafting under the heading "Separate approvals by third party owners or operators" is different. The Applicants are prepared to accept the position taken by Sembcorp, although the Applicants propose the following drafting as that proposed by Sembcorp suggests that the consent of third party owners or operators is otherwise required under this Part 17, which is not correct. **The Applicants propose drafting at paragraph 214 to replace the existing paragraph as follows:**

(1) Nothing in this Part of this Schedule removes any obligation on the undertaker to seek consent from Sembcorp for works details pursuant to this Part where such approval is also sought or obtained from a third party owner or operator pursuant to the third party protective provisions.

(2) Where the undertaker seeks consent for works details from a third party owner or operator pursuant to the third party protective provisions that also require consent from Sembcorp under this Part, the undertaker must provide Sembcorp with—

(a) the same information provided to the third party owner or operator at the same time; and

(b) a copy of any approval from the third party owner or operator given pursuant to the third party protective provisions.

8.2.7 Sembcorp includes restrictions in connection with the Sembcorp Pipeline Corridor at paragraphs D to E, which include restrictions on the exercise of powers of compulsory acquisition. The Applicants do not agree to the inclusion of these provisions, and have addressed this point in the Applicants' Schedule of Changes to the DCO submitted at Deadline 12 [REP12-005], in particular at pages 30 to 32. The Applicants maintain their position, that to protect the delivery of the nationally significant infrastructure project, the Applicants must retain compulsory acquisition powers over the Order land to facilitate the construction, maintenance and operation of the pipelines.

8.2.8 In terms of the proposed insurance provisions (Sembcorp paragraph I, Applicants' paragraph 221), these are agreed, except that the Applicants do not agree to the requirement that a policy of insurance include "cover in respect of any consequential

loss and damage suffered by Sembcorp". This is a commercial matter for discussion between the parties outside the protective provisions.

8.2.9 With respect to the dispute resolution clauses proposed by Sembcorp, the Applicants' preference is for "option one" which aligns with paragraph 226 of the draft DCO, and the reference to Article 47 (arbitration). It is noted that the wording of that provision doesn't preclude the parties agreeing an alternate dispute resolution process of the type proposed by Sembcorp as "option two".

9.0 SOUTH TEES DEVELOPMENT CORPORATION ("STDC")

9.1.1 The Deadline 12 submission by STDC [REP12-164 - REP12-166] includes a summary of outstanding objections and closing submissions, and a set of protective provisions.

9.2 Applicants' Response

9.2.1 Introduction – Introduction – the Applicants have made very significant attempts to enter into voluntary property agreements with STDC since May 2020, as evidenced by the final Statement of Common Ground [REP12-122] and Compulsory Acquisition Negotiations Schedule [REP12-131]. The option for lease is in a mature form. The most recent face to face all-parties meeting took place on 12 October 2022. Since then the Applicants' solicitor and STDC's solicitor have been working together to finalise the option for lease and in seeking to do that have held 14 legal calls since 12 October 2022. Whilst that only relates to the most recent period, it provides an example of the level of negotiations which have been occuring between the parties. Any suggestion in STDC's representation that the Applicants have not been adequately negotiating or that issues have 'sat' with the Applicants is plainly incorrect. Those negotiations will continue beyond the end of the Examination. The next legal call is due to take place on 9 November 2022 after which arrangements will be made for an all parties meeting. The Applicants will continue to exhaust all attempts to enter into voluntary agreements with STDC

9.2.2 Background – the Applicants make no comment on the factual background. To the extent that STDC has expressed concern regarding potential interface or conflict with other development, or the extent of the Order Limits, the Examining Authority is directed to the Applicants Comments on STDC's Relevant Representation Applicants' [REP1-045] the Applicant's Comments on STDC's Written Representation [REP3-012], the Schedule of Changes to the DCO submitted at Deadline 4 [REP4-004] which included substantial updates to the protective provisions for the benefit of STDC, as well as the Applicants Comments on STDC's Deadline 6 Submissions [REP7-009] Deadline 7 Submissions [REP8-049] Deadline 8 submissions [REP9-018] and Deadline 11 submissions [REP12-133]. It would also refer to the Applicants' Justification Pipeline Width document that was submitted as Appendix 1 to the Applicants Written Summary of CAH2 [REP5-026] and updated at Deadline 8 [REP8-051].

9.2.3 Article 2 permitted preliminary works - the Applicants have amended the protective provisions to include consent for works details related to permitted preliminary works [REP12-003] and fully addressed STDC's submissions on permitted preliminary works in the Applicants Comments on STDC's Deadline 11 Submissions [REP12-133] and page 34 of the Schedule of Changes to the DCO submitted at Deadline 12 [REP12-005]. The Applicants would also direct the Examining Authority to Appendix 1 of this document for justification as to why the consent to works details (including permitted preliminary works) should not extend to Work Nos. 1 and 7 located at the PCC Site.

9.2.4 Article 8 Consent to transfer benefit of the Order – the Examining Authority is directed to the Applicants Comments on STDC's Deadline 11 Submissions [REP12-133]. The Applicants' position remains as set out in this response.

9.2.5 Schedule 2 (Requirements) - the Applicants strongly disagree with STDC having an approval role on the DCO Requirements. The Examining Authority is directed to the Applicants' full justification in the Applicants Comments on STDC's Written Representation [REP3-012] and the Applicants Written Summary of ISH3 [REP5-025]. The Applicants have retained Requirement 36 in Schedule 2 of the DCO, which specifies that STDC's consultee role only applies to the extent that the matters submitted for approval by the relevant planning authority relate to the STDC area.

9.2.6 Schedule 5, Access - The Applicants are content with the amendments proposed if plots 274 and 279, related to the creation of a means of access at Tees Dock Road, are removed from the Order. The amendments STDC refer to are included in Part 3 of the Applicants Schedule of Changes submitted at Deadline 12 [REP12-005] at page 18. The Applicants also confirmed in this document that updated plans (which would include updated access and rights of way plans) would be required in the event of a change to remove the aforementioned plots.

9.2.7 Protective provisions – Justification for Amendments – the Applicants have reviewed STDC's preferred protective provisions submitted at Deadline 12 [REP12-165] and related justification in its Closing Submissions [REP12-166]. The Applicants disagree that any amendments are required to the protective provisions submitted at Deadline 12 in Part 20 of Schedule 12 to the final DCO [REP12-003]. The Applicants have provided comprehensive justification for the protective provisions proposed therein in Appendix 1 to the Schedule of Changes to the DCO submitted at Deadline 12 [REP12-005]. They have also provided comprehensive responses to STDC's comments on the protective provisions at Appendix 1 of this document. It should be noted that in a number of instances the changes to drafting sought by STDC at Deadline 12 have already been secured in the final DCO submitted at Deadline 12.

9.2.8 The Examining Authority should note that STDC has commented on a set of protective provisions from October 2022 (referred to as the "14 October PPs") at Deadline 12. The Applicants had made updates to that set of protective provisions in preparing the final DCO submitted at Deadline 12 [REP12-003]. The Applicants have sought to assist the Examining Authority in Appendix 1 by setting out in tabular format the drafting changes sought by STDC in the 14 October PPs along with the paragraph referencing and accompanying comment. The Applicants have in separate columns in the table set out the updated drafting in the final DCO, along with the updated paragraph referencing, along with its comments in response to STDC's comments.

9.2.9 Compulsory Acquisition and Temporary Possession – with respect to the status of STDC and requirement to balance the public benefit of the Proposed Development against the loss of private rights, the Examining Authority is directed to the Applicants Comments on STDC's Relevant Representation Applicants' [REP1-045] the Applicant's Comments on STDC's Written Representation [REP3-012], and the

Applicants Written Summaries of CAH1 [REP1-037], CAH2 [REP5-026] and CAH3 [REP11-016]. The Applicants do not consider that STDC have raised any substantial new or different points in its submissions (and nor should it, at this stage). The Applicants' position is that they have already comprehensively addressed STDC's comments on the compulsory acquisition and temporary possession powers sought, during the course of the Examination.

9.2.10 Permanent Acquisition of Land – with respect to the status of negotiations on the land agreements, the Examining Authority is referred to the Applicants' response at paragraph 9.1.2 above. With respect to the position with Anglo American, the ExA is referred to the Joint Statement between the Applicants and Anglo American [REP12-130]. This makes clear that the protective provisions between the Applicants and Anglo American are bespoke and relate to the agreements negotiated between those parties (paragraph 4), and more importantly that the inclusion of a restriction on powers of compulsory acquisition at was an error (paragraphs 5 and 6). See also the response to Anglo American, at section 2 above.

