

**Notes:**

*(a) STDC's preferred form of protective provisions are based upon the draft protective provisions provided by the Applicants to STDC on 14 October 2022 ("the 14 October PPs"). At the date of writing, the 14 October PPs were not the same as the version contained in the draft DCO submitted at Deadline 8 [REP8-003].*

*(b) STDC has assumed that the 14 October PPs will, substantively, be contained in the Applicants' final version of the DCO submitted at Deadline 12. Hence it was considered expedient to mark-up changes against the 14 October PPs, to assist the Examining Authority in understanding the changes required to achieve STDC's preferred form of protective provisions, and highlight where the differences lie.*

*(c) All of the amendments to the 14 October 2022 PPs proposed by STDC have already been notified to the Applicants. STDC reserves the right to comment further at Deadline 13 following receipt of the Applicants final DCO.*

**PART 19**

**FOR THE PROTECTION OF SOUTH TEES DEVELOPMENT CORPORATION**

225. For the protection of South Tees Development Corporation, Teesworks Limited and South Tees Developments Limited, the following provisions have effect, unless otherwise agreed in writing between the undertaker and South Tees Development Corporation, South Tees Developments Limited and Teesworks Limited.

226. In this Part of this Schedule—

~~"adequacy criteria" means the criteria at paragraph 226A(c) and (d) in this Part;~~

"AIL access route land" means plots 290, 291 and 299, so far as required in relation to Work No. 10;

"AIL access route works" means Work No. 10 within the AIL access route land;

~~"discharge outfall land" means plots 297 and 308, so far as required in relation to Work No. 5A;~~

~~"discharge outfall works" means Work No. 5A within the discharge outfall land;~~

"diversion condition" means that in relation to the relevant diversion work—

(a) in relation to a proposed work which is required for the construction of the authorised development, that ~~it~~ in the reasonable opinion of the undertaker ~~complies with the adequacy criteria and it is adequate to enable~~ the authorised development to be constructed and commissioned;

(b) in relation to a proposed work which is required for the maintenance or operation of the authorised development, that ~~it~~ in the reasonable opinion of the undertaker ~~complies with the adequacy criteria and it is adequate to enable~~ the authorised development to be constructed (where relevant), maintained, operated and (where relevant) decommissioned;

(c) its cost is reasonable having regard to the nature and scale of the relevant proposed work;

(d) planning permission is not required, or has been granted, or in the reasonable opinion of the undertaker can be obtained in accordance with the undertaker's programme for the construction of the authorised development;

**Commented [BDBP1]:** 1. STDC consider this unnecessary given the substantial criteria already included in the "diversion condition" (a) to (j). See further comments on para 226A.

**Commented [BDBP2]:** 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.

**Commented [BDBP3]:** 3. As above (comment 1), STDC does not consider "adequacy criteria" necessary given the stringent other diversion conditions.

**Commented [BDBP4]:** 4. As per comment 3.

- (e) such other consents, licences or authorisations as are required for the diversion work have been obtained, or in the reasonable opinion of the undertaker can be obtained in accordance with the undertaker's programme for the construction of the authorised development;
- (f) the Teesworks entity can grant adequate interest in land or a licence to the undertaker to use, maintain and operate the diversion work for its intended purpose as part of the authorised development and if relevant to carry out the diversion work;
- (g) the diversion work:
  - i. is already constructed and available for use by the undertaker; or
  - ii. where a diversion work is to be carried out, whether by the Teesworks entity or the undertaker, it can be carried out and completed in accordance with the undertakers' programme for the construction of the authorised development;
- (h) in relation only to the AIL access route work that the diversion work complies with the red main criteria; land
- (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
- (j) in relation only to the parking diversion works that:
  - i. from 1 July 2023 to 30 September 2023, 60 parking spaces within the STDC area (but no more than 1.5km from Work No. 1) would be available to the undertaker for the parking of private cars;
  - ii. from 1 October to 31 December 2023, 150 parking spaces within the STDC area (but no more than 1.5km from Work No. 1) would be available to the undertaker for the parking of private cars;
  - iii. by 1 January 2024, at least 300 car parking spaces within the STDC area would be available for use by the undertaker for the parking of private cars;
  - iv. by 31 March 2024, 1200 car parking spaces within the STDC area would be available for use by the undertaker for the parking of private cars;

