



The Planning Inspectorate Yr Arolygiaeth Gynllunio

The Planning Act 2008

The Willington C Gas Pipeline

Examining Authority's Report of Findings and Conclusions

and

**Recommendation to the
Secretary of State for Energy and Climate Change**

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Examining Authority

2 October 2014

The Examining Authority's findings, conclusions and recommendation in respect of an application for a Development Consent Order for a buried gas pipeline from a connection into the national gas transmission system near Yoxall in Staffordshire to the site of the proposed Willington C Power Station in Derbyshire.

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File Ref EN060001

The application, dated 25 July 2013, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on 30 July 2013.

The applicant is RWE Npower plc.

The application was accepted for examination on 22 August 2013.

The examination of the application began on 11 January 2014 and was completed on 2 July 2014.

The development proposed comprises a buried gas pipeline, approximately 27km in length, from a connection into the national gas transmission system near Yoxall in Staffordshire, where the development would include an above ground installation, to its termination at a block valve within the site of the proposed Willington C Power Station in Derbyshire.

Summary of Recommendation:

The Examining Authority recommends that the Secretary of State should make the Order in the form attached.

Section Contents

1	INTRODUCTION	4
2	MAIN FEATURES OF THE PROPOSAL AND SITE.....	9
	THE PRESENT APPLICATION.....	9
	PLANNING HISTORY.....	11
3	LEGAL AND POLICY CONTEXT	12
	PLANNING ACT 2008, AS AMENDED BY THE LOCALISM ACT 2011 AND THE GROWTH AND INFRASTRUCTURE ACT 2013	12
	NATIONAL POLICY STATEMENTS	12
	EUROPEAN REQUIREMENTS AND RELATED UK REGULATIONS.....	23
	OTHER LEGAL AND POLICY PROVISIONS	24
	LOCAL IMPACT REPORTS.....	26
	THE DEVELOPMENT PLAN	27
	NATIONAL PLANNING POLICY FRAMEWORK (MARCH 2012)	28
4	FINDINGS IN RELATION TO POLICY AND FACTUAL ISSUES	29
	PRINCIPAL ISSUES.....	29
	BIODIVERSITY, BIOLOGICAL ENVIRONMENT AND ECOLOGY.....	30
	FLOOD RISK AND CLIMATE CHANGE	35
	NOISE AND VIBRATION DISTURBANCE	39
	LAND USE AND SAFETY	41
	TRAFFIC, TRAVEL AND TRANSPORTATION	43
	DESIGN, LANDSCAPE AND VISUAL IMPACT	44
	SOCIO-ECONOMIC EFFECTS.....	46
	HISTORIC ENVIRONMENT	47
	RATIONALE FOR THE SELECTION OF THE ROUTE, WORKSITES AND PIPELAYING STRATEGIES	48
	AIR QUALITY AND EMISSIONS	49
	RIVER CHANGE.....	50
	WATER QUALITY AND RESOURCES	50
5	OVERALL CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT	51
6	COMPULSORY ACQUISITION AND RELATED MATTERS.....	53
	THE REQUEST FOR COMPULSORY ACQUISITION POWERS	53
	THE REQUEST FOR RELATED COMPULSORY POWERS	54
	THE PURPOSES FOR WHICH THE LAND IS REQUIRED	54
	THE REQUIREMENTS OF THE PLANNING ACT 2008.....	56
	HOW THE CASE FOR COMPULSORY ACQUISITION WAS EXAMINED	57
	THE CASE FOR THE APPLICANT	59
	OBJECTOR'S CASES	68
	THE EXAMINING AUTHORITY'S CONCLUSIONS	68
	THE EXAMINING AUTHORITY'S RECOMMENDATIONS ON THE GRANTING OF COMPULSORY ACQUISITION POWERS.....	73
7	DRAFT DEVELOPMENT CONSENT ORDER	74
	GENERAL MATTERS	74
	ARTICLES	75
	SCHEDULE 1 PART 1 – AUTHORISED DEVELOPMENT	83
	SCHEDULE 1 PART 2 – REQUIREMENTS	85

SCHEDULES 5 AND 6 – LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED AND LAND OVER WHICH RESTRICTIVE OBLIGATIONS AND RIGHT OF SUPPORT ARE REQUIRED	89
SCHEDULE 9 – PROTECTIVE PROVISIONS.....	90
OTHER LEGAL AGREEMENTS	90
CONCLUSION AND RECOMMENDATION	91
8 OVERALL CONCLUSIONS AND RECOMMENDATION	92
EXAMINATION LIBRARY	2
EVENT IN THE EXAMINATION	14
LIST OF ABBREVIATIONS	18

Appendices Contents

APPENDIX A - RECOMMENDED DEVELOPMENT CONSENT ORDER.....	1
APPENDIX B.....	2
APPENDIX C.....	14
APPENDIX D	18

1 INTRODUCTION

- 1.1 The proposed development, the Willington C Gas Pipeline, comprises a buried gas pipeline approximately 27km in length. It would include an above ground installation at the start point near Yoxall in Staffordshire, where a connection would be made into the national gas transmission system. It would terminate at a block valve within the site of the proposed Willington C Power Station in Derbyshire. The route of the pipeline is shown on drawing UKP/WLC/0186/S0/D [REP-115]. Throughout this report, references in square brackets [] refer to the examination documents listed in the examination library at Appendix B.
- 1.2 The Willington C Gas Pipeline is a nationally significant infrastructure project (NSIP) as defined by s14(1)(g), s21(1) and s21(2)(a) of the Planning Act 2008 (PA2008). Development consent is required before the project can proceed. The project is an NSIP: under s14(1)(g) because it would comprise the construction of a pipeline other than by a gas transporter; under s21(1) as it is a cross-country pipeline whose length is intended to exceed 16.093 km and would require authorisation under s1(1) of the Pipelines Act 1962; and under s21(2)(a) because both ends of it are in England.
- 1.3 An application for development consent was submitted on 25 July 2013 and accepted for examination on 22 August 2013 [PD-001]. I was appointed on 18 October 2013 as the Examining Authority (ExA) to examine and report on the application [PD-003].
- 1.4 The applicant gave notice [CERT-001] under s56 of the PA2008 to the persons prescribed that the application had been accepted and gave them an opportunity to make relevant representations. It certified [CERT-004] on 17 October 2013 that this had been carried out. 119 relevant representations were subsequently received [REP-014 to 025].
- 1.5 A letter, under Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR), together with the initial assessment of principal issues, was issued on 28 November 2013 [PD-003]. A preliminary meeting was held in Town Hall, King Edward Place, Burton upon Trent on 10 January 2014 at which the applicant and interested parties were able to make representations to me about how the application should be examined. The examination began on 11 January 2014.
- 1.6 Development consent under the PA2008 can only be granted by the Secretary of State (SoS) and this report provides the Secretary of State for Energy and Climate Change with my findings and conclusions on the application for development consent for the Willington C Gas Pipeline. This report also comprises my recommendation on whether to grant consent for the project and recommendations on the terms of the

Development Consent Order (DCO) should the SoS agree with my recommendation.

- 1.7 The application is Environmental Impact Assessment development as defined by The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 as amended (the EIA Regulations). It was accompanied by an Environmental Statement (ES) which, in my view, meets the definition given in Regulation 2(1) of these Regulations [APP-021 to 114]. In reaching my recommendation, the environmental information as defined in Regulation 2(1) (including the ES and all other information on the environmental effects of the development) has been taken into consideration in accordance with Regulation 3(2) of these Regulations.
- 1.8 During the examination, I made a number of procedural decisions [PD-003 to 015]. These included decisions relating to the examination timetable and requests for Statements of Common Ground (SoCGs), further information which were issued by a letter, under Rule 8 of the EPR, dated 20 January 2014 [PD-003]. The main examination events are detailed within Appendix C.
- 1.9 During the examination, SoCGs were provided between the applicant and the following organisations:
- (i) Derbyshire County Council
 - (ii) Staffordshire County Council
 - (iii) South Derbyshire District Council
 - (iv) East Staffordshire Borough Council
 - (v) Natural England
 - (vi) English Heritage
 - (vii) The Environment Agency
 - (viii) Network Rail
 - (ix) The Canal and River Trust
 - (x) The Highways Agency
 - (xi) National Grid (Gas)
 - (xii) National Grid Electricity Transmission plc.
 - (xiii) Severn Trent Water
 - (xiv) South Staffordshire Water plc.
- 1.10 The SoCGs are considered in more detail later in the report. At this stage however, it is of note that they do not contain any areas of outstanding disagreement.
- 1.11 As set out in the timetable for the examination [PD-005], the following hearings were held at the Town Hall, King Edward Place, Burton upon Trent:
- (i) issue specific hearings on the draft DCO and related matters on 11 March and 22 May 2014 ;
 - (ii) a compulsory acquisition hearing on 12 March 2014; and
 - (iii) an issue specific hearing on flood risk assessment on 9 April 2014.

- 1.12 The timetable for the examination [PD-005] reserved time for an open floor and further compulsory acquisition and issue specific hearings in Burton upon Trent. At examination timetable Deadline 1, I had not received any requests to speak at an open floor hearing. No arrangements were therefore made in respect of an open floor hearing on the reserved date.
- 1.13 At examination timetable Deadline 1, I had also not received any requests to make oral representations on the reserved compulsory acquisition hearing date of 30 April 2014 or relating to the issue specific reserved hearing date of 1 May 2014 [PD-005]. These hearings, the dates of which had been set [PD-007], were therefore cancelled. These constituted variations to the timetable and notice of this was sent to all interested parties on 23 April 2014 [PD-010].
- 1.14 I undertook unaccompanied site visits to various public locations along the pipeline route on 12 September 2013 and 8 April 2014. I also undertook an accompanied site visit on 29 April 2014 [HE-15 & 16].
- 1.15 The notice, under s60(2) of the PA2008, inviting each local authority falling under s56A to submit local impact reports (LIRs) was given in the Rule 8 letter on 20 January 2014 [PD-005]. LIRs were received from East Staffordshire Borough Council [REP-044], Lichfield District Council [REP-045], South Derbyshire District Council [REP-046] and Staffordshire County Council [REP-047]. These LIRs are considered further in Sections 3 and 4.
- 1.16 Two rounds of written questions were issued by the ExA, initially on 20 January 2014 [PD-006] and subsequently on 24 April 2014 [PD-011].
- 1.17 Under Regulation 5(2)(g) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, an application must be accompanied by sufficient information to enable the SoS to meet his statutory duties as the competent authority under the Habitats Regulations¹ relating to European protected sites. In order to inform my report and recommendation to the SoS on the application under s74 of the PA2008, and to provide standalone information to the SoS in order for him to carry out his statutory duties, I requested, as part of my first written questions, that the applicant provide the following matrices. These were to be in the model form, as developed by the Planning Inspectorate, to summarise the likely significant effects and the implications for the integrity of each European protected site assessed, where a likely significant effect either alone or in combination with other plans and projects has been identified [REP-029].