9.2.11 Permanent Acquisition of Rights – the form of easement agreement is anticipated to replicate the main site option, and the main site option includes specific provisions relating to the entering into of the easement agreement. The efforts of both parties have therefore rightly focussed on entering into the main site option. The negotiation of the main site agreement is inextricably linked with the connection easement. That negotiations on the main site option are further ahead is not evidence that the Applicants have somehow failed to comply with CA Guidance with respect to the easement land.

9.2.12 The Applicants have set out its full justification as to why a control over the exercise of powers of compulsory acquisition in the protective provisions would be wholly inappropriate. The Examining Authority is directed to Appendix 1 to the Schedule of Changes to the DCO submitted at Deadline 12 [REP12-005] and Appendix 1 of this document.

9.2.13 Temporary Possession, Tees Dock Road - The Examining Authority its directed to page 3 of the Applicant's Written Summary of CAH2 [REP5-026] for a full summary of the Applicants' position. Further justification for the Applicants position is set out in the Applicant's Written Summary of CAH3 [REP11-016]. The Applicants have also proposed an appropriate "lift and shift" provision in the protective provisions to address STDC's concerns in Part 20 of Schedule 12 of the final DCO [REP12-003]. Notwithstanding, the Applicants have committed to requesting a further change to the Order to remove 274 and 279 if an agreement to secure an alternative access is entered into with STDC following the end of the Examination. The Examining Authority is directed to the introductory text and Part 3 of the Schedule of Changes to the DCO submitted at Deadline 12 [REP12-005]. The Applicants agree that the "lift and shift" provisions with respect to the "southern access road" should be removed if the aforementioned plots are removed from the DCO pursuant to a change request after the end of the Examination. The Applicants have identified those changes in Part 3 of the Schedule of Changes to the DCO submitted at Deadline 12 [REP12-005].

9.2.14 Plots 290, 291, 299 – Construction access from Redcar Bulk Terminal – the Applicants welcome confirmation that an "appropriate lift and shift" provision can address this issue. This has been included in the final DCO submitted at Deadline 12 [REP12-003]. The Applicants justification for the final terms of the protective provision is set out in Appendix 1 to the Schedule of Changes to the DCO submitted at Deadline 12 [REP12-005]. They have also provided comprehensive responses to STDC's comments on the protective provisions at Appendix 1 of this document.

9.2.15 Plots 289, 292, 293, 298 and 300 – Construction laydown / parking – the Applicants require powers of temporary possession at these plots for construction laydown activities including parking. The Applicants welcome confirmation that STDC are agreeable to an appropriate lift and shift provision for alternative parking arrangements. The Examining Authority is referred to the documents in paragraph 9.1.5 for full justification of the Applicant's protective provisions related to alternative parking arrangements.

9.2.16 Plots 297, 304, 306, 307, 308, 310, 311, 312, 326 – Existing outfall – the Applicants welcome confirmation of STDC's support for the removal of Work No. 5A. This change was approved by the Examining Authority pursuant to a procedural decision dated 4 November 2022 [PD-023].

9.2.17 Plot 409, 425, 427, 464 - Connection corridors – the Examining Authority is referred to the Applicants' response at paragraph 9.1.3 above. The Applicants strongly disagree with STDC's assertion that its proposals "sterilise" an 85m corridor. The flexibility the Applicants seek is specifically designed to ensure that an optimal route is secured and that there is minimal disruption to STDC's interests. Details of the final design must be provided to STDC pursuant to the consent for works details process. STDC will also be consulted on the final design as part of its consultee role on Requirement 3 (detailed design).

9.2.18 Water connection - the Applicants' position is the same as set out in paragraph 9.1.5. They welcome confirmation that an appropriate "lift and shift" arrangement can be secured by the protective provisions.

9.2.19 Plots 377, 378 – the Examining Authority is directed to the Applicants' justification in Appendix 1 of the Schedule of Changes to the DCO submitted at Deadline 12 [REP5-005] as to why a control over the exercise of compulsory acquisition powers must not be included in the final DCO. Very robust arrangements have been secured in the Applicant's final protective provisions to avoid the sterilisation of STDC and its lessees' land including approval of works details, cooperation arrangements related to managing the interaction between projects, lift and shift arrangements (as requested and agreed to by STDC) and arrangements to be consulted on several requirements where details may be approved that impact on STDC's interests.

9.2.20 Statement of Common Ground – the Applicants agree this reflects the latest position between the parties on these matters.

9.2.21 Funding Statement – the Applicants have deliberately not provided a separate estimate for land acquisition costs, since to do so in this case is likely to result in

commercial disadvantage to the Applicants, revealing its overall land assembly budget to interested parties and which could significantly impact on the ability of the Applicants to negotiate appropriate terms (the aim of which is to where possible avoid reliance on compulsory acquisition powers). The Applicants do not see how the lack of such a figure is of any disadvantage to STDC, or any other interested party. Matters of compensation are of course not relevant to the Secretary of State's decision in relation to the DCO. The Funding Statement (Document Ref. 3.3, updated at Deadline 13) provides adequate information to the Secretary of State in relation to the costs and proposed funding of the Proposed Development.

10.0 TEESSIDE GAS & LIQUIDS PROCESSING AND TEESSIDE GAS PROCESSING PLANT LIMITED ("NSMP")

10.1.1 The Deadline 12 submission by NSMP [REP12-167] includes an update on discussions and a set of protective provisions.

10.2 Applicants' Response

10.2.1 Section 3 of [REP12-167] sets out NSMP's position with respect to the protective provisions. These comments are addressed below.

10.2.2 NSMP paragraphs 3.2.1 & 3.2.2 "Protection of Access"

10.2.3 As set out in the Applicants' Schedule of Changes to the DCO submitted at Deadline 12 [REP12-005] (page 46 onwards), the Applicants fully understand the importance to NSMP of the access road running through plots 103, 106 and 108 and to its gas processing facility. As explained in the Deadline 12 Schedule of Changes, the protective provisions proposed address this concern, and the Applicants have proposed bespoke approval principles and requirements for works on these plots reflecting NSMP's specific concerns.

10.2.4 The Applicants note that paragraph 3.2.1 of NSMP's submission is concerned with access over plots 103, 106 and 108, being the sole access road to NSMP's gas processing plant. As is clear from their submissions during the Examination, this is their key area of concern and the Applicants have responded to this in creating two works packages under the protective provisions; relevant works package A and relevant works package B. The approach is explained in the Schedule of Changes [REP12-005] on page 47 and following, and essentially means that the parts of the Proposed Development (including access) to take place on plots 103, 105, 106 or 108 (plots 103, 106 and 108 being the existing NSMP access road, and all plots, other than plot 108 being part of NSMP's freehold) and the neighbouring plots 110, 112, 113 and 114 (unless access is not needed via the NSMP plots to access those plots) comprise relevant works package A, and the Applicants' proposed works in this area are subject to more stringent controls, reflecting NSMP's need for continuous, uninterrupted access along the access road to its gas processing facility. For all other works comprising the Proposed Development, with the potential to impact NSMP's operations elsewhere in the Order limits and beyond, protection is still in place, but (as is clear from NSMP's submission paragraph 3.2.1) there is no justification for providing the same level of protection that is required for relevant works package A (see Applicants' Schedule of Changes [REP12-005] from pages 49 and 50).

10.2.5 The amendment to the protective provisions referred to by NSMP in paragraph 3.2.1 of its submission is accepted by the Applicants and was contained in the protective provisions submitted at Deadline 12, and the Applicants have addressed the individual paragraphs of the protective provisions submitted by NSMP below.

10.2.6 With respect to the requirement for a Construction Traffic Management Plan, the Applicants have also made allowance for this in the protective provisions it has submitted at Deadline 12. NSMP states in paragraph 3.2.1 that the traffic

management plan is a key required protection for NSMP "given that the access road which runs through plots 108, 103 and 106 is the sole access road to NSMP's nationally significant site". The reasoning from NSMP is consistent with the Applicants' approach that a specific traffic management plan is required for relevant works package A (rather than all parts of the Proposed Development with the potential to impact NSMP's operations across and beyond the Order limits).