~~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.~~

"diversion notice" means a notice from the Teesworks entity to the undertaker under paragraph 238;

"diversion work" means works, development or use of land;

"diversion works agreement" means an agreement between the Teesworks entity and the undertaker in relation to a diversion work which provides:

- (a) adequate interest in land to allow the undertaker to use and where relevant maintain and operate the diversion work for its intended purpose as part of or in connection with the authorised development; and

**Commented [BDBP5]:** 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.

**Commented [BDBP6]:** 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.

(b) where relevant, that the undertaker can carry out the diversion work or that the Teesworks entity must carry out the diversion work, in either case in accordance with the undertakers' programme for the construction of the authorised development;

"identified power" means a power conferred by the following in relation to a proposed work—

- (a) article 22 (compulsory acquisition of land);
- (b) article 23 (power to override easements and other rights);
- (c) article 25 (compulsory acquisition of rights etc.);
- (d) article 26 (private rights);
- (e) article 28 (acquisition of subsoil and airspace only);
- (f) article 31 (temporary use of land for carrying out the authorised development);
- (g) article 32 (temporary use of land for maintaining the authorised development);
- (h) article 33 (statutory undertakers),

or the powers conferred by section 11(3) (powers of entry) of the 1965 Act or the 1981 Act as applied by this Order 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;

"information notice" means a notice issued by the undertaker under paragraph 240(3) that additional information is reasonably required before it can decide whether to agree to a diversion work;

"Lackenby Gate" means the entrance to the Teesworks site located on the A1085 Trunk Road and known as Lackenby Gate;

"parking land" means part of each of plots 289, 292, 293, 298 and 300 being the area shown hatched green on the parking plan, so far as required in relation to Work No. 9A;

"parking plan" means the plan which is certified as the parking plan by the Secretary of State under article 45 (certification of plans etc.) for the purposes of this Order;

"parking works" means use of the parking land within part of Work No. 9A for parking;

"the PCC site access plan" means the plan which is certified as the PCC site access plan by the Secretary of State under article 45 (certification of plans etc.) for the purposes of this Order;

"the PCC site access route land" means parts of plots 425, 459, 485 and 488, and plots 425a, 458, 458a, 467, 470, 473, 493, 496, 500, 502, 504, 505 and 508, being the area shown hatched green on the PCC site access plan so far as required in relation to Work No. 10;

"the PCC site access route works" means Work No. 10 within the PCC site access route land;

"proposed land" means one of the AIL access route land, the discharge outfall land, the parking land, the PCC site access route land, the southern access route land or the water connection land;

**Commented [BDBP7]:** 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.

**Commented [BDBP8]:** 8. As per comment 5.

“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;

**Commented [BDBP9]:** 9. As per comment 2.

**Commented [BDBP10]:** 10. As per comment 5.

“proposed work programme” means a programme for the construction and use of a proposed work;

“the respective authorised developments” means the authorised development and the Teesworks development respectively;

“red main criteria” means that:

(a) 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;

(b) 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;

(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

(a)(e) the diversion work must have a minimum ground bearing capacity of 100 kN/m<sup>2</sup> and sufficient protection provided if it crosses underground facilities;

**Commented [BDBP11]:** 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.

**Commented [BDBP12]:** 12. As per comment 5.

“southern access route land” means plots 274, 279, 282, 283, 287, 296, 348, 362, 363, 367, 370, 373, 374, 376 and 381 so far as required in relation to Work No. 10;

“southern access route works” means Work No. 10 within the southern access route land;

“South Tees Developments Limited” means South Tees Developments Limited (Company number 11747311) whose registered office is at Teesside Airport Business Suite, Teesside International Airport, Darlington, United Kingdom, DL2 1NJ;

“STDC area” means the area shown on the STDC area plan;

“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;

**Commented [BDBP13]:** 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.

“Tees Dock Road access” means an access from Tees Dock Road to plots 274 and 279 as shown on the land plans;

**Commented [BDBP14]:** 14. As per comment 5.

“the Teesworks development” means development authorised by any planning permission or development consent order granted in relation to the Teesworks site (or generally by permitted development rights), or prospective development planned in relation to the Teesworks site;

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”.