¹ Conservation of Habitats and Species Regulations 2010 (as amended)

- 1.18 All interested parties were then invited to comment upon the applicant's matrices [PD-005]. This information would assist the SoS, as the competent authority, in fulfilling the requirements of the Habitats Directive and the 2010 Habitats Regulations in the context of the PA2008 process.
- 1.19 All documents, representations and submissions made, together with procedural letters, a note of the preliminary meeting and the itinerary for the accompanied site inspection visit, are set out in Appendix B and are available on the project website. The examination was completed on 2 July 2014 [PD-015], and the dates of the main examination events are set out in Appendix C. A list of abbreviations used in this report is at Appendix D. The draft DCO, as recommended to be made by the SoS, is at Appendix A.
- 1.20 In addition to the consent required under the PA2008 (which is the subject of this report), the proposal would require consents under:
- (i) the Pipeline Safety Regulations 1996, for notifications and the provision of a major accident prevention document to the Health and Safety Executive (HSE);
 - (ii) the Gas Safety (Management) Regulations 1996, for the submission of a safety case or exemption to the HSE;
 - (iii) the Highways Act 1980 (Road Traffic Regulation Act 1984), in relation to temporary footpath closure orders from the relevant county council;
 - (iv) the Conservation of Habitats and Species Regulations 2010, to obtain European protected species licences from Natural England (NE) in respect of works likely to affect great crested newts;
 - (v) the New Roads and Street Works Act 1991, for street works notifications to the relevant street works authority;
 - (vi) the Water Resources Act 1991 and the Flood and Water Management Act 2010, for flood defence consent from the Environment Agency (EA) for works in floodplains and main rivers;
 - (vii) the Land Drainage Act 1991 and the Flood and Water Management Act 2010, for land drainage consent from the relevant county council for work in ordinary watercourses;
 - (viii) the Environmental Permitting Regulations 2010, in respect of an Environmental Permit from the EA for the use of any surplus excavated material;
 - (ix) the Road Traffic Regulation Act, for temporary speed limit orders from the relevant highway authority;
 - (x) the New Roads and Street Works Act 1991, for a Section 50 licence from the Highways Agency for the crossing of the A38 road; and
 - (xi) the Protection of Badgers Act 1992, for a licence from NE on behalf of the Department for Environment, Food and Rural Affairs (Defra) for any work that would interfere with badger setts.

- 1.21 At the time that the examination was completed, on 2 July 2014, there was no evidence that the above consents had been issued. I comment on the likelihood of such consents being forthcoming in my final conclusions.
- 1.22 The report sections which follow set out respectively: the main features of the proposal and its site; the legal and policy context; my findings in relation to policy and factual issues; my overall conclusion on the case for development consent; compulsory acquisition; the draft DCO and finally my overall conclusion and recommendation. The draft DCO as recommended to be made by the SoS is attached at Appendix A.

2 MAIN FEATURES OF THE PROPOSAL AND SITE

THE PRESENT APPLICATION

- 2.1 The applicant, RWE Npower plc., is an integrated UK energy company that operates and manages a portfolio of power stations and cogeneration plants. The applicant produces around 10% of the electricity used in the UK and owns 10 major power station sites in the UK. It has recently delivered projects such as two new gas-fired power stations at Staythorpe in Nottinghamshire and in Pembroke in Wales, including an associated gas pipeline for the latter. The applicant is supported by its parent company, RWE AG.
- 2.2 The proposed development, the Willington C Gas Pipeline, would follow a rural route between the national gas transmission system (NTS) at Yoxall in Staffordshire and the proposed Willington C Power Station in Derbyshire. The route would pass around the town of Burton upon Trent on its western side and is shown on an overview plan UKP/WLC/0186/ S0 /D [REP-115]. Part of the route would lie within the National Forest [REP-037]. The creation of the forest is led by the National Forest Company, a non-departmental public body, funded by the Department for Food and Rural Affairs (Defra).
- 2.3 The proposed development is split into various elements or Works Nos in the draft Development Consent Order (DCO), and the locations for these elements are shown on the works plans [REP-115]. The proposal would comprise the following main features.
- 2.4 The authorised and permanent development is covered by Works Nos 1 to 6. Works No 1 is the Yoxall to Willington pipeline section. It would convey natural gas at high pressure, be constructed of steel with welded joints and lie below ground level for much of its length. Whilst the detail design of the pipeline would require the approval of the Health and Safety Executive, it would have an external diameter of up to 800mm with a nominal minimum depth of cover of 1.7m below watercourses and 1.1m elsewhere. Works No 2 is the NTS spur pipeline between Works No 1 and the NTS at Yoxall. It would again have an external diameter of up to 800mm. Works No 2 would be implemented by National Grid (Gas).
- 2.5 Works No 3 is the Yoxall above ground installation (AGI) and the permanent access to it. This would contain RWE Npower control and National Grid (Gas) valves, instrumentation and pipeline access facilities within a landscaped but secure compound having a maximum fence height of 2.8m. Indicative heights would be 2m for the control valves and 5m for the lighting columns.
- 2.6 Works No 4 is the Willington block valve within the site of the proposed Willington C Power Station. The valve would be partially

buried and have a maximum above ground height of 2m. Consent for the Wellington AGI, under s36 of the Electricity Act 1989, has already been obtained as part of the wider power station proposals.

- 2.7 Works No 5 are micro-tunnels and shafts at 6 major pipeline crossings of natural features or infrastructure along the length of Works No 1. The micro-tunnels would have an internal diameter of not greater than 2.3m and a depth not greater than 20m below ground level. Shafts, having an internal diameter not greater than 8m, would be required at either end of the micro-tunnels. These would extend to a maximum of 1m above ground level during construction. After construction, the shafts would be reduced to ground level, fitted with inspection covers and would be likely to be fenced to prevent damage.
- 2.8 Works No 6 is pipeline marking on both sides of every crossing, at all field boundaries and at intervals of approximately 500m for aerial markers along the length of Works Nos 1 and 2. Markers would have a maximum height of 2m.
- 2.9 The associated and temporary development is covered by Works Nos 7 to 14. Works No 7 is the Yoxall temporary works compound adjacent to the site of Works No 3. Works No 8 is the Carriers Road temporary works compound on the route of Works No 1. This would be the main pipe delivery and storage location. Works No 9 is the Wellington temporary works compound within the site of the proposed Wellington C Power Station.
- 2.10 Works No 10 are temporary bridges and culverts to provide construction access across watercourses along the route of Works No 1. These would comprise Bailey bridges or box culverts at the larger watercourses shown on the works plans [REP-115] and flume pipes or culverts at other ditches.
- 2.11 Works No 11 is the working corridor and additional working areas along the route of Works Nos 1 and 2. This would nominally be 30m wide across agricultural land or 50m wide over a length of 35m at road, river and railway crossings. The corridor and working areas would generally be contained by fencing of no more than 2m in height. The works plans show the indicative corridor, but any additional areas, within the DCO Works limits, would be determined following detailed pipeline design.
- 2.12 Works No 12 is temporary construction access works at 37 locations along the route of Works No 1. Works No 13 is street works, along the route of Works No 1 at locations where the pipeline route intersects with a road or street and where access points would be laid out. The works would include: pipeline installation work; access creation work; reinstatement work; marker post installation; cathodic protection test cable installation; and temporary lighting.

- 2.13 Works No 14 is a temporary car park for approximately 5 cars to be located within the site of Works No 11 and used by anglers during the construction period. It would be situated near to the settlement of Rolleston on Dove and a disused railway line which crosses the pipeline route to the south west of the pipeline crossing point of the River Dove. The car park would be constructed from geo-textile and crushed stone which would be removed and the site reinstated at the end of the construction period.
- 2.14 The following application documents were updated during the examination: River Dove Floodplain Modelling Addendums [REP-066 & 076]; draft DCO, Version 2 [REP-078]; draft DCO, Version 3 [REP-088]; Book of Reference, Version 2 [REP-091]; Land Plans, Version 2 [REP-092]; Works Plans, Version 2 [REP-093]; Yoxall AGI Plan, Version B [REP-094]; Examining Authority's draft DCO [REP-105]; Book of Reference, Version 3 [REP-113]; Land Plans, Version 3 [REP-114], Works Plans, Version 3 [REP-115]; and the Yoxall AGI Plan, Version C [REP-116].

PLANNING HISTORY

- 2.15 No planning applications or other decisions impinging on the proposal were identified during the examination. Furthermore, no other nearby pipeline applications were identified during the examination.

3 LEGAL AND POLICY CONTEXT

PLANNING ACT 2008, AS AMENDED BY THE LOCALISM ACT 2011 AND THE GROWTH AND INFRASTRUCTURE ACT 2013

- 3.1 S104(3) of the Planning Act 2008 (PA2008) requires that the Secretary of State (SoS) must decide an application for development consent in accordance with any relevant National Policy Statement (NPS), except to the extent that the SoS is satisfied that, in summary:
- (i) doing so would lead to the United Kingdom being in breach of its international obligations;
 - (ii) doing so would lead to the SoS being in breach of any duty imposed on him under any enactment;
 - (iii) doing so would be unlawful under any enactment;
 - (iv) the adverse impact of the proposed development would outweigh its benefits; or
 - (v) that any prescribed condition for deciding the application otherwise than in accordance with the NPS would be met.
- 3.2 S104(2) of the PA2008 sets out the matters to which the SoS must have regard in deciding an application submitted in accordance with the PA2008. In summary, the matters set out in s104(2) include any relevant NPSs, any local impact report (LIR); and any other matters the SoS thinks are both important and relevant to the decision.

NATIONAL POLICY STATEMENTS

- 3.3 Two NPSs are relevant to the proposal: the Overarching National Policy Statement for Energy (EN-1); and the National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4). EN-4 is relevant as the proposal is a cross-country pipeline over 16.093km long to transport natural gas which would otherwise require consent under s1 of the Pipelines Act 1962. They provide, in combination, the primary basis for decisions by the SoS.

Overarching National Policy Statement for Energy (EN-1)

- 3.4 EN-1² states that it is critical that the UK continues to have secure and reliable supplies of electricity as we make the transition to a low carbon economy, including reliable associated supply chains, for example fuel for power stations. It³ also states that one of the main security of supply challenges during the transition to a low carbon economy is the requirement for substantial and timely private sector investment in power stations and gas infrastructure.

² Paragraph 2.2.20

³ Paragraph 2.2.25

- 3.5 EN-1⁴ adds that the SoS will assess all applications for development consent for the types of infrastructure covered by the energy NPSs on the basis that the Government has demonstrated that there is a need for those types of infrastructure and that the scale and urgency of that need is as described in EN-1. It adds that substantial weight will be given to the contribution which projects would make towards satisfying this urgent need when considering applications for development consent.
- 3.6 EN-1⁵ suggests that the assessment should start with a presumption in favour of granting consent to applications for energy nationally significant infrastructure projects (NSIPs). That presumption applies unless any more specific and relevant policies, set out in the relevant NPSs, clearly indicate that consent should be refused. In considering any proposal, and in particular when weighing its adverse impacts against its benefits, the SoS will take into account:
- (i) its potential benefits including its contribution to meeting the need for energy infrastructure, job creation and any long-term or wider benefits; and
 - (ii) its potential adverse impacts, including any long-term and cumulative adverse impacts, as well as any measures to avoid, reduce or compensate for any adverse impacts.
- 3.7 EN-1⁶ advises that, in this context, the SoS will take into account environmental, social and economic benefits and adverse impacts at national, regional and local levels. These may be identified in this NPS, EN-4, in the application or elsewhere, including in local impact reports (LIRs). Other matters that the SoS may consider both important and relevant to its decision-making include Development Plan Documents or other documents in the Local Development Framework. In the event of a conflict between these or any other documents and an NPS, the NPS prevails for purposes of decision making given the national significance of the infrastructure.
- 3.8 EN-1⁷ identifies that the SoS may take into account any development consent obligations that an applicant agrees with local authorities. These must be: relevant to planning; necessary to make the proposed development acceptable in planning terms; directly related to the proposed development; fairly and reasonably related in scale and kind to the proposed development; and reasonable in all other respects.