10.2.7 With respect to paragraph 3.2.2 of NSMP's submission, and the rights sought over NSMP plots in Schedule 7 of the DCO, the Applicants have explained elsewhere (Applicants' Responses to Deadline 5 Submissions [REP6-122], Section 11 and Written Summary of Oral Submissions for CAH3 [REP11-122]) the need for rights over plot 105 in connection with Work No. 2A and over plots 103, 106 and 108 in connection with Work No. 10. The Applicants do not consider any amendments to Schedule 7 are required. However, the Applicants have included measures in the protective provisions to limit how and for what purpose rights sought in the DCO are exercised over these plots. The Applicants have included the drafting referred to by NSMP, so that it can withhold consent for works where access is proposed over plots 106 and 105 other than for the construction of Work No. 2A within plot 105. In addition, pursuant to paragraph 399 of the protective provisions proposed by the Applicants, the undertaker must not use plots 105 or 106 to access plots 110, 112, 113 or 114.

10.2.8 In terms of the ability to do works comprised in Work No. 10 over plots 103, 106 and 108 (road improvement works), NSMP has sought to prohibit the Applicants from undertaking any such works to the existing access road. The Applicants' position is that it needs to retain the ability to undertake such works, in the event the access road ceases to be maintained as it is now, and therefore would not be of a standard that the Applicants could use for construction or maintenance of the Proposed Development.

10.2.9 The Applicants have proposed (paragraphs 389 and 390 of the protective provisions submitted at Deadline 12) a restriction on undertaking Work No. 10 on plots 103, 106 and 108, other than if NSMP has failed to maintain the access road within those plots to a state of repair suitable for use by HGVs. Pursuant to paragraph 390(a), it would be unreasonable for NSMP to withhold consent for works comprised in Work No. 10 in the event of failure to maintain the access road by NSMP. The Applicants consider these provisions provide appropriate protection for NSMP whilst ensuring the Applicants can still deliver the Proposed Development. In reality, if NSMP had failed to maintain the access road, that would suggest its importance to its operations was no longer of the same level as it currently is. The likelihood of the Applicants needing to undertake road improvements as part of Work No. 10 on the access road, in circumstances where NSMP still depended on the access road for continuous, uninterrupted access, is very low.

10.2.10 <u>NSMP paragraph 3.2.2 "Definition of NSMP operations"</u>

10.2.11 The Applicants accept the NSMP submissions with respect to the scope of the "NSMP operations" and this is reflected in the protective provisions submitted at Deadline

12. The difference in the approach of the two parties relates to the level of protection itself, as has been explained by the Applicants above in response to NSMP's paragraph 3.2.1 submissions and in the Schedule of Changes to the DCO submitted at Deadline 12 [REP12-005] (page 47 onwards). The Applicants' proposed approach is consistent with the NSMP submissions in paragraph 3.2.3, which require protection for its operations in Teesside (including ensuring the Proposed Development allows uninterrupted, unimpeded emergency access and otherwise reasonable access to its operations). It is noted that there is no mention of the same level of unhindered, uninterrupted access being necessary across Teesside, as it is specifically for the sole access road at plots 103, 106 and 108, and that is consistent with the protective provisions the Applicants have proposed.

10.2.12 NSMP paragraph 3.2.4 "Indemnity"

10.2.13 The Applicants welcome the acknowledgement from NSMP that a sensible cap on the Applicants' liability is required, and that principle is agreed. The Applicants do not agree with the level of the liability cap proposed by NSMP. The Applicants' position is that this is a private commercial matter that is best discussed and agreed between the parties, and the drafting in the protective provisions can simply refer to a cap on liability, as agreed between the parties.

10.2.14 NSMP paragraph 3.2.5 "Definition of NSMP group"

10.2.15 The Applicants do not agree that the protection in the DCO should be expanded to the "NSMP group". There are no interests within the Order limits owned by parties other than the three identified NSMP entities (Teesside Gas and Liquids Processing, Teesside Gas Processing Plant Limited and Northern Gas Processing Limited). The Applicants are not aware of any interests that are sought to be protected outside of the Order limits that are owned by entities other than the NSMP entities, and nothing in NSMP's submission at paragraph 3.2.5 nor its proposed definitions for its various interests / assets suggest anything to the contrary. The Applicants consider that the protection proposed is adequate to protect the interests / assets identified as having the potential to be affected by the Proposed Development and in particular the powers in the Order.

10.2.16 NSMP paragraph 3.2.6 "Compulsory Acquisition of rights"

10.2.17 The Applicants disagree that the "complexity of the arrangements" mean that powers of compulsory acquisition are not required, necessary or appropriate. In the absence of land agreements being entered into with the appropriate NSMP entities, the Applicants require powers of compulsory acquisition to ensure that the Proposed Development can be built, maintained, and operated, and so that the public benefits of the NZT project can be realised, including supporting the Government's policies in relation to the timely delivery of new generating capacity and achieving ambitious net zero targets are met. The Applicants consider that the balance lies clearly in favour of the grant of compulsory acquisition powers, taking into account the measures to avoid, minimise or mitigate the effects of such powers, and noting the substantial public benefits that it considers exist for the Proposed Development.

10.2.18 The Secretary of State must be satisfied that there is a compelling case in the public interest for the compulsory acquisition. It is the Applicants' case that that exists for the whole of the Order land, including land owned by NSMP. The Applicants' position is that the compulsory acquisition powers sought in the DCO are necessary and proportionate and that it must retain the powers to exercise those rights. Accordingly, it does not agree that the protective provisions should be amended in the way proposed by NSMP in its protective provisions.

10.2.19 NSMP paragraph 3.2.7 "CATS access"

10.2.20 The Applicants have selected and included within the Order limits the most appropriate access to plots 110, 112, 113 and 114, being via the land/access road owned by NSMP. This is the most direct access route, and avoids alternatives which would have increased the Order land and meant the Applicants were seeking compulsory acquisition powers through operational areas (such as CATS'). The Applicants are in discussions with CATS about potentially using an alternative access route, by agreement, but do not consider that there is any justification for obligations (backed up by criminal liability) in the protective provisions to seek such an alternative. The Applicants' proposed access route is adequate and appropriate, and there is no need or justification for an alternative to be considered.

10.2.21 Notwithstanding, the Applicants are prepared to commit to use an alternative access if that can be agreed and secured, and have included drafting (at paragraphs 399-401) in Part 28 of Schedule 12 of the draft DCO submitted by the Applicants at Deadline 12 [REP12-003].

10.2.22 NSMP's draft protective provisions

10.2.23 NSMP has submitted a set of protective provisions attached to its submission. The Applicants' comments on the proposed provisions are set out below, using the paragraph numbers adopted by NSMP in its protective provisions. Paragraph references to the Applicants' protective provisions are references to Part 28 of Schedule 12 of the draft DCO submitted by the Applicants at Deadline 12 [REP12-003].

10.2.24 **Paragraph 2, defined terms** - Although NSMP has adopted some different terminology in some cases (it uses 'NSMP body' where the Applicants use 'NSMP entity', 'NSMP activities' for 'NSMP operations', 'NSMP pipes' for 'NSMP pipelines', 'NSMP land' for 'NSMP property', 'NSMP benefits' for 'NSMP rights'), those definitions are the same, except for the defined term itself, and these definitions are agreed (the Applicants understand that the terms used by the Applicants are likely to be agreed by NSMP at Deadline 13). **The one exception is "NSMP pipelines" in the Applicants' protective provisions (PPs) at paragraph 371 of Schedule 12, and the Applicants agree that the reference to "within the Order limits" should be substituted with "within Teesside".**

10.2.25 "NSMP requirements" – The Applicants apply these requirements to the relevant works package A only, for reasons explained above. In limb (b) the Applicants do not

include an express reference to the NSMP pipelines, as they are already defined as being part of the NSMP operations / activities, which are included here.

10.2.26 "works details" – the Applicants have not used this term, and instead refer to a "design package". NSMP has set out an approval process for the works details at paragraphs 7 – 9, which, in terms of process, achieves the same thing as the Applicants' approval process (Parts A – C) set out at paragraph 375 to 393. This is discussed further below, but for the purposes of the "works details" definition, the Applicants' position is that there is no material difference between the definition it has proposed for "design package". The Applicants understand that the use of "design package" and the proposed definition is likely to be agreed by NSMP at Deadline 13.