“Teesworks Limited” means Teesworks Limited (Company number 12351851) whose registered office is at Venture House, Aykley Heads, Durham, England, DH1 5TS;

“Teesworks entity” means subject to paragraph 254 Teesworks Limited, STDC and South Tees Developments Limited and any successor in title to the freehold interest in the Teesworks site;

“the Teesworks site” means ~~the 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

“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 green~~ on the water connection plan, and so far as required in relation to Work No. 4;

“water connection plan” means the plan which is certified as the water connection plan by the Secretary of State under article 45 (certification of plans etc.) for the purposes of this Order;

“water connection works” means Work No. 4 within the water connection land;

“works details” means—

- (a) plans and sections;
- (b) details of the proposed design;
- (c) details of the proposed method of working;
- (d) details of the programme and timing of execution of the works;
- (e) details of vehicle access routes for construction and operational traffic;
- (f) details of the location within the Teesworks site of a corridor situated within the limits shown on the works plans for numbered works 2A, 3, 4A, 5, 6, 8 and 10 within which the corresponding works are proposed to be carried out;
- (g) details of the location within the Teesworks site of a corridor situated within the limits shown on the works plans for numbered works 2A, 3, 4A, 5, 6, 8 and 10 within which the permanent corresponding works will be placed; and
- (h) any further particulars provided in response to a request under paragraph 227;

“works notice” means a notice setting out details of a proposed work (sufficient to allow consideration of a potential diversion work and including a programme) and the exercise of an identified power in respect of any part of the proposed land.

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 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.~~

**Commented [BDBP15]:** 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 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.

**Commented [BDBP16]:** 16. Added to reflect the colour on the plan provided by the Applicants to STDC

**Commented [BDBP17]:** 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).

**Commented [BDBP18]:** 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”.

**Consent for works and land acquisition**

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 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.~~
228. ~~No works comprising any part of numbered works 2A, 3, 4A, 5, 6, 8, 9 and 10 or 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.~~
229. Any approval of the Teesworks entity required under paragraph 227 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as the Teesworks entity may require to be made to ensure that the respective authorised developments can co-exist within the Teesworks site.
230. The authorised development must be carried out in accordance with the works details approved under paragraph 227 and any requirements imposed on the approval under paragraph 229 or where there has been a reference to an arbitrator in accordance with paragraph 253 and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator.

**Commented [BDBP19]:** 19. See new para 230B

**Commented [BDBP20]:** 20. As per comment 15, prior approval should apply to all works on land owned by Teesworks, STDC and STL. 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 could have on STDC's wider estate and other tenants.

**Commented [BDBP21]:** 21. As per comment 20

- 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].~~
- 230B. ~~Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not, 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.~~

**Commented [BDBP22]:** 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.

**Commented [BDBP23]:** 23. STDC has provided its preferred from of drafting to 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.

**Co-operation**

231. The Teesworks entity must provide the undertaker with information the undertaker reasonably requests in relation to the Teesworks development and which the undertaker reasonably needs (and which is reasonably available for disclosure by the Teesworks entity) in order to understand the interactions between the respective authorised developments or to design, build and operate the authorised development.
232. The undertaker must provide the Teesworks entity with information the Teesworks entity reasonably requests in relation to the authorised development and which the Teesworks entity reasonably needs (and which is reasonably available for disclosure by the

undertaker) in order to understand the interactions between the respective authorised developments or to design, build and operate the Teesworks development.

233. —(1) This paragraph applies insofar as—

- (a) the construction of the authorised development may be undertaken on the Teesworks site concurrently with demolition or site preparation works undertaken by the Teesworks entity;
- (b) the construction of the respective authorised developments may be undertaken on the Teesworks site concurrently; or
- (c) the construction of one of the respective authorised developments would have an effect on the operation or maintenance of the other respective authorised development or access to it.

(2) Where this paragraph applies the undertaker and the Teesworks entity must-

- (a) co-operate with each other with a view to ensuring-
  - (i) the co-ordination of construction programming and the carrying out of the respective authorised developments;
  - (ii) that access for the purposes of constructing the respective authorised developments is maintained for the undertaker, the Teesworks entity and their respective employees, contractors and sub-contractors; and
  - (iii) that operation, maintenance and access to the respective authorised developments is maintained for the undertaker and the Teesworks entity;
- (b) use reasonable endeavours to avoid any conflict arising from the carrying out of the respective authorised developments.