⁴ Paragraph 3.1.3

⁵ Paragraph 4.1.2

⁶ Paragraph 4.1.3

⁷ Paragraph 4.1.8

- 3.9 The applicant should have made a judgement on the financial and technical viability of the proposal. EN-1⁸ suggests that, where the SoS considers, on the information provided in an application, that the financial viability and technical feasibility of the proposal has been properly assessed by the applicant, it is unlikely to be of relevance in the SoS's decision making.
- 3.10 In terms of the Environmental Statement (ES), EN-1⁹ highlights that it should cover the environmental, social and economic effects arising from pre-construction, construction, operation and decommissioning of the project. For gas pipelines, it may be appropriate to assess effects arising from commissioning the infrastructure once it is completed but before it comes into operation. EN-1¹⁰ also suggests that the SoS will find it helpful if the applicant sets out information on the likely significant social and economic effects of the development, and shows how any likely significant negative effects would be avoided or mitigated. This information could include matters such as employment, equality, community cohesion and well-being.
- 3.11 It may not be possible, at the time of the application, for development consent for all aspects of the proposal to have been settled in precise detail. Where this is the case, EN-1¹¹ suggests that the applicant should explain in its application which elements of the proposal have yet to be finalised, and the reasons why. Where some details are still to be finalised the ES should set out, to the best of the applicant's knowledge, what the maximum extent of the proposed development may be in terms of site and plant specifications, and assess, on that basis, the effects which the project could have.
- 3.12 EN-1¹² reiterates that the SoS must, under the Habitats and Species Regulations¹³, consider whether the proposal may have a significant effect on a European site, or on any site to which the same protection is applied as a matter of policy, either alone or in combination with other plans or projects. The applicant should therefore seek the advice of Natural England (NE) and provide the SoS with such information as is reasonably required to determine whether an appropriate assessment is required.
- 3.13 EN-1¹⁴ also reiterates that the relevance to the decision-making process of the existence of alternatives to the proposed development is, in the first instance, a matter of law. Applicants are however obliged to include in their ES, as a matter of fact, information about the main alternatives they have studied.

⁸ Paragraph 4.1.9

⁹ Paragraph 4.2.3

¹⁰ Paragraph 4.2.2

¹¹ Paragraph 4.2.5

¹² Paragraph 4.3.1

¹³ The Conservation of Habitats and Species Regulations 2010 (SI2010/490)

¹⁴ Paragraph 4.4.1

This should include an indication of the main reasons for the applicant's choice, taking into account the environmental, social and economic effects and including, where relevant, technical and commercial feasibility. In some circumstances, there are specific legislative requirements, notably under the Habitats Directive, for the SoS to consider alternatives. These should also be identified in the ES by the applicant.

- 3.14 EN-1¹⁵ sets out that the functionality of infrastructure, including fitness for purpose and sustainability, is equally as important as aesthetic considerations. Energy projects should produce sustainable infrastructure which is sensitive to place, efficient in the use of natural resources and energy used in its construction and operation and is matched by an appearance that demonstrates good aesthetics as far as possible. The nature of much energy infrastructure development will also often limit the extent to which it can contribute to the enhancement of the quality of the area.
- 3.15 EN-1¹⁶ also sets out that the SoS will need to be satisfied that energy infrastructure developments are sustainable and, having regard to regulatory and other constraints, are as attractive, durable and adaptable (including taking account of natural hazards such as flooding) as they can be. In so doing, the SoS will need to be satisfied that the applicant has taken into account both functionality, including fitness for purpose and sustainability, and aesthetics, including its contribution to the quality of the area in which it would be located, as far as possible. The SoS will also take into account the ultimate purpose of the infrastructure and bear in mind the operational, safety and security requirements which the design has to satisfy.
- 3.16 EN-1¹⁷ advises that the ES should set out how the proposal will take account of climate change, and this information will be needed by the SoS. The SoS will need to be satisfied that applicants for new energy infrastructure have taken into account the potential impacts of climate change using the latest UK Climate Projections.
- 3.17 EN-1¹⁸ highlights the statutory authority, conferred by s158 of the PA2008, to carry out development authorised by a Development Consent Order (DCO). This however only provides a defence in any civil or criminal proceedings for nuisance that is the inevitable consequence of what has been authorised. The defence does not extinguish the local authority's duties under Part III of the Environmental Protection Act 1990 to inspect its area and take steps to investigate complaints of statutory nuisance and to serve

¹⁵ Paragraph 4.5.1

¹⁶ Paragraph 4.5.3

¹⁷ Paragraph 4.8.5

¹⁸ Paragraph 4.14.1

an abatement notice where satisfied of its existence. Possible sources of nuisance under the 1990 Act, and how they may be mitigated, will therefore be considered by the SoS so that appropriate requirements can be included in any subsequent DCO.

- 3.18 EN-1¹⁹ states that the SoS will need to be satisfied that the effects on civil and military aerodromes, aviation technical sites and other defence assets have been addressed by the applicant. EN-120 also states that the applicant should assess the potential for emissions of dust and artificial light to have a detrimental impact on amenity, as part of the ES. The SoS will need to be satisfied that such an assessment has been carried out and that all reasonable steps have been taken to minimise any such detrimental impacts.
- 3.19 EN-1²¹ reiterates that the historic environment, resulting from the interaction between people and places through time, includes all surviving physical remains of past human activity, whether visible or buried. Heritage assets are those elements of the historic environment that hold value. There are heritage assets with archaeological interest that are not currently designated as scheduled monuments, but which are demonstrably of equivalent significance. The absence of designation for such heritage assets does not indicate lower significance. The SoS will thus consider such assets to be subject to the same policy considerations as those that apply to designated heritage assets.
- 3.20 EN-1²² also states that the SoS will consider the impacts on other non-designated heritage assets on the basis of clear evidence that these assets have a heritage significance that merits consideration in its decisions. This will be the case even though these assets are of lesser value than designated heritage assets or those of equivalent significance.
- 3.21 EN-1²³ advises that the ES should provide a description of the significance of the heritage assets affected by the proposed development and the contribution of their setting to that significance. The level of detail should be proportionate to the importance of the heritage assets and no more than is sufficient to understand the potential impact of the proposal on the significance of the heritage asset. Where the available evidence suggests that a development site has the potential to include a heritage asset with an archaeological interest, the applicant should carry out appropriate desk-based assessment. Where such desk-based research is insufficient to properly assess the interest, a field evaluation should be carried out.

¹⁹ Paragraph 5.4.14

²⁰ Paragraph 5.6.4

²¹ Paragraph 5.8.2

²² Paragraph 5.8.6

²³ Paragraph 5.8.9

- 3.22 EN-1²⁴ states that the SoS will exercise a presumption in favour of the conservation of designated heritage assets. The more significant the designated heritage asset, the greater will be the presumption in favour of its conservation.
- 3.23 EN-1²⁵ emphasises that a documentary record of our past is not as valuable as retaining the heritage asset. The ability therefore to record evidence of the asset should not be a factor in deciding whether consent should be given. Where the loss of a material part of a heritage asset's significance is justified, the SoS will require the developer to record and advance understanding of the significance of the asset before it is lost. The extent of the requirement will be proportionate to the nature and level of the asset's significance. Developers may be required to publish this evidence and deposit copies of the reports with the relevant Historic Environment Record and a local museum or other public depository.
- 3.24 EN-1²⁶ states that the SoS may consider there to be a high probability that a development site may include as yet undiscovered heritage assets with archaeological interest. In such cases, requirements will be considered to ensure that appropriate procedures are in place for the identification and treatment of such assets discovered during construction.
- 3.25 EN-1²⁷ states that the SoS will expect applicants to take appropriate mitigation measures to address adverse effects on rights of way. Where this is not the case, the SoS will consider what mitigation requirements might be attached to any DCO.
- 3.26 EN-1²⁸ advises that where a proposal is likely to have socio-economic impacts, the applicant should undertake an assessment of these impacts, as part of the ES, which may include:
- (i) the creation of jobs and training opportunities;
 - (ii) the effects on tourism;
 - (iii) the impact of a changing influx of workers during the construction phase; and
 - (iv) cumulative effects, if development consent were to be granted to for a number of projects within a region and these were developed in a similar timeframe, such as a shortage of construction workers.
- 3.27 EN-1²⁹ advises that applicants should consult the Highways Agency and highways authorities, as appropriate, on the assessment and mitigation of transport implications. This should

²⁴ Paragraph 5.8.14

²⁵ Paragraph 5.8.19

²⁶ Paragraph 5.8.22

²⁷ Paragraph 5.10.24

²⁸ Paragraph 5.12.2

²⁹ Paragraph 5.13.3

include the construction period. The SoS will consider requirements to mitigate adverse impacts on transport networks. Provided that the applicant is willing to enter into planning obligations or appropriate requirements can be imposed, with attribution of costs, then development consent should not be withheld.

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

- 3.28 EN-4³⁰ provides the primary basis for decisions by the SoS on development consent applications for gas pipelines which fall within the scope of the NPS. It³¹ adds that the efficient transmission of natural gas is crucial to meeting energy needs during the transition to a low carbon economy. National objectives relating to security of supply cannot be achieved without enabling investment in new infrastructure.
- 3.29 EN-4³² advises that, as climate change is likely to increase risks to infrastructure, applicants should set out how a proposal would be resilient to:
- (i) increased risk of flooding;
 - (ii) higher temperatures; and
 - (iii) increased risk of earth movement from increased risk of flooding or drought.
- 3.30 Climate change resilience measures should also form part of the relevant impact assessment in the ES accompanying an application.
- 3.31 The principal legislation governing the safety of pipelines is the Pipelines Safety Regulations 1996. The Health and Safety Executive (HSE) enforces these regulations, and EN-4³³ suggests that the SoS should seek advice from the HSE in respect of safety issues when considering an application.
- 3.32 EN-4³⁴ gives the following background information on the criteria that applicants should consider when choosing a gas related site or route. When designing the route of new pipelines, applicants should research relevant constraints including the proximity of existing and planned residential properties, schools, hospitals, railway crossings, major road crossings, below surface usage and the proximity to environmentally sensitive areas and main river and watercourse crossings. These can be undertaken by desk top studies, followed up by consulting the appropriate authority, operator or conservation body if necessary.

³⁰ Paragraph 1.2.1

³¹ Paragraph 1.1.1

³² Paragraph 2.2.2

³³ Paragraph 2.19.5

³⁴ Paragraph 2.19.7

- 3.33 Applicants should also undertake desktop surveys to identify historic or current mine workings, underground cavities serving industrial usage, the nature of any made ground, waste sites, unexploded ordnance, utility services and any other below surface usage when assessing routes for a pipeline. Applicants should seek to avoid or minimise adverse effects from usage below the surface.
- 3.34 Whilst EN-1 sets out the generic considerations to be given to the impacts of gas pipelines, EN-4³⁵ identifies specific considerations which apply to gas pipelines during the pre-construction and construction phases. These are: noise and vibration; biodiversity, landscape and visual effects; water quality and resources; and soil and geology.
- 3.35 In terms of noise and vibration, EN-4³⁶ advises that the ES should include an assessment of construction effects, such as those from site clearance, soil movement, ground excavation, tunnelling, trenching, pipe laying, pipe welding and ground reinstatement. In addition, the ES should include the assessment of any increased heavy goods vehicle traffic that would be generated on local roads for the movement of materials.
- 3.36 EN-1³⁷ adds that the assessment, which should be proportionate to the likely impact, should include:
- (i) a description of the noise generating aspects of the proposal, including the identification of any distinctive tonal, impulse or low frequency characteristics;
 - (ii) the identification of noise sensitive premises and areas;
 - (iii) the characteristics of the existing environment;
 - (iv) how the noise environment would change with the proposal during the construction period and subsequently at particular times of the day, evening and night;
 - (v) the effect of the changes on any noise sensitive premises and areas;
 - (vi) the impact of ancillary activities associated with the proposal, such as increased road traffic; and
 - (vii) mitigation measures.
- 3.37 EN-1³⁸ also adds that the proposal should demonstrate good design through the: selection of the quietest cost-effective plant available; optimisation of plant layout to minimise noise emissions; and the use of noise barriers to reduce transmission. The SoS will need to be satisfied that the proposal would meet the aims to avoid significant adverse impacts and mitigate and minimise other adverse impacts. The SoS will consider including

³⁵ Paragraph 2.20.1

³⁶ Paragraph 2.20.2

³⁷ Paragraph 5.11.3

³⁸ Paragraph 5.11.8

measurable DCO requirements or specifying the mitigation measures to ensure that noise levels do not exceed any specified limits in the DCO.