10.2.27 NSMP adopts the following definitions which are not used by the Applicants in their PPs: "affiliates", "losses", "NSMP group", "RPI". The Applicants do not agree to the inclusion of the "NSMP group" as noted above, and therefore neither that definition nor "affiliates" is agreed. Definitions of "losses" and "RPI" are similarly not agreed, as they relate to drafting in paragraph 16 relating to the indemnity, which is not agreed.

10.2.28 **Paragraphs 3 – 6, Construction traffic management plan** - The Applicants have included a detailed definition of the "traffic management plan" in paragraph 371 and the requirements for the traffic management plan set out in the definition arguably go further than what is required by NSMP's paragraph 3. It is noted that the Applicants have proposed the traffic management plan specifically in relation to relevant works package A, reflecting NSMP's submission at paragraph 3.2.1 and as addressed above.

10.2.29 The definition of "design package" for relevant works package A, requires the submission of the traffic management plan (either with the other documents, or in advance, as allowed by paragraph 380).

10.2.30 These definitions and paragraph 380 together have the same effect as paragraph 3 of the NSMP protective provisions, except that flexibility is allowed by the Applicants to either first have a traffic management plan approved, or for it to be approved alongside other design details. That is because it may be that it is more practicable to agree a traffic management plan in advance that could apply to multiple design packages, or a better approach may be that a specific traffic management plan is required for each design package. In all cases NSMP's approval is required, maintaining appropriate protection.

10.2.31 The other difference is that NSMP requires a traffic management plan before any part of the authorised development can be undertaken anywhere, that has the potential to affect access to NSMP's operations. The Applicants do not consider that is justified beyond the area of relevant works package A, particularly given the approval principles in place for works beyond that works package, as set out in paragraph 392.

10.2.32 NSMP's paragraphs 4 to 6 relate to the approval and implementation of the traffic management plan, and the Applicants' PPs achieve the same thing by virtue of paragraph 380 and the approval process set out in Part A of the PPs, which would apply to any traffic management plan. Paragraph 372 provides the restriction on works commencing until approval of the design package (which includes the traffic management plan) and paragraph 374 secures implementation in accordance with approved details.

10.2.33 The Applicants understand that the basic structure and approach as set out by the Applicants is likely to be agreed by NSMP at Deadline 13, subject to some points of detail on the drafting.

10.2.34 **Paragraphs 7 – 9, Consent under this Part:** NSMP sets out a process for approval of works details. The process is not inconsistent with the Applicants' PPs at paragraphs 372 to 393, which set out a more detailed approval process for design packages. At paragraph 9, NSMP's PPs set out what are termed the "approval principles" in part C of the Applicants' PPs at paragraphs 386 to 393. These are aligned, subject to the key differences highlighted above with respect to:

(a) The different approval principles proposed for relevant works packages A and B – the reasons for which are explained above;

(b) The ability to undertake works under Work No. 10 on the NSMP access road in the event it has not been maintained to an appropriate standard; and

(c) Specifying when it will be unreasonable of the NSMP entity to withhold approval of works details for relevant works package A (paragraph 390). Sub-paragraph (a) relates to the point above about allowing the undertaker to undertake road improvement works to the access road (Work No. 10) in specific circumstances. Sub-paragraph (b) applies to withholding consent on the ground of access, where there is already an approved traffic management plan, and a design package confirms that relevant works package A would be carried out in accordance with the traffic management plan approved by NSMP.

10.2.35 The effect of NSMP's paragraph 9(3)(f) is that a crossing agreement is required to be entered into for pipelines on which the NSMP entity relies for the NSMP operations, and the crossing agreement is required to be on terms reasonably satisfactory to NSMP. The Applicants accept that crossing agreements will be needed in some circumstances, however, it is not considered reasonable that the terms of any crossing agreements with third parties would need to be approved by NSMP. The Applicants' view is that this matter is more appropriately dealt with outside of the Order.

10.2.36 The Applicants understand that the basic structure and approach as set out by the Applicants is likely to be agreed by NSMP at Deadline 13, subject to some points of detail on the drafting (for example, it is expected that the three points outlined above as being key differences will remain, as will the requirement on crossing agreements).

10.2.37 **Paragraphs 10 – 14, Compliance with requirements, etc. applying to the NSMP activities** – NSMP's paragraph 10 is covered by the Applicants' paragraph 374 in terms of compliance with approved details. NSMP's paragraph 11 covers various points, which are the subject of ongoing discussion between the parties. The proposals relating to practical completion and remediation of defects are not able to be dealt with adequately in the way proposed by NSMP in protective provisions, and the Applicants consider these requirements are, if required at all, best suited to detailed drafting in a side agreement. Accordingly the Applicants consider this paragraph should not be included in the protective provisions.

10.2.38 Paragraph 12 is agreed with respect to relevant works package A (given that is the works package for which the Applicants accept uninterrupted access is required) and is included by the Applicants at paragraph 394.

10.2.39 Paragraph 13 is included by the Applicants at paragraph 395, except that the Applicants require that NSMP provide it with the conditions, requirements or regulations that it requires the undertaker to comply with. The Applicants consider this requirement to be entirely reasonable, given these are requirements potentially affecting NSMP's operations and which NSMP is therefore presumably aware of, and the Applicants cannot comply with them unless they are provided to the Applicants.

10.2.40 Paragraph 14 is included by the Applicants at paragraph 396, with the caveat that the undertaker could only exercise the powers in the Order to hinder or prevent access, if expressly provided for in an approved traffic management plan or design package. Given NSMP's approval would be required for those details, the Applicants consider this is acceptable and reasonable.

10.2.41 **Paragraph 15, Co-operation** – The Applicants included the co-operation provisions in paragraphs 391 and 393, with the only difference in drafting being that the provisions are split between relevant works packages A and B, and that the NSMP requirements (relating to access) are relevant only to relevant works package A (for reasons given above).

10.2.42 **Paragraph 16, Indemnity** – As recorded above, whilst the Applicants agree that a sensible cap on the Applicants' liability is required, the Applicants do not agree with the level of the liability cap proposed by NSMP. The Applicants' position is that this is a private commercial matter that is best discussed and agreed between the parties, and the drafting in the protective provisions can simply refer to a cap on liability, as agreed between the parties. **The Applicants propose that a new sub-paragraph 397(5) be included to provide: "The undertaker's maximum liability under this paragraph 397 shall be as agreed in writing between the undertaker and the NSMP entity".**

10.2.43 Similarly, the detail of the scope of the undertaker's liability is a matter for detailed commercial discussions between the parties, and go hand in hand with discussions on the amount of any cap on liability. The Applicants' proposed indemnity drafting is appropriate and provides suitable protection – in addition to all the other measures with the protective provisions – for the NSMP entities. As a result the Applicants consider that the protective provisions are adequate, and that otherwise this is a

matter that can if appropriate be most appropriately discussed and secured by way of a side agreement.

10.2.44 The Applicants have made submissions above with respect to the "NSMP group" and the Applicants therefore do not consider the undertakers should be liable for losses suffered by the NSMP group.

10.2.45 On sub-paragraph (4) NSMP does not agree to this drafting with respect to conduct of any claim, and the Applicants' position is that its proposed drafting in paragraph 397(3) is appropriate and reasonable, particularly given the Applicants' liability for the claims the subject of the sub-paragraph.

10.2.46 **Paragraph 17, Arbitration** – this paragraph is agreed, and this aligns with paragraph 398 of the Applicants' PPs.

10.2.47 **Paragraph 18, CATS Access** – as noted above in response to NSMP's paragraph 3.2.7, the Applicants do not consider NSMP's proposed provisions in relation to an alternative access are necessary or appropriate, and these should not be preferred over the Applicants' paragraphs 399-401.

10.2.48 **Paragraph 19, Consent** – The Applicants have set out their position on the restriction on CA powers above, and for those reasons, these additional provisions are not accepted and should be deleted.

APPENDIX 1: APPLICANTS COMMENTS ON STDC PROTECTIVE PROVISIONS

Para no. (14 October PPs)	STDC drafting change in 14 October PPs	STDC comment on drafting change in 14 October PPs	Para no. (final DCO submitted at D12)	Drafting in final DCO submitted at D12	Applicants comments at D13
226	~~*"adequacy criteria" means the criteria at paragraph 226A(c) and (d) in this Part;*~~	1.STDC consider this unnecessary given the substantial criteria already included in the "diversion condition" (a) to (j). See further comments on para 226A.	256(1)	*"adequacy criteria" means the criteria at sub-paragraph (2);*	The Applicants disagree that the "adequacy criteria" definition should be deleted. The purpose of this provision to confirm what the undertaker must <u>not</u> treat as constituting an inadequate alternative, subject to certain conditions (see paragraph 256(2) of Part 20 of the DCO submitted at Deadline 12). It accordingly serves a separate and mutually beneficial purpose from the criteria in the "diversion condition" definition. For completeness, the Applicants did make a minor change to the definition of "adequacy criteria" to make it clear that all of the criteria in paragraph 226A (now 256(2)) should apply.