#### Expenses

234. —(1) Subject to the following provisions of this paragraph, the undertaker must repay to Teesworks Limited, South Tees Developments Limited and STDC the reasonable costs and expenses incurred by them in, or in connection with—

- (a) the authorisation of works details in accordance with paragraphs 227 to 230;
- (b) the process in relation to proposed works and diversion works set out in paragraphs 236 to ~~248B~~253;
- (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 agreed between the undertaker and the~~

**Commented [BDBP24]:** 24. STDC considers it appropriate that costs for arbitration are included within 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.

~~Teesworks entity acting reasonably or to be determined by arbitration pursuant to paragraph 253.~~

(2) Prior to incurring any expenses associated with the activities outlined in sub-paragraph 234, Teesworks Limited, South Tees Developments Limited and STDC must give prior written notice to the undertaker of the activity or activities to be undertaken and an estimate of the costs to be incurred.

~~(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.~~

**Commented [BDBP25]:** 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.

**Commented [BDBP26]:** 26. See comment 25.

### Indemnity

235. —(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 227 and approved under paragraph 228, or any diversion works, any damage is caused to the Teesworks site, or there is any interruption in any service provided, or in the supply of any goods, by the Teesworks entity, the undertaker must—

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

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

(3) The Teesworks entity must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) The Teesworks entity must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 235 applies. If requested to do so by the undertaker, the Teesworks entity must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to paragraph (1). The undertaker shall only be liable under this paragraph 235 for claims reasonably incurred by the Teesworks entity.

### Provision for diversion works

236. The undertaker must:

(1) as soon as reasonably practicable following the grant of the DCO consent, and prior to commencement of the authorised development:

~~(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~~

**Commented [BDBP27]:** 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 interests, STDC considers this to be a reasonable request.

**Commented [BDBP28]:** 28. Added to clarify this is the Teesworks entity

request or such longer period as the Teesworks entity and the undertaker may agree; and

(2) prior to exercising an identified power in respect of any part of the proposed land issue a works notice to the Teesworks entity for that part.

237. If the undertaker intends to change the timing of the proposed work as set out in a proposed works programme issued to the Teesworks entity or the timing of the proposed works set out in a work notice the undertaker must notify the Teesworks entity as soon as reasonably practicable and where the undertaker decides to change timing which was specified in a work notice it must issue a revised work notice to the Teesworks entity.

238. The Teesworks entity may issue a notice (a "diversion notice") to the undertaker at any time prior to ~~30~~ 60 days after the later of:

(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.

239. A diversion notice must set out:

(1) the diversion work proposed; and

(2) how the diversion work proposed satisfies so far as relevant each part of the diversion condition.

240. If a diversion notice is issued to the undertaker before the expiry of the period under paragraph 238, the undertaker must notify the Teesworks entity no later than 30 days after the date of receipt of the diversion notice confirming whether the undertaker:

(1) agrees to diversion work;

(2) does not agree to the diversion work; or

(3) requires additional information to consider whether it agrees to the diversion work (an "information notice").

241. In making the decision under paragraph 240 the undertaker must act reasonably and may only issue a notice stating that it does not agree to the diversion work where it considers that the diversion condition is not satisfied.

242. Where the undertaker gives an information notice to the Teesworks entity, that notice must set out what additional information is required by the undertaker to decide whether or not it agrees to the diversion notice.

243. Where the undertaker notifies the Teesworks entity under paragraph 240(2) that it does not agree to a diversion work, that notice must set out the reasons why the undertaker does not agree that the diversion work satisfies the diversion condition along with an indication of what would be required to make acceptable.

244. If the undertaker issues an information notice to the Teesworks entity, the Teesworks entity may submit further information to the undertaker within 30 days of receipt of the information notice.

245. If the Teesworks entity submits further information to the undertaker within 30 days of receipt of the information notice, the undertaker must consider the further information

**Commented [BDBP29]:** 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 considered reasonable to require STDC to serve a notice within 30 days, particularly given the stringent diversion conditions imposed by the Applicants.

**Commented [BDBP30]:** 30. As per comment 29.

and paragraph 240 applies again provided that the undertaker is not obliged to consider any further information that is received by the undertaker:

(1) more than 30 days after the date of the information notice issued by the undertaker under paragraph 240(3); or

(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 revised~~ works notice issued by the undertaker under paragraph 237.