- 3.38 Turning now to biodiversity, landscape and visual effects, EN-4³⁹ advocates that the ES should include an assessment of construction effects. These should include those upon specific landscape elements within and adjacent to the pipeline route such as grasslands, field boundaries (hedgerows, hedge banks, dry stone walls and fences), trees, woodlands, and watercourses. There would also be temporary visual impacts caused by the need to access the working corridor and to remove flora and soil. Temporary impacts could include large excavations where deep pits are needed for boring beneath rivers, roads and sensitive features. Long term impacts would be likely to include: limitations on the ability to replant landscape features, such as hedgerows or deep-rooted trees over or adjacent to the pipeline; and structures and indication points necessary to identify the pipeline route.
- 3.39 EN-1⁴⁰ adds that Sites of Special Scientific Interest (SSSIs) should be given a high degree of protection. EN-141 also adds that the SoS should give due consideration to regional or local designations such as Regionally Important Geological Sites, Local Nature Reserves and Local Sites. Furthermore, EN-142 states that the SoS should ensure that species and habitats, which been identified as being of principal importance for the conservation of biodiversity in England and Wales and thereby requiring conservation action, are protected from adverse effects by using requirements or planning obligations.
- 3.40 EN-4⁴³ recommends that the ES should include an assessment of the biodiversity and landscape and visual effects of the proposed route and of the main alternative routes considered. The application should include proposals for the reinstatement of the pipeline route as close to its original state as possible and take into account any agreements with the landowner to access areas for aftercare and management work. Where it would be unlikely to be possible to restore landscape to its original state, the applicant should set out measures to avoid, mitigate, or employ other landscape measures to compensate for, any adverse effect on the landscape.
- 3.41 EN-1⁴⁴ adds that applicant should carry out a landscape and visual assessment and report it in the ES. It should include reference to any landscape character assessment and associated studies as a

³⁹ Paragraph 2.21.1

⁴⁰ Paragraph 5.3.10

⁴¹ Paragraph 5.3.13

⁴² Paragraph 5.3.17

⁴³ Paragraph 2.21.3

⁴⁴ Paragraph 5.9.5

means of assessing landscape impacts relevant to the proposal. The applicant's assessment should include effects during construction and the effects of the completed development on landscape components and landscape character. The assessment should also include the visibility of the proposal during construction and of its subsequent presence and impacts on views and visual amenity. This should include light pollution effects, including those on local amenity and nature conservation.

- 3.42 EN-1⁴⁵ states that the SoS will consider the existing character of the local landscape, its quality, how highly it is valued and its capacity to accommodate change. Having regard to siting, operational and other relevant constraints, the aim should be to minimise harm to the landscape and provide reasonable mitigation where appropriate. The SoS will also consider whether any adverse impact is temporary, such as during construction, and whether any adverse impact on the landscape will be capable of being reversed in a reasonable timescale.
- 3.43 Where a local development document has policies based on landscape character assessment, these will be paid particular attention. The SoS will judge whether any adverse impact on the landscape would be so damaging that it would not be offset by the benefits of, including the need for, the proposal. The SoS will also judge whether the visual effects on receptors, such as local residents and visitors to the area, outweigh the benefits of the proposal.
- 3.44 In relation to water quality and resources, EN-446 identifies that constructing pipelines creates corridors of surface clearance and excavation that could potentially affect watercourses, aquifers, water abstraction and discharge points, areas prone to flooding and ecological receptors. Pipeline impacts could include inadequate or excessive drainage, interference with groundwater flow pathways, mobilisation of contaminants already in the ground, the introduction of new pollutants, flooding, disturbance to water ecology, pollution due to silt from construction and disturbance to species and their habitats.
- 3.45 EN-1⁴⁷ adds that all proposals located in Flood Zone 2⁴⁸ should be accompanied by a flood risk assessment (FRA). FRAs should:
- (i) be proportionate to the risk and appropriate to the scale, nature and location of the project;
 - (ii) consider the risk of flooding arising from the project in addition to flooding to the project;
 - (iii) take the impacts of climate change into account;

⁴⁵ Paragraph 5.9.8

⁴⁶ Paragraph 2.22.2

⁴⁷ Paragraph 5.7.4

⁴⁸ As described in Technical Guidance to the National Planning Policy Framework: DCLG: March 2012

- (iv) be undertaken by competent people;
- (v) consider the adverse and beneficial effects of flood risk management infrastructure, including raised defences, flow channels and other artificial features, together with the consequences of their failure;
- (vi) consider the vulnerability of those using the site;
- (vii) consider and quantify the different types of flooding and identify flood risk reduction measures;
- (viii) consider the effects of a range of flooding events on people, property, the natural and historic environment and river processes;
- (ix) assess the residual risk after reduction measures have been taken into account and demonstrate that this is acceptable;
- (x) consider how the ability of water to soak into the ground could change with the proposal, along with how the layout of the proposal could affect drainage systems;
- (xi) consider if there is a need for the proposal to remain operational during a worst case flood event; and
- (xii) be supported by appropriate data and information, including historical information.

3.46 EN-1⁴⁹ identifies that the SoS will need to be satisfied that:

- (i) the application is supported by an appropriate FRA;
- (ii) the Sequential Test has been applied as part of site selection;
- (iii) the proposal is in line with any relevant national and local flood risk management strategy; and
- (iv) the proposal is appropriately flood resilient and resistant and any residual risk can be safely managed.

3.47 EN-1⁵⁰ also identifies that the SoS will not consent development in Flood Zone 2 unless satisfied that the sequential test requirements have been met. Preference will be given to locating projects in Flood Zone 1. If there is no reasonably available site in Flood Zone 1, then projects can be located in Flood Zone 2.

3.48 Where the proposal would be likely to have effects on water resources or water quality (for example impacts on existing surface water or associated ecological receptors and such as through siltation, spillages, discharges from maintenance activities or the discharge of disposals such as wastewater) the applicant should provide an assessment of the impacts in the ES.

3.49 In relation to soil and geology, EN-4⁵¹ advises that it is important for applicants to understand the soil types and the nature of the underlying strata. Underground cavities and unstable ground conditions may present risks to pipeline projects. Impacts could include the sterilisation of mineral resources or loss of soil quality.

⁴⁹ Paragraph 5.7.9

⁵⁰ Paragraph 5.7.12

⁵¹ Paragraph 2.23.1

- 3.50 Applicants should assess the stability of the ground conditions associated with the pipeline route. Desktop studies, which include known geology and previous borehole data, can form the basis of the applicant's assessment. The assessment should cover the options considered for installing the pipeline and weigh up the impacts of the means of installation.
- 3.51 The SoS should take into account the impact on and from geology and soils when considering a pipeline project. A proposal will be acceptable if the applicant has proposed a route and other measures that either eliminates any adverse impacts on soil and geology or reduces them to an acceptable level and that the route does not adversely affect the integrity of the pipeline, for example, by increasing materially the risk of fracture.
- 3.52 The two relevant NPSs include much detail on the assessment of and decision making on development consent applications for pipeline projects. In view of this and the NPSs' status as adopted Government policy, their relevant sections, as set out above, will be used as the basis for the findings in this report.

EUROPEAN REQUIREMENTS AND RELATED UK REGULATIONS

Habitats Directive (Council Directive 92/43/EEC)

- 3.53 The Habitats Directive (together with the Council Directive 79/409/EEC on the conservation of wild birds) forms the cornerstone of Europe's nature conservation policy. It is built around two pillars: the Natura 2000 network of protected sites; and the strict system of species protection.
- 3.54 Animal and plant species of interest whose conservation requires the designation of Special Areas of Conservation (SACs) are listed in Annex II of the directive. Annex IV lists animal and plants species of interest in need of strict protection. All species listed in these annexes are identified as European Protected Species (EPS) and protected under the Conservation of Habitats and Species Regulations 2010 (The Habitats Regulations 2010).

Birds Directive (Council Directive 2009/147/EC)

- 3.55 The Birds Directive is a comprehensive scheme of protection for all wild bird species naturally occurring in the European Union. It requires classification of areas as Special Protection Areas (SPAs) comprising all the most suitable territories for these species. Since 1994 all SPAs form an integral part of the Natura 2000 ecological network.

The Conservation of Habitats and Species Regulations 2010 (as amended) and the Conservation of Habitats and Species (Amendment) Regulations 2012

- 3.56 The Conservation of Habitats and Species Regulations 2010 are the principal means by which the Habitats Directive is transposed in England and Wales.
- 3.57 Where EPS are concerned, statutory provisions apply to which the competent authority must pay due regard. These are that adequate surveys must establish the presence or absence of the species concerned and predict the likely impact of the proposal upon the species. This information must also accompany an application for a Habitats Regulations licence to the appropriate authority which is required to ensure that the proposed development can proceed lawfully.
- 3.58 The forgoing directions and regulations are relevant to this application in view of the presence of the River Mease SAC, which is some 5km from the route of the proposed pipeline, and the Humber Estuary SPA, which has hydraulic connectivity with the River Mease.

The Environmental Impact Assessment Directive (Council Directive 85/337/EEC as amended)

- 3.59 Environmental Impact Assessment (EIA) is a process to assess the likely environmental effects of a project in order that decision makers may take these effects into account in making their determination. EIA is required in certain circumstances by European law and is implemented in English law in respect of projects requiring development consent pursuant to the PA2008 under the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 as amended (the EIA Regulations).

Water Framework Directive (Council Directive 2000/60/EC)

- 3.60 "Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for the Community action in the field of water policy" or, in short, the Water Framework Directive has a number of objectives such as preventing and reducing pollution, environmental protection, improving aquatic ecosystems and mitigating the effects of floods. It includes the production of river basin management plans (RBMPs) which are designed to integrate the sustainable management of rivers. This directive is relevant to the application as the route of the proposed pipeline crosses the floodplain of the River Dove, an integral part of the local RBMP.

OTHER LEGAL AND POLICY PROVISIONS

The Climate Change Act 2008 and the UK Low Carbon Transition Plan 2009

- 3.61 The Climate Change Act 2008 creates a legally binding long-term framework to cut greenhouse gas emissions, including through the use of carbon budgeting. It also creates a framework for building the UK's ability to adapt to climate change. The Climate Change Act 2008 (2020 Target, Credit Limit and Definitions) Order (SI 2009:1258) increased the target for 2020 carbon budget cuts from 26% (against a 1990 baseline) to 34%⁵².
- 3.62 The Low Carbon Transition Plan: National Strategy for Climate and Energy: 2009 sets out how the UK will meet its target reduction in carbon budget of 34% by 2020. The plan aims to take a cost effective route to reducing carbon, whilst keeping the overall impact on the consumer to a minimum. Electricity consumption is expected to rise in the future, as the use of electricity increases for transport and home heating.

Planning our electric future: a White Paper for secure, affordable and low carbon electricity (July 2011)

- 3.63 This White Paper sets out the Government's commitment to transform the UK's electricity system to ensure that future supply is secure, low-carbon and affordable. The paper identifies a number of challenges in the coming decades including the following issues⁵³.
- 3.64 The first is that security of supply is threatened as existing plant closes. Over the next decade, the UK will lose around a quarter of its existing generation capacity as old or more polluting plant closes. Modelling suggests that de-rated capacity margins could fall below five per cent around the end of this decade, increasing the likelihood of blackouts. In addition to this reduction in existing capacity, the future electricity system will also contain more intermittent generation, such as wind, and inflexible generation, such as nuclear.
- 3.65 The second is that demand for electricity is likely to rise, despite improvements in energy efficiency. Overall demand for electricity may double by 2050 due to the electrification of the transport, heat and other carbon-intensive sectors.
- 3.66 The unprecedented nature of the challenge means there is a risk of uncomfortably low capacity margins towards the end of the decade⁵⁴. The UK needs to take action now to address these issues and avoid problems in the future. It is also clear that fossil fuels without carbon capture and storage, especially gas, will continue to have a key role to play in the coming years.