226	***[“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;]*	2.STDC strongly supports the Applicants' change request 18 “Removal of optionality for the disposal of wastewater to Tees Bay by removal of Work No. 5A (repair and upgrade of the existing water discharge infrastructure to the Tees Bay) resulting in a reduction in the Order Limits (Work Nos. 5A & 10).” [REP11-011]. If this change request is accepted by the Examining Authority / Secretary of State, then these provisions can be deleted from the protective provisions. If the change is for some reason rejected, these definitions should remain.	N/A	N/A	The definition of “discharge outfall land” and “discharge outfall works” have been deleted in the final DCO on the basis that they related to a “lift and shift” option for part of WN5A, that being removed by the Applicants pursuant to a change request submitted at Deadline 12. The Applicants removed these definitions in anticipation that the change request would be accepted by the Examining Authority (whilst offering drafting in Part 2 of the Schedule of Changes [REP12-005] for reinstating the drafting if the change request was refused). Confirmation was received on 4th November that the change request was accepted by the Examining Authority [PD-023]. Accordingly, the Applicants position is that the definitions should not be re-instated. STDC's position is that it is also in favour of deletion of these provisions if the change

					request was accepted. Accordingly, the Applicants anticipate that this point has now been resolved.
226	*"diversion condition" means that in relation to the relevant* ***DIVERSION WORK—*** *(a) in relation to a proposed work which is required for the construction of the authorised development, that ~~it~~ in the reasonable opinion of the undertaker ~~complies with the adequacy criteria and~~ it is adequate to enable~~s~~ the authorised development to be constructed and commissioned;*	3. As above (comment 1), STDC does not consider "adequacy criteria" necessary given the stringent other diversion conditions.	256(1)	*"diversion condition" means that in relation to the relevant diversion work—* *(a)in relation to a proposed work which is required for the construction of the authorised development, that it in the reasonable opinion of the undertaker complies with the adequacy criteria and enables the authorised development to be constructed and commissioned;*	Changes not accepted. The Applicants disagree with STDC's proposed changes to remove reference to the "adequacy criteria". See response to comment 1.
226	*(b) in relation to a proposed work which is required for the maintenance or operation of the authorised development, that ~~it~~ in the reasonable opinion of the*	4. As per comment 3.	256(1)	*(b) in relation to a proposed work which is required for the maintenance or operation of the*	Changes not accepted. The Applicants disagree with STDC's proposed changes to remove reference to the "adequacy criteria". See response to comment 1.

	undertaker ~~complies with the adequacy criteria and~~ it is adequate to enable~~s~~ the authorised development to be constructed (where relevant), maintained, operated and (where relevant) decommissioned;			*authorised development, that it in the reasonable opinion of the undertaker complies with the adequacy criteria and enables the authorised development to be constructed (where relevant), maintained, operated and (where relevant) decommissioned;*	
226(h)	*(h)in relation only to the AIL access route work that the diversion work complies with the red m**AIN CRITERIA; [AND]***	N/A	256(1)(h)	(h)in relation only to the AIL access route work that the diversion work complies with the red main criteria;	Change not accepted. The change proposed by STDC would appear to envisage the deletion of paragraph 226(i) related to the diversion condition for the "southern access route" in order that the word "and" would be appropriate at the end of the preceding paragraph 226(h), now 251(1)(h) (this becoming the penultimate limb of the "diversion condition" definition). The Applicants have set out below why paragraph 226(i) (now 256(1)(i)) must be retained. That being the case, the word "and" should not be retained at the end of

					paragraph 226(h) (now 256(1)(h).
226(i)	*(i)[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]*	5. STDC strongly opposes the Tees Dock Road access. This definition will need to be removed if either: (i) the Examining Authority / Secretary of State agree with STDC that the Applicants have not made out a case for this access (by failing to adopt the reasonable alternative offered by STDC to temporary possession of plots 274/279) and accordingly remove the access from the scope of the DCO; or (ii) the Applicants decide to remove the access in the post-examination phase, and that change is accepted by the Examining Authority / Secretary of State. If neither of these circumstances arise, these definitions will need to be retained, to protect STDC's position as far as possible.	256(1)(i)	*(i)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*	The Applicants disagree that the creation of an access from Tees Dock Road (at plots 274 and 279) is not required. An alternative at Lackenby Gate has not been secured by legal agreement. There is no guarantee such an agreement will be entered into. The Applicants have retained limb (i) in the final DCO submitted at D12 which provides for the potential alternative access at Lackenby Gate, in circumstances where powers to create an access from Tees Dock Road are retained in the final DCO. However, in either scenario i) or (ii) set out opposite by STDC, the Applicants agree that limb (i) should be removed from the protective provisions. The Applicants have provided for this in its drafting instructions to remove the powers over the creation of an access at Tees Dock Road in Part 3 of the

					Applicants Schedule of Changes to the DCO submitted at Deadline 12 [REP12-005].
226(j)	~~*and that in the reasonable opinion of the undertaker the car parking spaces would be available for use by the undertaker at all times during the periods specified, and that the land demonstrated for use as car parking spaces is suitable for such use,*~~ *and that the undertaker will be able to operate a bus service that provides for the transport of personnel from the car parking spaces to construction areas during the construction of the authorised development.*	6. This text has been deleted as it does not reflect the principles agreed in the main site option negotiations between the parties. STDC also considers this an unreasonable / unnecessary caveat as it grants the Applicants a significant amount of discretion over and above what is needed in order to implement the authorised development.	256(1)(j)	*(j)and that in the reasonable opinion of the undertaker the car parking spaces would be available for use by the undertaker at all times during the periods specified, and that the land demonstrated for use as car parking spaces is suitable for such use, and that the undertaker will be able to operate a bus service that provides for the transport of personnel from the car parking spaces to construction areas during the construction of the authorised development.*	Change not agreed. The Applicants consider that the drafting is consistent with the principles in the main site option negotiations and that it is in any case reasonable and proportionate to include in the protective provisions. The Applicants have secured the necessary powers to provide parking within the temporary construction laydown forming part of WN9A. Temporary possession powers are available throughout the construction phase of the development. If STDC wish to provide an alternative, the undertaker must benefit from equivalent rights to provide parking as it requires under the powers in the DCO. The undertaker has gone further in accommodating STDC, by providing dates for making spaces available in line

					with the anticipated need for them during construction. Furthermore, it is plainly reasonable for the undertaker to require that any alternative land proposed by STDC for parking must be "suitable for such use".
226	*or the powers conferred by section 11(3) (powers of entry) of the 1965 Act or the 1981 Act as applied by this Order or any other power in the Order which would permit access to or interference with land or interests in land held by the Teesworks entity;*	7. STDC has inserted a catch-all to capture any other powers exercised in the STDC area as there are various miscellaneous land and works powers within the DCO that could cause significant disruption to STDC or its tenants (e.g. article 11 street works or article 17 discharge of water), and which should also be subject to the protective provisions.	256(1)	*or the powers conferred by section 11(3) (powers of entry) of the 1965 Act or the 1981 Act as applied by this Order*	Change not agreed. The "other powers" in the Order (such as street works under Article 11 or the discharge of water under Article 17) could only be exercised by the Applicants with the benefit of an interest in STDC's land. The definition of "identified power" already deprives the Applicants of the ability to secure that under the Order by removing its powers of compulsory acquisition. The Applicants therefore consider this wording unnecessary.
226	*["Lackenby Gate" means the entrance to the Teesworks site located on the A1085 Trunk Road and known as Lackenby Gate;]*	8. As per comment 5.	256(1)	*"Lackenby Gate" means the entrance to the Teesworks site located on the A1085 Trunk Road and known as Lackenby Gate;*	See the Applicants' response to Comment 5 above.