**Commented [BDBP31]:** 31. Updated to 180 days to account for the additional 30 days at para 238.

**Commented [BDBP32]:** 32. As per comment 31.

**Commented [BDBP33]:** 33. Updated to use the same wording as in para 237.

246. If the undertaker issues notice to the Teesworks entity under paragraph 240(2) confirming that it does not agree to the diversion notice, the Teesworks entity may submit a further diversion notice to the undertaker to address the undertaker's reasons for refusal under paragraph 243, provided that the undertaker is not obliged to consider any further diversion notice that is received by the undertaker:

(1) more than 30 days after the date of the notice issued by the undertaker under paragraph 240(2); or

(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 notice issued by the undertaker under paragraph 237.

**Commented [BDBP34]:** 34. As per comment 31.

**Commented [BDBP35]:** 35. As per comment 31.

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.

**Commented [BDBP36]:** 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".

248. Subject to paragraphs 248A and paragraph 248B, if a diversion works agreement is not entered into within the 30 day period set out in paragraph 247 (or such longer period as may be agreed between the parties prior to the expiry of that 30 day period) the Teesworks entity or the undertaker may within 5 days of the end of that period refer the matter to arbitration under paragraph 253.

248A If a diversion works agreement is not entered into within the 30 day period set out in paragraph 247 (or such longer period as may be agreed between the parties prior to the expiry of that 30 day period) because any planning permission required for the diversion work has still not been obtained, and in the reasonable opinion of the undertaker the planning permission is not likely to be obtained in order to allow the diversion work to be carried out without material delay to the undertaker's programme, the undertaker may issue a notice to the Teesworks entity confirming that it is not entering into the diversion works agreement.

248B A notice issued by the undertaker under paragraph 248A shall have the same effect as a notice issued by the undertaker under paragraph 246.

249. If a reference is made to arbitration under paragraph 253 the arbitrator must determine whether the terms of the diversion works agreement can reasonably be in accordance with the diversion condition and if it can then the arbitrator must determine the terms of the diversion works agreement and which must be in accordance with the diversion condition.

250. Where the arbitrator determines that the terms of the diversion works agreement can be in accordance with the diversion condition the Teesworks entity and the undertaker must use best endeavours to enter into the diversion works agreement on the terms determined by the arbitrator within 10 days of the arbitrator's decision.

251. If—

(1) a diversion works agreement is entered into within the 30 day period set out in paragraph 247; or

(2) a reference to arbitration is made in accordance with paragraph 253 and a diversion works agreement is entered into within the 10 day period in paragraph 250,

the undertaker must not exercise the identified powers in respect of the relevant proposed land.

252. If:

(1) no diversion notice is issued by the Teesworks entity to the undertaker before the expiry of the period under paragraph 238;

(2) a diversion notice is issued by the Teesworks entity to the undertaker, the undertaker issues a notice not agreeing to the diversion work under paragraph 240(2), and no further diversion notice is issued by the Teesworks entity to the undertaker prior to the dates set out in paragraph 246;

(3) a diversion notice is issued by the Teesworks entity to the undertaker, the undertaker issues an information notice, and no further information is provided by the Teesworks entity to the undertaker prior to the dates set out in paragraph 245;

(4) paragraph 247 applies and the Teesworks entity and the undertaker do not enter into a diversion works agreement within the 30 day period set out in that paragraph and no reference to arbitration is made prior to the expiry of the period in paragraph 248;

(5) the arbitrator determines under paragraph 253 that the terms of the diversion works agreement cannot reasonably be in accordance with the diversion condition; or

(6) paragraph 250 applies and the Teesworks entity has not executed and unconditionally released for completion a diversion works agreement within the 10 day period set out in that paragraph,

the undertaker may exercise the identified powers in respect of the relevant proposed land in order to (as relevant) carry out, use, maintain, operate or decommission the relevant proposed work.

252A. For the avoidance of doubt, in circumstances where paragraph 252 applies, this does not obviate the need for the undertaker to comply with paragraphs 227 to 230 in respect of the relevant proposed work.

#### **Arbitration**

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

#### **Interpretation**

254. Any reference to the Teesworks entity in this Part means the freehold owner of the relevant part of the Teesworks site.

255. Where a notice or information is provided by the undertaker to any of STDC, South Tees Developments Limited or Teesworks Limited under this Part, a copy of that notice or information must also be sent to the other parties.