⁵² Climate Change Act 2008: s5(1)(a)

⁵³ Paragraph 3

⁵⁴ Paragraph 14

- 3.67 The above Act, Plan and White Paper are relevant to the consideration of the need for the proposed pipeline.

The Wildlife and Countryside Act 1981 (as amended)

- 3.68 The Wildlife and Countryside Act 1981 is the primary legislation which protects animals, plants, and certain habitats in the UK. The Act provides for the notification and confirmation of SSSIs. These sites are identified for their flora, fauna, geological or physiographical features by Natural England (NE). The Act also contains measures for the protection and management of SSSIs.

- 3.69 The Act is divided into four parts: Part I relating to the protection of wildlife, Part II relating to designation of SSSIs and other designations, Part III on public rights of way and Part IV on miscellaneous provisions. If a species protected under Part I is likely to be affected by development, a protected species licence will be required from NE. The Act is relevant to the application in view of the species identified in the ES.

Natural Environment and Rural Communities (NERC) Act 2006

- 3.70 NERC2006 made provisions for bodies concerned with the natural environment and rural communities, in connection with wildlife sites and SSSIs. It includes a duty that every public body must, in exercising its functions, have regard so far as is consistent with the proper exercising of those functions, to the purpose of biodiversity. In complying with this duty, regard must be had to the United Nations Environmental Programme Convention on Biological Diversity of 1992. Priority habitats and species are listed in the UK Biodiversity Action Plan. The Act is relevant to the application in view of the number of wildlife sites that would intersect or abut with the Works limits.

LOCAL IMPACT REPORTS

- 3.71 The principal matters raised in the LIRs submitted by East Staffordshire Borough Council [REP-044], Lichfield District Council [REP-045], South Derbyshire District Council [REP-046] and Staffordshire County Council [REP-047] are:

- (i) landscape and visual impact;
- (ii) amenity of nearby residents, including noise, vibration and air quality;
- (iii) highways and transportation;
- (iv) heritage impact;
- (v) ecology;
- (vi) flood risk and hydrogeological impacts;
- (vii) geological, soil and contamination impacts;
- (viii) highway and rail safety impacts;
- (ix) decommissioning and abandonment impacts;
- (x) public rights of way; and
- (xi) minerals and waste.

3.72 These are considered in Section 4 of this report.

THE DEVELOPMENT PLAN

3.73 The development plan for the area of the proposal comprises the policies of the East Staffordshire Local Plan (ESLP) 2006 and the South Derbyshire Local Plan (SDLP) 1998 saved under the provisions of the Planning and Compulsory Purchase Act 2004 [APP-026]. Whilst these policies are now of some age, I am satisfied that the policies relevant to the consideration of this proposal are generally consistent with the National Planning Policy Framework (NPPF) and can be given significant weight.

The East Staffordshire Local Plan 2006

3.74 The Council's LIR refers to the following ESLP saved policies which are relevant to this examination [REP-044]. Saved Policy NE1 seeks to avoid development outside the development boundaries of the plan, unless it cannot reasonably be located within them and is appropriate in the countryside, amongst other things. Such development should: not adversely affect the amenities of existing land users; be compatible with the surrounding character; relate satisfactorily to its setting; include landscaping to take into account immediate impact and distant views; only use access roads that could accommodate the likely traffic generated; and include adequate access. Saved Policy T1 seeks to ensure that development does not unacceptably harm the safe and efficient use of the highway network and that any necessary highway improvement works are supported by an appropriate contribution.

3.75 The Council has also referred to Saved Policy BE1 – Design. From the information provided, and likely duplication with Saved Policy NE1, the policy would not appear to be directly relevant to the examination.

3.76 The LIR also refers to an East Staffordshire Pre-Submission Local Plan. There is however no evidence to suggest that this should be given anything more than very limited weight in the examination.

The South Derbyshire Local Plan 1998

3.77 The Council's LIR refers to the following SDLP saved policies which are relevant to this examination [REP-046]. Saved Policy T6 seeks to ensure that: development does not interfere with the free and safe flow of traffic; proposals incorporate adequate provision for access; and that the cost of necessary improvements to the highway network should be met by s106 planning obligations. Saved Policy EV1 seeks to prevent development outside settlements unless it is unavoidable in the countryside and protects the countryside's character, landscape quality and wildlife and historic features, with as little impact as possible on the countryside, amongst other things. Saved Policy EV11 seeks to prevent significant disturbance to known archaeological or other

heritage features, with impact minimised where there is an overriding need for the development.

- 3.78 The Council has also referred to Saved Policies E10 – Employment and EV-9, EV-12 and EV-14 - Environment. There is however no evidence that these policies are directly relevant to the examination.
- 3.79 The LIR also refers to an emerging local plan. There is however no evidence to suggest that this should be given any weight in the examination.

NATIONAL PLANNING POLICY FRAMEWORK (MARCH 2012)

- 3.80 The NPPF sets out the Government's planning policies for England and how these are expected to be applied.
- 3.81 The NPPF does not contain specific policies for NSIPs for which particular considerations apply. The NPPF⁵⁵ explains that these are to be determined in accordance with the PA2008 relevant NPSs for major infrastructure and 'any other matters that are considered both important and relevant (which may include the NPPF).'
- 3.82 In this case, the NPPF is of limited relevance as there are relevant designated NPSs in EN-1 and EN-4. The NPPF⁵⁶ also notes that weight should be given to relevant policies in development plan adopted before 2004 'according to their degree of consistency with this framework'.

⁵⁵ Paragraph 3

⁵⁶ Paragraph 215

4 FINDINGS IN RELATION TO POLICY AND FACTUAL ISSUES

PRINCIPAL ISSUES

- 4.1 Prior to holding the preliminary meeting I identified, in my Rule 6 and 4 letter [PD-003], a number of principal issues for the examination having regard to the application documents, National Policy Statements for Energy (EN-1) and Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4) together with relevant representations submitted by interested parties. The principal issues were:
- (i) Biodiversity, Biological Environment and Ecology
 - (ii) Flood Risk and Climate Change
 - (iii) Noise and Vibration Disturbance
 - (iv) Land Use and Safety
 - (v) Traffic, Travel and Transportation
 - (vi) Design, Landscape and Visual Impact
 - (vii) Socio-Economic Effects
 - (viii) Historic Environment
 - (ix) Rationale for the Selection of the Route, Worksites and Pipelaying Strategies
 - (x) Air Quality and Emissions
 - (xi) River Change
 - (xii) Water Quality and Resources
 - (xiii) Compulsory Acquisition and Related Matters
- 4.2 During the examination, I saw no reason to change or add to these issues and no one challenged or suggested additions to the issues at the preliminary meeting. This section of the report therefore sets out my findings and conclusions in respect of these issues, except compulsory acquisition and related matters, including financial viability, which are contained in Section 6. Planning obligations are considered in Section 7. All representations, even if not explicitly mentioned, have been fully considered in reaching the conclusions set out.
- 4.3 In response to a request in my Rule 8 letter [PD-005], the applicant provided a schedule of the mitigation identified in the Environmental Statement (ES) together with the mechanisms by which it would be secured [REP-030]. The findings in relation to biodiversity, biological environment and ecology have regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992 in its consideration of the likely impacts of the proposed development and appropriate objectives and mechanisms for mitigation and compensation.
- 4.4 All of the principal matters raised in the submitted local impact reports (LIRs) are covered by my principal issues.

- 4.5 EN-1⁵⁷ and EN-4⁵⁸ identify the critical importance of secure and reliable supplies of electricity. They also identify the importance of gas infrastructure in the change to a low carbon economy in terms of the supply chain for power station fuel. Applications for development consent in relation to gas energy supply infrastructure will therefore be considered on the basis that the scale and urgency of their need has already been demonstrated. Substantial weight should be given to the contribution that projects would make towards this need. Assessment should start with a presumption in favour of granting consent and that cross country pipeline strategic effects are considered to be neutral in accordance with the appraisal for sustainability for EN-4. Such a presumption is also supported by the Climate Change Act 2008, the UK Low Carbon Transition Plan 2009 and the Planning our electric future White Paper. The following findings and conclusions take all of these matters into account.

BIODIVERSITY, BIOLOGICAL ENVIRONMENT AND ECOLOGY

- 4.6 These matters are included in the ES in accordance with EN-4⁵⁹ [APP-080]. In this section of the report, full account has been taken of the fact that, in the relevant Statements of Common Ground (SoCGs), there are no matters not agreed between the applicant and Natural England (NE), the Environment Agency (EA) and the relevant planning authorities [REP-049, 052, 055 & 058]. Moreover, the approval of the relevant planning authorities to an ecological management plan for mitigation, monitoring and aftercare together with the duties of an environmental manager/clerk of works under draft DCO Requirement 15 would be necessary before work on any stage of pipeline construction could commence. I am satisfied that such approval would facilitate the regulation of detailed construction timing against seasonal effects where appropriate.

Habitats Regulations Assessment

- 4.7 There are no statutorily designated European sites within the Works or Order limits. The nearest Special Area of Conservation (SAC) is the River Mease which is some 5km from the route of the proposed pipeline [APP-080]. The Humber Estuary Special Protection Area (SPA) was identified as requiring consideration in relation to significant effect and appropriate assessment by the then Infrastructure Planning Commission at application scoping opinion stage [APP-048]. The SPA has hydraulic connectivity with the River Mease, via the River Trent [REP-024]. The SPA is however some 144km from the pipeline route along the line of the hydraulic connectivity between the two. All other SPAs are in excess of 40km from the proposal measured directly. There is no

⁵⁷ Paragraphs 2.2.20-25, 3.1.3 & 4.1.2

⁵⁸ Paragraph 1.1.1

⁵⁹ Paragraph 2.21.1

evidence of any ecological connectivity between the SAC and SPAs and the route of the proposed pipeline. There would also be sufficient physical separation between the SAC and SPAs and the proposal when taking into account any in combination construction effects from the proposed Wellington C Power Station.

- 4.8 As part of the suite of application documents, the applicant submitted a 'European Sites Report' to satisfy Section 5(2)(g) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 [APP-080]. This report concludes that there is no real possibility of any adverse impact on any European sites and that the proposed development does not qualify under Regulation 61(a) of The Conservation of Habitats and Species Regulations 2010 as requiring an appropriate assessment to be carried out. The examination timetable did not include a deadline for the publication of any Report on the Implications for European Sites (RIES) by the Examining Authority (ExA) as such a report appeared to be unnecessary, given that no party disagreed with the conclusions of the applicant's European Sites report.
- 4.9 This conclusion was further documented by the submission of a European sites screening matrix [REP-029] in accordance with the Planning Inspectorate's Advice note ten⁶⁰. Question 36.1 of the ExA's first written questions also sought an explanation as to if and why any parties considered the publication of a RIES to be necessary [REP-040 question 36.1]. No interested parties responded to this question. This accords with the advice of NE both before the examination, in its pre-application consultation responses, and during the examination in its SoCG with the applicant. The SoCG again confirmed that no further action or assessment was necessary [APP-082 & REP-052].
- 4.10 Having had regard to these findings, the views of the statutory nature conservation body, the aforementioned spatial separations between European sites and the proposal site and EN-1⁶¹, I am satisfied that there is sufficient evidence to allow the SoS to conclude that significant effects can be excluded for all European sites or on any site to which the same protection is applied as a matter of policy, either alone or in combination with other projects. Furthermore, in accordance with EN-1⁶², such information has been provided, as is reasonably required, for the SoS to determine that an appropriate assessment is not required.