226	*"proposed work" means one of the AIL access route works, [the discharge outfall works], the parking works, the PCC site access route works, [the southern access route works] or the water connection works;*	9. As per comment 2.	256(1)	*"proposed work" means one of the AIL access route works, the parking works, the PCC site access route works, the southern access route works or the water connection works;*	See the Applicants' response to Comment 5 above. The definitions of "discharge outfall works" and "southern access route works" has been deleted from the definition of "proposed work" following the procedural decision of the Examining Authority to accept the change request to remove WN5A [PD-023].
226	*"red main criteria" means* ***THAT:*** *(a)the diversion work must accommodate cargo of 20 metr****E WIDTH BY 20 METRE HEIGHT BY 80 METRE LENGTH, WITH AN AXLE WIDTH OF 10 METRES, AND WITH 5 METRES OF OVERHANG EACH SIDE;*** *(b)the diversion w****ORK MUST ALLOW A MINIMUM INTERNAL TURNING RADIUS OF 24 METRES FROM THE CENTRE OF THE DIVERSION WORK AND A MAXIMUM OUTER***	11. STDC has provided this definition based upon the principles agreed between the parties. At the time of drafting, the Applicants had not proposed their own definition. This definition provides the Applicant which sufficient certainty that any diversion of red main will be compatible with the delivery of the authorised development.	256(1)	*"red main criteria" means that—* *(a)the diversion work must be along a route must connect to plot 223 at the same location as the existing road;* *(b)the diversion work must connect into the construction areas required for the construction of the authorised development at a location required by the undertaker acting reasonably;*	The Applicants agree with the definition provided by STDC and which is replicated in sub-paragraphs (c) to (g) in the protective provisions in the final DCO submitted at D12. In addition, the Applicants have included new sub-paragraphs (a) and (b). These reflect what the Applicants consider as necessary as part of the main site option negotiations. Specifically, with respect to sub-paragraph (a), the Applicants must secure an access that connects into the land owned by RBT at plot 223, and that therefore provides a route to the RBT facility. With respect to sub-paragraph (b),

	TURNING RADIUS OF 53 METRES FROM THE CENTRE OF THE DIVERSION WORK; *(c)the longitudinal slope of the diversion work must not exceed 5%;* ***(D)THE TRANSVERSE SLOPE OF THE DIVERSION WORK MUST NOT EXCEED 1.5%; AND*** *(e)the diversion work must have a minimum grou****ND BEARING CAPACITY OF 100 KN/M2 AND SUFFICIENT PROTECTION PROVIDED IF IT CROSSES UNDERGROUND FACILITIES;***			*(c)the diversion work must accommodate cargo of 20 metre width by 20 metre height by 80 metre length, with an axle width of 10 metres, and with 5 metres of overhang each side;* *(d)the diversion work must allow a minimum internal turning radius of 24 metres from the centre of the diversion work and a maximum outer turning radius of 53 metres from the centre of the diversion work;* *(e)the longitudinal slope of the diversion work must not exceed 5%;* *(f)the transverse slope of the diversion work must not exceed 1.5%; and* *(g)the diversion work must have a minimum ground bearing capacity of 100 kN/m2 and*	the Applicants must have certainty that the alternative route actually secures access to the construction sites that would otherwise be serviced by the existing Red Main route. If the Applicants are obliged to accept an alternative and potentially longer route pursuant to paragraph 226A (now paragraph 256(2)) it is imperative that the alternative access route proposed by STDC secures adequate access to the construction areas that would otherwise be serviced by the Red Main route. This must be a pre-condition of any alternative route STDC propose.

				sufficient protection provided if it crosses underground facilities.	
	"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;*	12. As per comment 5.	256(1)	*"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;*	See response to Comment 5 above. The Applicants' position is that this drafting must be retained in the DCO unless the powers over plots 274 and 279 are removed. If the plots are removed, pursuant to either of the scenarios outlined by STDC in Comment 5, the Applicants have provided the consequential drafting instructions to remove these definitions in Part 3 of the Applicants Schedule of Changes to the DCO submitted at Deadline 12 [REP12-005].
226	*"STDC area plan" means the plan which is certified as the STDC area plan by the Secretary of State under article 45 (certification of plans etc.) for the purposes of this Order;*	13. STDC has not yet been provided with a plan by the Applicants. If the Applicants insist upon reference to a plan, STDC refer to the plan appended to its relevant representation [RR-035]. The Applicants may be able to produce a copy in line with their other DCO plans.	N/A	N/A	Definition has been deleted. The Applicants have changed the definition of the STDC area to "means the administrative area of STDC". Accordingly, no definition of "STDC area plan" is required.

226	*["Tees Dock Road access" means an access from Tees Dock Road to plots 274 and 279 as shown on the land plans;]*	14. As per comment 5. STDC's position is that this definition is not required and should be removed, based on STDC's amendments to para 230A. If the Secretary of State elects to retain this wording, they should note that plots 274 and 279 are not themselves part of Tees Dock Road so the definition should read: "Tees Dock Road access" means an access from Tees Dock Road to plots 274 and 279 as shown on the land plans ".	N/A	N/A	The Applicants deleted the definition of "Tees Dock Road" access from the final DCO. Its sole purpose would have been to assist with the interpretation of a provision excluding the exercise of any powers to create an access at Tees Dock Road. However, the Applicants have included the exact same definition as STDC have requested in Part 3 of its Schedule of Change to the DCO at Deadline 12 [REP12-005]. Accordingly, if either of the scenarios outlined by STDC in Comment 5 occur, the Applicants would invite the Secretary of State to insert a definition of "Tees Dock Road access" requested by STDC.
226	*"the Teesworks site" means ~~the~~ any land within the Order limits ~~shown on the works plans for numbered works 2A, 3, 4A, 5, 6, 8, 9 and 10~~ owned by Teesworks Limited, STDC and South Tees Developments Limited; and*	15. The Applicants' preferred form of wording excludes the PCC site from the scope of the protective provisions. STDC requires the Teesworks site definition to apply to all works within the scope of the DCO which take place on land owned by STDC (and its	256(1)	*"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*;	The Applicants disagree with the changes proposed. The definition of "Teesworks site" applies with respect to the consent to works details process. The changes proposed by STDC means that the protective provisions could

		associated parties). It is reasonable for STDC, as landowner, to have protective provisions that apply to all of the Applicants' works on its land, particularly in circumstances where an option for PCC site has not been agreed.			apply with respect to activities associated with WN1 and WN7 at the PCC site. In the event that the Applicants secure the rights to build these works, such activities would be self-contained on the PCC Site, a fenced area which the Applicants would have sole control of. It is not reasonable or necessary for the protective provisions to effectively give the Teesworks entities a control over works that are not near to its interests and where no impact on its operations has been identified (either by the Applicants or STDC in its submission during the Examination). The protective provisions and with it the definition of "the Teesworks site" have been drafted specifically to manage the potential interface with STDC's interests in the connection corridors. The Applicants' position remains that its definition of "the Teesworks site" must be retained.

					The Applicants also disagree with extending the definition of "Teesworks site" to include land owned by "Teesworks Limited". The interests in the land to which these protective provisions apply is currently owned by STDC or STDL and not Teesworks Limited. The protective provisions must be drafted to reflect current title interests. In any event, Teesworks Limited would have the benefit of the protective provisions upon acquiring an interest pursuant to the definition of "Teesworks entity" which applies to successors with a freehold interest and the terms of paragraph 284 (Interpretation).
226	*"water connection land" means part of plots 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 ~~[x]~~hatched*	16. Added to reflect the colour on the plan provided by the Applicants to STDC.	256(1)	*"water connection land" means part of plots 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*	Change made to definition by STDC is identical to change made in final DCO at D12. No further comment.