⁶⁰ Planning Inspectorate's Advice note ten: Habitat Regulations Assessment relevant to nationally significant infrastructure projects

⁶¹ Paragraph 4.3.1

⁶² Paragraph 4.3.1

Other Wildlife Sites

- 4.11 Other sites were assessed in accordance with EN-1⁶³[APP-079]. The nearest Site of Special Scientific Interest (SSSI) is the Old River Dove, which is designated for its standing waters and branched bur-reed swamp [REP-024]. It is 200m from the Works limits, and usual working good practice to prevent pollution of the water environment would prevent impacts on the SSSI. This finding is agreed with NE and would allow the SSSI to have a high degree of protection in accordance with EN-1⁶⁴. There are no local nature reserves within 2km of the Works limits, and no identified impacts on the nearest of those sites. The nearest Regionally Important Geological Site/Local Geological Site is at Hilton Terrace, Etwall, 1km from the Works limits. In view of the physical separation, there is no identified impact on this feature as a result of the proposal.
- 4.12 Five Local Wildlife Sites (LWSs) intersect or abut with the Works limits. The Burton Old Railway and Trent and Mersey Canal sites would be crossed by non-open cut methods. This would avoid impacts, although at Burton there would be some construction noise and activity disturbance due to the shorter non-open cut crossing length. Such effects are generally anticipated by EN-1⁶⁵.
- 4.13 The Hilton and Egginton Brook Old Gravel Pits LWSs, which have been designated due to their standing open water, would also be likely to suffer some construction disturbance. This would however be minimised by avoiding night time working and excessive lighting, a requirement of the ecological management plan to be approved by the relevant planning authority under draft Development Consent Order (DCO) Requirement 15.
- 4.14 The Ash Grove hedgerow and verge LWS near Egginton would lose 15m of standard low-grade UK Biodiversity Action Plan (BAP) hedgerow and 15m of species rich hedgerow with good examples of UK BAP priority habitat in terms of biodiversity. The applicant's mitigation proposals however include reinstatement. Approval of a hedgerow and tree management plan, generally in accordance with the hedgerow management strategy in the ES [APP-073], is also required from the relevant planning authority under draft DCO Requirement 6.
- 4.15 Three Biological Alert Sites (BASs) intersect or abut with the Works limits [APP-079]. The B5107 and Hanbury Road sites would each lose 60m of highway verge. The verges would be reinstated and residual impacts would be neutral five years later. The remaining BAS is the Burton Old Railway which is considered above.

⁶³ Paragraph 5.3.13

⁶⁴ Paragraph 5.3.10

⁶⁵ Paragraph 1.7.2

- 4.16 The pipeline route crosses the Brankley Pastures Staffordshire Wildlife Trust Nature Reserve, which has been recently reclaimed from agricultural use. Some 0.9ha of grassland and newly planted woodland would be lost and then reinstated. In view of the young age of the woodland, residual impacts would return to neutral three years after reinstatement.
- 4.17 As a result of mitigation and reinstatement during the construction period, together with the absence of permanent above ground structures, any residual impacts at all of the above LWSs, BASs and the Wildlife Trust Nature Reserve would only be present for up to five years. Such impacts would therefore not be significant.
- 4.18 Apart from the sites identified above, most of the land within the Works limits is arable or pasture fields and hedgerows. Other features such as ponds and woodlands within the Works limits would be avoided by the pipeline through the implementation of the ecological management plan for each stage of the works. Of the habitats that could be encountered, none have a potential value greater than medium or county level according to Chartered Institute of Ecology and Environmental Management Guidelines.
- 4.19 I am satisfied that the detailed approval and implementation of the hedgerow and tree management plan under draft DCO Requirement 6 would ensure that the impact on hedgerows that have been categorised as important in line with the Hedgerow Regulations 1997 would be minimised as far as possible and that any residual impact would be reversed in a reasonable timescale.
- 4.20 The ES considers the habitats to be typical of farmland across the English midlands which is under intensive agricultural use. This has resulted in the application of fertilisers and herbicides, ploughing and re-seeding, causing the loss of many semi-natural species from pastures. Habitats of value are therefore generally limited to identified sites which have already been considered. The control of impact on any additional areas of value would be likely to be sufficiently regulated by the ecological management plan in accordance with EN-466.
- 4.21 The South Derbyshire District Council (SDDC) LIR suggests that the applicant could contribute to a number of planned projects in and around Egginton in order to change the neutral impact to a significant net gain in biodiversity [REP-046]. Any requirement in this regard would however go beyond the scope of the project to be consented in that it would not be necessary to make the project acceptable in planning terms.
- 4.22 Mr G Smedley, a local resident and Category 1 and 3 person in the Book of Reference [REP-019], raised a concern that there would be insufficient space within the limits of deviation for the soil

⁶⁶ Paragraph 2.21.3

strip/construction area to avoid the root protection zones for the mature oak trees T6.13 and T6.14. Whilst tree T6.13 lies within the Works limits, it would be outside the indicative pipeline working area and no adverse impacts are predicted [APP-068]. Tree 6.14 also lies within the Works limits and on the boundary of the indicative pipeline working area, but is not a tree highlighted as having the greatest potential for impacts. In this locality, the pipeline route appears to take advantage of a greater gap between trees T6.14 and T6.15 to minimise impacts on the group of hedgerow trees to the south of the former gravel pits and to limit the likely losses to ash trees. The route therefore represents an acceptable balance between various ecological and landscape features in this area.

- 4.23 In view of the limited impact, as set out above, should pipeline construction or reinstatement extend into a second year, the extent of impacts would still lie within the scope of the assessment as presented in the ES [REP-040 question 24.5 response]. There would also be sufficient physical separation between the construction of the Willington C Power Station, other plans and projects identified in the ES and agreed with the relevant planning authorities and the above sites to avoid adverse effects occurring due to cumulative impacts from the power station and pipeline construction phases.
- 4.24 In view of all of the above points, the proposal would seek to protect the wildlife features of the countryside as required by South Derbyshire Local Plan (SDLP) Saved Policy EV1. It would also accord with EN-1⁶⁷ and EN-4⁶⁸ in this regard. I am therefore satisfied that the proposal would not result in any unacceptable adverse impacts on wildlife sites generally.

Wildlife Species

- 4.25 There would be some loss of great crested newt terrestrial habitat [APP-079]. The applicant's mitigation measures however include fencing, trapping and reinstatement measures to be carried out under the scope of the ecological management plan. These would be secured by the implementation of draft DCO Requirement 15. European Protected Species are also afforded mitigation under draft DCO Requirement 20 under which the relevant planning authority would approve protection and mitigation measures plan specifically for all licensable activities in relation to European Protected Species. Any residual impacts would therefore be limited to during construction and a short period following completion. In terms of breeding birds, there would be some temporary habitat loss, but the impact of this could be minimised by the avoidance of some seasonal vegetation clearance. This would be

⁶⁷ Paragraph 5.3.10

⁶⁸ Paragraph 2.21.1

delivered in accordance with the ecological management plan required by DCO Requirement 15.

- 4.26 There would also be some tree and hedgerow loss where these are associated with breeding bird and bat use. These would be reinstated following construction. There could however be some very slight adverse residual impacts due to the time that trees would require to reach an appropriate age for such use.
- 4.27 Some outlier and subsidiary badger setts would be lost as a result of the proposal. Sett closure would be undertaken under licence [APP-046]. This, plus fencing and other measures to avoid direct conflict with construction works, would avoid any post construction residual effects.
- 4.28 Open cut river crossings could cause some disturbance to otter habitat [APP-079]. Such operations would however be of very limited duration, probably in terms of one to three days, and this would prevent any residual post construction effects.
- 4.29 The ES includes a full desk study on a 2km wide corridor and field assessments covering up to a 250m wide corridor along the pipeline route. The desk study found records of white clawed crayfish at low densities in the River Swarbourn and Hilton Brook waterbodies in 2007 and 1996 [APP-070]. None however were recorded during the field assessments for this application, although suitable habitat was found.
- 4.30 In view of all of the above points, I am satisfied that the proposal would not result in any unacceptable adverse impacts on the above protected species or conflict with EN-1⁶⁹ or EN-4⁷⁰ in this regard.

FLOOD RISK AND CLIMATE CHANGE

This matter is incorporated in the ES [APP-028, 060 & 064]. The ES includes information relating to watercourses, surface waters, groundwater and the risk of flooding to land within and near to the construction corridor. It also includes a flood risk assessment (FRA) and a strategy for construction work within flood zones, areas with a high water table and at river crossings.

Flood Risk

- 4.31 My first written questions included matters relating to flood risk at the village of Egginton during the construction period [REP-019 & 040]. The South Derbyshire DC LIR suggests that this area is acutely vulnerable to flood risk, although it does not identify any unacceptable impacts [REP-046]. My questions related to the

⁶⁹ Paragraph 5.3.10

⁷⁰ Paragraph 2.21.1

possibility that stockpiles of excavated material and temporary fencing, in EA Flood Zone 2, could represent barriers to floodplain flows. Further modelling was then carried out in addition to the FRA included with the application in accordance with EN-1⁷¹ [APP-060 & 063]. This further modelling included EA flood defence works that had been completed after the initial modelling work [REP-076]. The matter was also considered at an issue specific hearing, which was also attended by a representative of Egginton Parish Council [HE-010 & 011].

- 4.32 The further modelling concluded that, as a result of the proposals, there would be no increased flood risk at any residential property and no floodwater depth increase at the recently completed EA Egginton flood defences. This further work also resulted in an updated SoCG between the applicant and the EA which confirmed that there were no matters not agreed between the parties [REP-077].
- 4.33 Work in the flood plain would also require specific EA approval, and detailed design matters would need to be approved by the relevant planning authority under draft DCO Requirement 4. This would incorporate any matters relating to existing flood defence assets including, even though there is no evidence of, potential settlement.
- 4.34 Various matters were raised in a relevant representation from Mr G Smedley, a local resident and Category 1 and 3 person in the Book of Reference [REP-019]. These have been satisfactorily addressed as follows. The absence of FRA Egginton Brook shading to show predicted flood water depths was due to a software error that was subsequently corrected in an updated modelling report [APP-120 & REP-040 question 34.7 response]. The accuracy of predicted flood levels in the Egginton Brook area has been improved in the River Dove Floodplain Modelling Addendum [REP-076]. The potential for flooding at Egginton Bridge had been incorrectly shown, but was subsequently corrected in the updated modelling report [APP-120 & REP-040 question 34.8 response]. Contingency measures to prevent flood flows along open trenches increasing flood risk would be regulated by the EA through the flood defence consent that would be required for this work [REP-040 question 34.2 response]. The potential for bund erosion during a flood event has been minimised by an EA specified minimum distance between a River Dove bank and the nearest bund. In any event, additional sediment loadings from eroded bund material would not be significant in relation to the flood loading in the River Dove [REP-040 question 34.1 response]. Any potential for increased flood risk during floodplain watercourse crossing would be minimised by the need to obtain specific EA approval for the work [REP-040 question 34.2 response].

⁷¹ Paragraph 5.7.4

- 4.35 I am therefore satisfied that there would be sufficient regulation of the construction process in the floodplain to avoid any increased flood risk, bearing in mind that an acceptable bund management scenario has already been identified. I am also satisfied that, in accordance with EN-172 : the application is supported by an appropriate FRA [APP-060, APP-120 and REP-065]; the sequential test has been applied as part of the route corridor selection process [APP-043]; the proposal is in line with the relevant flood risk management strategy [APP-120]; and the proposal is appropriately flood resilient and resistant and any risk can be safely managed.
- 4.36 Towards the end of the examination, at Deadline 7, a written representation was received in relation to a potential increase in flood risk at Derby Airfield from the owner and licensee, Mr TM Jones [REP-117]. Part of the airfield has been subject to non-intrusive environmental surveys by agreement. These areas would also be subject to further non-intrusive surveys under the draft DCO. Mr Jones is identified in the Book of Reference and has been notified of the application, the examination preliminary meeting and subsequent relevant matters and events. The airfield is the only Civil Aviation Authority licensed airfield in Derbyshire. It is said to be very susceptible to waterlogging and had previously been adversely affected by other development of land.
- 4.37 The representation reiterated matters raised at the pre-application consultation stage which identified concerns, said to be major, that the sub-surface discontinuity of the pipeline could have a negative effect on the drainage of the airfield leading to waterlogging [APP-009]. It also repeated a request that a drainage and hydrological survey should be carried out before the pre-construction stage, as had been done for the environmental surveys. The applicant had, during the consultation period, agreed to extend a planned pre-construction drainage survey to incorporate the airfield [REP-122].
- 4.38 A scheme to deal with agricultural land drainage within the Works limits must be approved by relevant planning authority under draft DCO Requirement 13. Such an approval must be in place before any work on the relevant stage of the development commences. The scheme must include an investigation and assessment report giving details of existing drainage arrangements and requirements for pre-construction works and post-construction reinstatement. The installation of any such pre-construction drainage would be regulated as part of the scheme approved by the relevant planning authority before the commencement of the related stage of the authorised development. Furthermore, Land Drainage Consent and Flood Defence Consent would be required from the relevant county council or the EA for the crossing of any watercourse or main river

⁷² Paragraphs 5.7.9 & 12

respectively, including work in a main river floodplain. All of these measures would ensure that the efficiency of surface and man-made sub-surface drainage across the pipeline route is maintained both during and following construction.

- 4.39 Land within Works limits would form a continuous zone between the pipeline and the airfield, and the above scheme, in accordance with draft DCO Requirement 13, would seek to prevent any adverse effect on surface or sub-surface drainage within this zone. There is therefore nothing to suggest that the proposal would have an adverse effect on airfield drainage in terms of forming a surface or sub-surface drainage discontinuity downstream of the airfield.
- 4.40 Whilst there is also no evidence of any adverse impact on groundwater flows anywhere across the pipeline route as a result of its construction, the ES recognises that natural drainage systems can be disrupted by the general disturbance or compaction of soil [APP-024⁷³]. It also recognises that the influence of any disruption could have the potential to extend outside of the area of the construction corridor.
- 4.41 The land drainage assessment, which would be subject to relevant planning authority approval, would also establish any need for any additional pre-construction drainage across the construction corridor. The assessment would thus seek to retain the existing sub-surface natural drainage conditions at the outer boundary of the Works limits, by the completion of pre-construction drainage measures if necessary. This would ensure that natural drainage conditions outside of the Works limits, including those under the airfield, did not change as a consequence of pipeline construction. There is therefore nothing to suggest that the proposal would have an adverse effect on airfield sub-surface natural drainage in terms of forming an impediment down slope from the airfield.
- 4.42 The applicant's offer to extend the pre-construction drainage survey is a matter between the parties. From all of the above however, there is nothing to suggest that the draft DCO should require, or give powers to, the undertaker to carry out a hydrological survey or drainage work outside of the Works limits in relation to the airfield drainage. Furthermore, to carry out the draft DCO Requirement 13 investigation and assessment before the proposal has been designed would not necessarily reflect the drainage situation that would result from the proposal when designed and constructed.
- 4.43 Even if, after all of the above, the land at Derby Airfield was physically affected by the construction of the pipeline, the landowner may be able to make a claim for compensation under s152(3) of the Planning Act 2008. Furthermore, if the value of the

⁷³ Paragraphs 91-95

property was affected by a physical nuisance arising from the operation of the pipeline, a claim for depreciation in property value could be made under Part 1 of the Land Compensation Act 1973.

- 4.44 In view of all of the above points, I am satisfied that all reasonable matters related to Derby Airfield that are appropriate at this stage of the proposal have been addressed in accordance with EN-1⁷⁴. I can thus see no reason why consent should be withheld as a consequence of matters relating to the airfield.

Climate Change

- 4.45 In response to my first written questions 21.1, 28.1 and 39.1, the applicant drew my attention to the FRAs that had been carried out in relation to the Yoxall above ground installation (AGI) and the Willington C Power Station block valve, in line with EN-4⁷⁵ [REP-040]. Both of these locations are within Flood Zone 1, where there is less than a 1 in 1,000 annual probability of river flooding. The FRAs used the 2011 EA Flood Maps, which use the 2011 UK Climate Impacts Programme data, in accordance with EN-1⁷⁶. The EA Flood Maps assume a 20% increase in flooding and peak flows between 2025 and 2115. The assessment of flood risk in relation to the only above ground pipeline infrastructure at the Yoxall AGI and the Willington C Power Station block valve has therefore satisfactorily taken into account climate change.
- 4.46 Pipeline installation work in the River Dove floodplain would only have any impact in terms of flood risk during the construction period, which would be complete before 2025. The assessment of work in the floodplain has therefore satisfactorily taken into account climate change. The FRA has not identified any other locations where the pipeline could have an impact on flood risk. The SoCG between the applicant and the EA also records that there are no matters that are not agreed [REP-077].
- 4.47 I am therefore satisfied that the potential impacts of climate change have been fully considered in accordance with EN-1⁷⁷.

NOISE AND VIBRATION DISTURBANCE

- 4.48 This matter is included in the ES in accordance with EN-4⁷⁸ and EN-1⁷⁹ [APP-031]. The application also includes a statutory nuisance report which concludes that there would be no statutory

⁷⁴ Paragraph 5.4.14

⁷⁵ Paragraph 2.22.2

⁷⁶ Paragraph 4.8.5

⁷⁷ Paragraph 4.8.6

⁷⁸ Paragraph 2.20.2

⁷⁹ Paragraph 5.11.3

nuisance due to the mitigation measures set out in the ES and the requirements in the draft DCO to accord with EN-1⁸⁰ [APP-091].

- 4.49 Whilst installation of the pipeline would have a significant adverse effect in terms of noise, as anticipated in EN-4⁸¹, this impact would generally be transient and the resulting impact would only be minor adverse. Specialist crossing works, such as Horizontal Directional Drilling (HDD), would however require a 24 hour operation.
- 4.50 HDD would result in a significant adverse impact at two residential properties near to Crossing 1 [APP-110 & REP-040 question 25.12 response]. This significant impact would however be reduced if, as is more likely, micro tunnelling or auger boring is used, as it would involve limited above ground plant. Another mitigating factor would be the duration of the impact, which would only be likely to last for up to one week [HE-006]. The noise management scheme to be approved by the relevant planning authority, under draft DCO Requirement 17, would also include, where relevant, compensation in the form of alternative overnight accommodation or financial compensation.
- 4.51 The ES only considers those receptors with the highest sensitivity, whereas the evaluative criteria in BS5228-1 include other receptor categories. Residential housing is however closest to the proposed construction works and is therefore an appropriate worst case against which the proposal can be assessed [REP-040].
- 4.52 The ES does not establish existing ambient noise levels. The Works limits are however situated in a rural environment with a low level of ambient noise. The BS5228-1 significance of effect criteria have lower cut off levels. Where the ambient noise is above these cut off levels, a significant effect is noise which exceeds the ambient noise level plus 5dB. Where the ambient noise is below these cut off levels, a significant effect is a noise which exceeds the cut off level. As ambient noise levels in the area of the proposal are likely to lie below the cut off levels, it is reasonable to apply the BS cut off levels as the thresholds for significant effect. There is therefore no need to establish ambient noise levels.
- 4.53 Additional construction traffic would be likely to peak at a further 0.5% on some roads local to the Works limits. It is generally accepted that an increase in traffic flows of 25% would result in a noise increase of 1dB(A). There would therefore be no significant adverse effects in terms of noise or vibration from the proposal, and similarly no significant cumulative effect in combination with other developments.

⁸⁰ Paragraph 4.14.1

⁸¹ Paragraph 1.7.2

- 4.54 Construction work would be unlikely to involve impact operations or blasting. There would therefore be little prospect of a significant effect at residential locations.
- 4.55 In terms of cumulative effects generally, the relevant planning authorities have suggested considerations, including construction of the power station, in accordance with EN-4⁸² and these have been assessed as having no unacceptable cumulative impacts [REP-040 question 19.1 response]. Furthermore, the SoCGs between the applicant and the relevant planning authorities record that there are no outstanding matters [REP-049 & 055], a point that was confirmed at the DCO issue specific hearing [HE-06]. The submitted LIRs also advise that the proposal would have negligible effects in terms of noise and vibration disturbance [REP-044 to 047]. Moreover, as the proposal would not adversely affect the amenities of existing land users, it would not conflict with East Staffordshire Local Plan (ESLP) Saved Policy NE1 in this regard.
- 4.56 I am therefore satisfied that the proposal would avoid significant adverse noise and vibration disturbance effects and minimise other such effects in accordance with EN-1⁸³.

LAND USE AND SAFETY

- 4.57 These matters are incorporated in the ES [APP-027 & 034]. The ES includes information relating to human land use, geology, minerals and soils within and near the pipeline route together with an assessment of how the proposal could affect land use and earth resources.

Land Use

- 4.58 Soil classifications were determined using a desk based study in accordance with EN-4⁸⁴. These would be used to inform a soil handling management scheme which is to be approved by the relevant planning authority and implemented under draft DCO Requirement 12. The scheme would address matters such as the retention of soil fertility following construction. In response to my first written question 7.11, such matters also form part of the private agreements with landowners [REP-040]. The restoration of land drainage would be regulated by the agricultural land drainage scheme, approved by the relevant planning authority, and again by private agreements where relevant.
- 4.59 The pipeline route crosses an historic landfill site near Willington. Whilst there are no anticipated construction difficulties, a written contaminated land and groundwater scheme must be approved by the relevant planning authority with the involvement of the EA and

⁸² Paragraph 2.19.7

⁸³ Paragraph 5.11.8

⁸⁴ Paragraph 2.3.1

implemented in accordance with draft DCO Requirement 11. In view of all of the above points, I am satisfied that the proposal would incorporate adequate excavation and reinstatement measures.

Safety

- 4.60 The Health and Safety Executive (HSE) would provide land use planning advice in relation to the pipeline and would also approve its detailed design under the Pipeline Safety Regulations 1996. In response to my first written questions 3.5-3.8, reductions in the land use planning impact on existing and future development would be achieved by the use of heavy wall pipe or the provision of a concrete slab over the pipeline. Some areas for such reductions have already been identified. Private landowner agreements also include lift or pay provisions to allow for pipeline improvements to facilitate nearby development or compensation payments. If pipeline rights have been compulsorily acquired, statutory compensation provisions would apply.
- 4.61 At the start of the examination, in response to my Rule 6 and 4 letter [PD-003] and in accordance with EN-4⁸⁵, the HSE confirmed that they did not wish to raise any health and safety issues at the examination [REP-041]. In view of this and the above points, I am satisfied that the proposal and its associated zones for HSE land use planning advice would not have an unacceptable adverse impact on existing or future development.

Mineral Extraction

- 4.62 The route of the pipeline would cross the Fauld mine workings operated by British Gypsum [APP-107, 042 and REP-040 question 3.9 response]. The applicant's response to my first question 22.3 records that existing planning permission for the mine restricts peak mining particle velocities [REP-040]. This is to protect existing gas mains in the area amongst other things, and the restriction would similarly serve to protect the proposed gas pipeline, as sought by EN-4⁸⁶. The only known former mineral workings are sand and gravel sites which have been filled and returned to agricultural use. In terms of planned mining, there are no known areas that would be sterilised as a result of the pipeline, and no objections have been submitted by those holding mineral rights in the area of the pipeline.
- 4.63 I am therefore satisfied that mine workings would not have an unacceptable effect on the stability of the proposed pipeline and that the proposal would have a satisfactory relationship with actual, planned and former mineral extraction and mining areas.