	green on the water connection plan, and so far as required in relation to Work No. 4;			*green on the water connection plan, and so far as required in relation to Work No. 4;*	
226A	*For the purposes of* this Part of this Schedule, ~~*the diversion conditions,*~~ *a diversion work or associated interest in land* ~~*must be considered to be adequate by the undertaker*~~ *is capable of meeting the diversion condition notwithstanding that:* *(a) it is longer in distance than the relevant proposed work it is replacing; or* *(b) in the case of vehicular or staff access, it increases the time taken to travel to the authorised development compared to the relevant proposed work it is replacing;* ~~*provided that in the reasonable opinion of the undertaker the increase in*~~	17. The purpose of para 226A is simply to expressly acknowledge that diversions etc. can be longer in distance / duration and still meet the diversion condition (or conversely cannot be rejected simply on grounds that it is longer). 18. This protection is already provided by paragraphs of the diversion condition – see in particular (a), (b), (c) and (j). It is not reasonable or necessary for the Applicants to add further qualifications to matters which are already addressed by the "diversion condition".	256(2)	*(2) For the purposes of the diversion condition, a diversion work or associated interest in land must not be considered to be inadequate by the undertaker solely where—* *(a)it is longer in distance than the relevant proposed work it is replacing; or* *(b)in the case of vehicular or staff access, it increases the time taken to travel to the authorised development compared to the relevant proposed work it is replacing,* *provided that a diversion work or associated interest in land may not be considered to be adequate where in the reasonable opinion of the undertaker*	With respect to Comment 17, the Applicants agree that the purpose of paragraph 226A (now 256(2)) is to provide a safeguard that certain works may be longer in distance or duration and still be satisfactory. It is not considered that there is a substantive difference in the wording proposed by STDC in the first paragraph of 226A (now 256(2)) in order to necessitate a change to the drafting in the D12 DCO [REP12-003]. In fact it is arguable that the wording proposed by the Applicants ("must not be considered to be inadequate") provides greater protection to STDC than the proposed amendments ("is capable of meeting the diversion condition"). With respect to Comment 18, the Applicants disagree with the removal of the second part

	~~*distance or time (whichever is relevant) would not:*~~ ~~*(c) incur unreasonable cost, having regard to both the nature and scale of the relevant proposed work, and the nature and scale of the impact on the Teesworks Development; or*~~ ~~*(d) have a material adverse impact on the timetable for the delivery of the authorised development in accordance with the undertaker's construction programme.*~~			*an increase in distance or time (whichever is relevant) would— (c) incur unreasonable cost, having regard to both the nature and scale of the relevant proposed work, and the nature and scale of the impact on the Teesworks Development; or (d) have a material adverse impact on the timetable for the delivery of the authorised development in accordance with the undertaker's construction programme.*	of paragraph 226A (now 256(2)). The Applicants' position is that this wording is integral to limiting the circumstances where an alternative proposal (a "diversion work") must be accepted under the first part of the provision. Without this wording, there is uncertainty as to whether the terms of the "diversion conditions" take precedence or the terms of paragraph 226A (256(2)). STDC's attempt to "link" the drafting back to the diversion conditions in the first paragraph ("capable of meeting the diversion condition") is of no meaningful assistance in interpreting how the "diversion condition" and 226A (now 256(2)) are to be read together. The Applicants' drafting is clearer. The diversion conditions must always be satisfied. However the undertaker cannot "reasonably" refuse to treat a diversion condition as satisfied simply for

					the reasons under 226A(a) and (b) (now 256(2)(a) and (b) unless the circumstances where 226 (c) and (d) (now 256(2)(c) and (d) apply. For completeness, the Applicants did make some changes to this provision at Deadline 12 to improve clarity. However the substance of the provision is the same as the version in the 14 October PPs and the Applicants' DCO submitted at Deadline 8 [REP8-003].
Heading above paragraph 227	*Consent for works and land acquisition*	19. See new para 230B	Heading above paragraph 257	Consent for works	Change rejected. See comments below.
227	*Before commencing the construction of any part of ~~numbered works 2a, 3, 4a, 5, 6, 8, 9 and 10 or~~ the authorised development including any permitted preliminary works within the Teesworks site, the undertaker must first submit to the Teesworks entity for*	20. As per comment 15, prior approval should apply to all works on land owned by Teesworks, STDC and STDL. It would be unreasonable for the Applicants to be able to carry out certain works on the Teesworks Site without STDC's consent given the significant impacts this	257	*Before commencing the construction of any part of numbered works 2A, 3, 4A, 5, 6, 8, 9 and 10 or any permitted preliminary works within the areas of numbered works 2A, 3, 4A, 5, 6, 8, 9 and 10 within the Teesworks site, the undertaker must first*	Change rejected. The Applicants strongly disagree with the consent to works details applying outside of the connection corridors land. See response to Comment 15. For completeness, the Applicants did make changes to this provision in the Deadline

	its approval the works details for the work and such further particulars as the Teesworks entity may, within 30 days from the day on which the works details are submitted under this paragraph, reasonably require.	could have on STDC's wider estate and other tenants.		*submit to the Teesworks entity for its approval the works details for the work and such further particulars as the Teesworks entity may, within 30 days from the day on which the works details are submitted under this paragraph, reasonably require.*	12 DCO [REP12-003] to include the words "within the areas of numbered works 2A, 3, 4A, 5, 6, 8, 9 and 10" after the words "permitted preliminary works". The purpose of that change was to clarify that any consent to works details in respect of the PPW only has effect to the extent such PPW are within the connection corridors land and the vicinity of the Teesworks entities interests.
228	No works comprising any part of ~~numbered works 2A, 3, 4A, 5, 6, 8, 9 and 10 or~~ the authorised development including any permitted preliminary works 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.	21. As per comment 20		*No works comprising any part of numbered works 2A, 3, 4A, 5, 6, 8, 9 and 10 or any permitted preliminary works within the areas 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 257 have been approved by the Teesworks entity.*	As above.

230A	230A. [The undertaker must not under any circumstances exercise the powers under Article 14~~(b) of the Order in respect of Tees Dock Road land~~ or other provision of this Order to create a means of access between the Tees Dock Road and plots 274 and 279 as shown on the land plans].	22. STDC has set out its case for the removal of plots 274/279 from the Order Limits (see below). Paragraph 230A is required only if either of the following circumstances take place: (a) the Examining Authority / Secretary of State agree with STDC that the Applicants have not made out a case for this access (by failing to adopt the reasonable alternative offered by STDC to temporary possession of plots 274/279) and accordingly remove it from the scope of the DCO; or (b) the Applicants decide to remove the access in the post-examination phase. If this paragraph is included, these amendments are necessary to protect STDC from the use of miscellaneous in the DCO to form a means of access over these plots.	N/A	N/A	The Applicants disagree with these changes. See response to Comments 5 and 14. However, the Applicants accepts the changes to the drafting are required in either of the scenarios that STDC has outlined in Comment 5. The Applicants have proposed the same drafting as STDC have set out opposite in Part 3 of the Applicants Schedule of Changes submitted at Deadline 12 [[REP12-005].
230B	*Regardless of any provision in this Order or anything*	23. STDC has provided its preferred from of drafting to	N/A	N/A	The Applicants strongly oppose this drafting and have not

	shown on the land plans or contained in the book of reference to the Order, the undertaker may not, otherwise than by agreement with the Teesworks entity: *(a) appropriate or acquire or take temporary possession of any land owned or held by the Teesworks entity;* *(b) appropriate, acquire, create, extinguish or override any easement or other interest, including by temporary possession, in land owned or held by the Teesworks entity;* *(c) appropriate, acquire, extinguish or override any easement or other interest in land owned or held by the Teesworks entity, including by temporary possession,* *such agreement not to be unreasonably withheld or delayed.*	control the use of compulsory acquisition and temporary possession powers over its land and interests. The provision is intended to allow STDC to either require acquisition by agreement, or alternatively for STDC to consent to the use of compulsory acquisition and temporary possession powers over its land. STDC is not seeking to impede the implementation of the scheme, and such control is therefore drafted as subject to STDC not unreasonably withholding or delaying its consent.			included it or similar wording in the final DCO submitted at D12. The Applicants' justification for its exclusion has already been set out in Appendix 1 to Applicants Schedule of Changes submitted at Deadline 12 [REP12-005].
234(1)(b)	*(1)* ***SUBJECT TO THE FOLLOWING PROVISIONS OF THIS***	24. STDC considers it appropriate that costs for arbitration are included within	264(1)(b)	*(1)* ***SUBJECT TO THE FOLLOWING PROVISIONS OF THIS***	The Applicants strongly disagree that it should be responsible for funding

	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— *The* ***AUTHORISATION OF WORKS DETAILS IN ACCORDANCE WITH PARAGRAPHS 227 TO 230;*** *(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 ~~248B~~ 253;***	the recoverable expenses. STDC is entitled to serve diversion notices under the protective provisions and should not be subject to costs where arbitration is necessary to pursue resolution of the diversion works process. If STDC is liable for arbitration costs, it incentivises the applicants to use the arbitration process to resist diversions, with STDC having to weigh up the cost of defending its position at arbitration and the interests of its wider estate and statutory obligations.		***PARAGRAPH, THE UNDERTAKER MUST REPAY TO THE TEESWORKS ENTITY THE REASONABLE COSTS AND EXPENSES INCURRED BY THEM IN, OR IN CONNECTION WITH—*** *(a) the authorisation of works details in accordan****CE WITH PARAGRAPHS 257 TO 260;*** *(b) the process in relation to proposed works and diversion works set out in paragraphs 266 to 278(2)*	arbitration by STDC. Its position is that the parties must be incentivised to follow the diversion procedures in the protective provisions before they move to arbitration. The Applicants' full justification has already been set out in Appendix 1 to Applicants Schedule of Changes to the DCO submitted at Deadline 12 [REP12-005].

231(1)(c) and (d)	*(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 RELEVANT PROPOSED WORK;*** *~~(d) where the relevant diversion work is provided for the use of the undertaker in connection with the authorised development and for use in connection with or as part of the wider teesworks site, a proportion of the cost of construction of a diversion work provided instead of the the southern access route works, the outfall discharge works, the pcc site access route works or the water connection works, such proportion to be~~*	25. This has been updated to reflect the principles which STDC understands have been agreed between the parties. The parties have agreed that until such time as the Applicants have installed apparatus / works, the Applicants are wholly responsible for the costs of any diversion works. In any event, since any diversion works would be for the benefit of the Applicants, and are necessary to avoid unacceptable effects of the Applicants' project on the Teesworks estate, it is reasonable that the Applicants bear the full costs of diversions.	264(1)(c) and (d)	*(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 relevant proposed work; and* *(d) where the relevant diversion work is provided for the use of the undertaker in connection with the authorised development and for use in connection with or as part of the wider Teesworks site, a proportion of the cost of construction of a diversion work provided instead of the southern access route works, the PCC site access route works or the water connection works, such proportion to be agreed between the undertaker and the Teesworks entity acting*	The Applicants disagree with the proposed changes. The amendments made by STDC effectively mean that the undertaker will always be liable for funding a "diversion work" even where it solely benefits STDC, or benefits STDC in part. That cannot be fair, reasonable or proportionate. The Applicants have the power to carry out the proposed works under the Order, subject to payment of full compensation. If STDC wish to suggest an alternative proposal, and that proposal would benefit STDC, it must be responsible for funding a proportion of the related costs. The Applicants' full justification has already been set out in Appendix 1 to Applicants Schedule of Changes submitted at Deadline 12 [REP12-005]. Subject to referring to "relevant proposed work" at the end of sub-paragraph (c), removing the reference to "outfall discharge works" from sub-

	~~*agreed between the undertaker and the teesworks entity acting reasonably or to be determined by arbitration pursuant to paragraph 253.*~~			*reasonably or to be determined by arbitration pursuant to paragraph 283.*	paragraph 264(1)(d) (as part of the change request) and inserting a commitment to "act reasonably" in sub-paragraph (d) (as previously requested by STDC) no changes have been made by the Applicants to these provisions in the final DCO submitted at Deadline 12.
	~~*(3) The expenses associated with the activities outlined in sub-paragraph 234 so far as they relate to the procurement of diversion work instead of the ail access route works or the parking works will be incurred by the entity that serves the relevant diversion notice.*~~	26. See comment 25.	264(3)	*(3) The expenses associated with the activities outlined in paragraph 264 so far as they relate to the procurement of diversion work instead of the AIL access route works or the parking works will be incurred by the entity that serves the relevant diversion notice.*	The Applicants disagree with the deletion of this provision. The Applicants' full justification has already been set out in Appendix 1 to Applicants Schedule of Changes submitted at Deadline 12 [REP12-005].
236	*The undertaker must:* *(1) as soon as reasonably practicable following the grant of the DCO consent, and prior to commencement of the authorised development:*	27. STDC's require this paragraph to impose a positive obligation on the Applicants to supply the programme once it is available. Without an agreement in place between the parties, and given the scale of impact of the authorised works on its other	266	*The undertaker must as soon as reasonably practicable following the grant of the DCO consent, and prior to commencement of the authorised development—*	Drafting accepted by the Applicants in final DCO. For completeness, the Applicants have removed the reference to paragraph "(1)" at the beginning of paragraph 266 in the final DCO submitted at

	(a) provide to the Teesworks entity details of its proposed works programme; and *(b) provide such further particulars relating to the proposed works as the Teesworks entity may on occasion reasonably request, and must provide the details reasonably available to the undertaker that have been requested by the Teesworks entity within a period of 30 days of the Teesworks entity request or such longer period as the Teesworks entity and the undertaker may agree; and*	interests, STDC considers this to be a reasonable request. 28. Added to clarify this is the Teesworks entity.		*(a) provide to the Teesworks entity details of its proposed works programme; and* *(b) provide such further particulars relating to the proposed works as the Teesworks entity may on occasion reasonably request, and must provide the details reasonably available to the undertaker that have been requested by the Teesworks entity within a period of 30 days of a request by the Teesworks entity or such longer period as the Teesworks entity and the undertaker may agree; and*	Deadline 12 [REP12-003]. This was not required in accordance with legislative drafting guidance.
238	*238. The Teesworks entity may issue a notice (a "diversion notice") to the undertaker at any time prior to ~~30~~ 60 days after the later of:*	29. STDC requires 60 days to issue a diversion notice. The "lift and shift" process is technical in nature and requires considerable preparatory work by SDTC and, given the scale of the works concerned, it is not	268	*The Teesworks entity may issue a notice (a "diversion notice") to the undertaker at any time prior to 30 days after the later of:*	The Applicants strongly disagree with STDC's proposed changes to the timescales for the "lift and shift" procedures. The Applicants' full justification has already been set out in Appendix 1 to

	(1) the date of issue of the work notice under paragraph 236(2); or *(2) the date of issue of the most recent work notice under paragraph 237;* *unless the Teesworks entity and the undertaker, acting reasonably, agree such longer period prior to the expiry of the relevant ~~30~~ 60 day period.*	considered reasonable to require STDC to serve a notice within 30 days, particularly given the stringent diversion conditions imposed by the Applicants. 30. As per comment 29.		*(a) the date of issue of the work notice under paragraph 266(b); or* *(b) the date of issue of the most recent work notice under paragraph 267,* *unless the Teesworks entity and the undertaker, acting reasonably, agree such longer period prior to the expiry of the relevant 30 day period.*	Applicants Schedule of Changes submitted at Deadline 12 [REP12-005].
245(2)	*(2) in any case ~~150~~ 180 days from the date of the undertaker's works notice under paragraph 236(2) or if relevant ~~150~~ 180 days from the date of any revised works notice issued by the undertaker under paragraph 237.*	31. Updated to 180 days to account for the additional 30 days at para 238. 32. As per comment 31. 33. Updated to use the same wording as in para 237.	275(b)	*(b) in any case 150 days from the date of the undertaker's works notice under paragraph 266(b) or if relevant 150 days from the date of any further revised works notice issued by the undertaker under paragraph 267.*	With respect to Comment 31 and 32, see response in row above. Comment 33 is accepted, and the change has been incorporated into the final DCO submitted at Deadline 12.
246(2)	*(2) in any case ~~150~~180 days from the date of the undertaker's works notice under paragraph 236(2) or if relevant ~~150~~180 days from the date of any further works*	34. As per comment 31. 35. As per comment 31.	276(b)	*in any case 150 days from the date of the undertaker's works notice under paragraph 266(b) or if relevant 150 days from the date of any*	See response to Comments 29 and 30 above.

	notice issued by the undertaker under paragraph 237.			*further works notice issued by the undertaker under paragraph 267.*	
247	*If the undertaker issues a notice under paragraph 240(1) 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, and where a planning permission is still to be obtained for the diversion work, the Teesworks entity must use ~~all~~ reasonable endeavours to obtain the planning permission in order that the diversion work can be carried out without delay to the undertakers' programme for the construction of the authorised development.*	36. STDC is not prepared to commit to "all reasonable endeavours" here. "Reasonable endeavours" is an appropriate level of commitment given the practical steps STDC could actually take (i.e. prepare and submit an application). STDC notes the Applicants' mutual obligation in this paragraph is "reasonable endeavours"	277	*If the undertaker issues a notice under paragraph 270(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, and where a planning permission is still to be obtained for the diversion work, the Teesworks entity must use reasonable endeavours to obtain the planning permission in order that the diversion work can be carried out without delay to the undertakers' programme for the construction of the authorised development.*	This change was made in the Applicants' final DCO submitted at Deadline 12 [REP12-003]. No further comment.