⁸⁵ Paragraph 2.19.5

⁸⁶ Paragraph 2.19.7

TRAFFIC, TRAVEL AND TRANSPORTATION

- 4.64 These matters are included in the ES [APP-032]. In terms of highways, the application documents include a transport statement [APP-092]. The statement includes the need for many abnormal load deliveries to the construction compounds and access locations [APP-093, 094 & 095]. The statement also identifies routes for the avoidance of sensitive locations.
- 4.65 It would be unlikely that there would be more than 30 two-way journeys on any route to and from the construction site in any peak hour. On this basis, the 2007 Department for Transport Guidance on Transport Assessments suggests that a formal transport assessment (TA) is not necessary. Furthermore, as there would be no significant transport implications, EN-1 does not advise that a TA is required.
- 4.66 A construction, traffic and highway access arrangements plan, under draft DCO Requirement 7, would regulate these matters. The plan would be subject to approval by the relevant planning authority with local highway authority involvement. One of the envisaged construction access routes would pass through the village of King's Bromley, but heavy goods vehicle disturbance would be regulated by the construction delivery hours restrictions. The ES and the relevant LIR from Lichfield DC also suggest that unacceptable nuisance from such traffic would be unlikely to occur [APP-092 & REP-045].
- 4.67 The LIR from Lichfield DC however expresses some concern in relation to peak hour congestion at the A513/A515 junction in King's Bromley [REP-045]. Predicted peak hour traffic flows in relation to construction are however not sufficient to trigger a requirement for transport assessment and the junction is on a route which has the approval of the local highway authority. I am therefore not convinced that the proposal would result in unacceptable congestion at the junction.
- 4.68 The LIR from South Derbyshire DC seeks that the movement of HGVs respects sensitive times such as school runs and peak hours [REP-046]. This is however notwithstanding the Council's view that none of the construction access points would be in areas of known congestion. On the basis that the construction routes have the approval of the highway authority and that additional traffic flows are relatively light, I can see no reason to further restrict traffic flows beyond the daytime hours that would currently be possible.
- 4.69 The pipeline route also crosses the A50 trunk road [APP-046]. A licence under s50 of the New Roads and Street Works Act 1991 would be required from the Highways Agency (HA) for this

crossing. The applicant has considered this in conjunction with the HA in accordance with EN-1⁸⁷. At my request, the applicant has agreed a SoCG with the HA which records that there are no matters on which the parties do not agree [PD-003 & REP-059]. These matters would ensure that highway safety would be maintained.

- 4.70 The proposal would include one public footpath diversion under the draft DCO. There would however be no loss of footpath continuity during this process in line with the aims of EN-1⁸⁸. Temporary closures and diversions along the pipeline route would be undertaken in accordance with the public rights of way (PRoW) management plan approved and implemented under draft DCO Requirement 8 [APP-046]. This plan would allow the concerns of Staffordshire County Council, set out in its LIR, in relation to temporary closure of part of the Way for the Millennium and the National Forest Way to be addressed [REP-047]. Temporary closures and diversions would also be carried out under the Road Traffic Regulation Act 1984 and would therefore take into account all of the usual statutory considerations.
- 4.71 The pipeline route would cross Network Rail lines. These crossings would be undertaken using non-open cut methods, and the draft DCO includes appropriate protective provisions [APP-024]. The applicant has also agreed a SoCG with Network Rail Infrastructure Limited which records that there are no matters not agreed between the parties.
- 4.72 All of the highway and rail crossings would be undertaken by non-open cut methods, and there is therefore no evidence of any likely settlement difficulties.
- 4.73 I am therefore satisfied that the proposal would not have an unacceptable adverse impact on existing transport networks, including traffic routing and management, highway and rail safety, physical impacts and settlement. It would therefore accord with EN-1⁸⁹, ESLP Saved Policies T1 and NE1 and SDLP Saved Policy T6.

DESIGN, LANDSCAPE AND VISUAL IMPACT

- 4.74 The ES [APP-030], in accordance with guidance in EN-4⁹⁰ and EN-1⁹¹, includes a Landscape and Visual Impact Assessment (LVIA) incorporating temporary works compounds and temporary hedgerow loss [APP-096 to 101 & 111]. It also includes indicative planting schedules for the Yoxall AGI.

⁸⁷ Paragraph 5.13.3

⁸⁸ Paragraph 5.10.24

⁸⁹ Paragraph 5.11.3

⁹⁰ Paragraphs 2.21.1-3

⁹¹ Paragraphs 5.9.5-8

- 4.75 The LVIA considers receptors during the construction period. Highly sensitive residential properties and footpath users would experience a substantially adverse impact over the period. This is as anticipated in EN-4⁹². The impact period would however be some 6 months, and the overall effect would thus be low. For low sensitivity highway users this impact would be slight adverse.
- 4.76 Five years from the completion of construction, no receptor is anticipated to experience an adverse impact greater than slight adverse, which is not an impact of significance. After 20 years, there would be no discernible impact.
- 4.77 The Yoxall AGI indicative planting schedules have the agreement of the National Forest Company (NFC), apart from the presence of ash, in the context of its vulnerability to dieback disease, and sessile oak rather than English oak [REP-037]. Matters relating to ash and sessile oak could however be satisfactorily addressed in the subsequent relevant planning authority approval under draft DCO Requirement 5, as suggested by the NFC.
- 4.78 In terms of hedgerows, the chosen route seeks to use existing hedgerow gaps where possible and avoid trees. Draft DCO Requirement 4 demands detailed route alignment approval from the relevant planning authority. Approval of a hedgerow and tree management plan, generally in accordance with the hedgerow management strategy in the ES [APP-071], is also required from the relevant planning authority under Requirement 6. I am satisfied that the detailed approval and implementation of the hedgerow and tree management plan would ensure that the impact on hedgerows that have been categorised as important in line with the Hedgerow Regulations 1997 would be minimised as far as possible and that any residual impact would be reversed in a reasonable timescale. Ecological interests in terms of hedgerow management would also be protected through draft DCO Requirements 6 and 15.
- 4.79 The NFC also requests that at least one new hedgerow tree is incorporated in each section of replacement hedgerow [REP-018]. The proposal seeks to minimise the loss of hedgerows and trees [APP-030]. With this in mind, many of the hedgerows to be removed and replaced would lie in such close proximity to the pipeline that future tree roots within these sections would be detrimental to the safe operation of the pipeline. The NFC request would therefore be difficult to include in any draft DCO requirements. I am satisfied however that the regulation provided by the hedgerow and tree management plan under draft DCO Requirement 6 would ensure that replacement hedgerows were compatible with landscape aims in the area concerned wherever possible.

⁹² Paragraph 1.7.2

- 4.80 Under draft DCO Requirement 12, the relevant planning authority would need to approve a soil management scheme, which would regulate the reinstatement of vegetation. Furthermore, draft DCO Requirement 5 sets out the necessary approval of the relevant planning authority for the landscaping of the Yoxall AGI.
- 4.81 The AGI, which would be necessary infrastructure, would also be subject to relevant planning authority approval under draft DCO Requirement 4. I am therefore satisfied that it would be likely to exhibit good aesthetics as far as possible in accordance with EN-1⁹³. I am also satisfied that the Yoxall AGI landscaping would take into account immediate impact and distant views as sought by ESNP Saved Policy NE1.
- 4.82 The SoCGs between the applicant and NE and the relevant planning authorities record that there are no outstanding matters between the parties [REP-049, 052 & 055]. The submitted LIRs also advise that the proposal would not have any significant adverse landscape and visual impact issues [REP-044 to 047]. As the proposal would seek to protect the character and landscape quality of the countryside, it would accord with ESNP Saved Policy NE1 and SDLP Saved Policy EV1 in this regard.
- 4.83 In view of all of the above, there is, to my mind, no reason to doubt the findings of the ES on this issue. I am therefore satisfied that any adverse impacts on landscape would be temporary and reversible in a reasonable timescale. I am also satisfied that unacceptable impacts would be unlikely due to the capacity of the existing landscape to accommodate significant temporary and minor residual changes to its character and quality.

SOCIO-ECONOMIC EFFECTS

- 4.84 These matters are included in the ES in accordance with EN-1⁹⁴ [APP-035]. The proposed power station would be likely to have positive socio-economic impacts in terms of its purpose and the local economy through employment. Whilst the proposed pipeline is a necessary element of the power station operation, the direct positive impact of the pipeline in terms of local businesses and services would only be short term. Cumulatively therefore, the proposal and the power station would have a positive effect in the medium term in accordance with EN-4⁹⁵.
- 4.85 In respect of tourism, Mercia Marina, which is the largest canal based marina in the UK, is situated close to the pipeline route at Willington. The pipeline would however cross the canal by means of non-open cut methods such as HDD. This would substantially reduce any adverse visual impact and any HDD plant would be

⁹³ Paragraphs 4.5.1-3

⁹⁴ Paragraphs 4.2.2 & 3

⁹⁵ Paragraph 1.7.2

sufficiently physically separated from the marina to avoid noise impact. Such impacts associated with the installation of the pipeline would also generally be transient in nature.

- 4.86 In relation to the community, the applicant undertook pre-application consultation with strategic and local health bodies, and no suggestions of adverse impacts were raised. In terms of community cohesion and wellbeing, any influx of construction workers would be of low numbers, and any negative impact would therefore, in my view, be unlikely. The secure energy supply, to which the power station and pipeline would contribute, would however have a positive impact on wellbeing.
- 4.87 The proposal would result in a moderate adverse impact in relation to the temporary loss of landscape appeal and closure of PRoWs along its route [APP-034]. It would result in a neutral to slight impact in relation to construction noise at the Trent and Mersey Canal, the Mercia Marina and the River Dove, in view of the fact that these amenity features would be drilled under to cross them.
- 4.88 Taking all of the above matters into account however, the proposal overall would have a positive socio-economic effect and would accord with EN-1⁹⁶ in this regard.

HISTORIC ENVIRONMENT

- 4.89 This is included in the ES, which describes the significance, or value, of heritage assets affected by the proposal and the contribution of their setting to that significance in accordance with EN-1⁹⁷ [APP-033 & 111]. An element of the assessment work was carried out during the route selection process and included desk based assessments and light detection and ranging (LiDAR) and field surveys. In terms of buildings and structures as heritage assets, there would be sufficient physical separation to avoid direct impacts from settlement or other harm. In particular, the pipeline route crosses the Trent and Mersey Canal Conservation Area (CA). The pipeline would however be drilled underneath the canal and no harm to the CA would result from this operation. The finding of no impacts in the ES includes for the Rangemore CA, which is the next closest to the pipeline route. The proposal would therefore preserve the character and appearance of these CAs in accordance with the Infrastructure Planning (Decisions) Regulations 2010.
- 4.90 In terms of archaeological and palaeo-environmental remains, known sites would be excavated in advance under the Written Scheme for the Investigation of Areas of Archaeological Interest (WSI) set out in draft DCO Requirement 14. This scheme would need the approval of the relevant planning authority before work

⁹⁶ Paragraph 5.12.2

⁹⁷ Paragraph 5.8.9

on the respective stage could commence, and would include the involvement of the EA and English Heritage (EH) where appropriate. The WSI would also accommodate as yet undiscovered remains through a process of surface stripping, mapping and sampling of the construction site in accordance with EN-1⁹⁸.

- 4.91 No known archaeological assets of national importance would be likely to be affected by the proposal [REP-023]. The only known effect on a heritage asset with a medium to high heritage significance is to a crop mark complex near Willington. This asset has a heritage significance that merits consideration in this case under EN-1⁹⁹. The pipeline route avoids as much of the area of this asset as possible, and the affected area would be that with a lower crop mark density than the remainder of the area of the asset. This would result in a moderate/large adverse significance of effect based on a high asset value. This significance of effect would however reduce to moderate/slight adverse after mitigation. The mitigation, which would be likely to include advance excavation and detailed recording of the asset, would be secured in the WSI approved under draft DCO Requirement 14. There are no other known heritage assets that would experience a significance of effect higher than slight adverse.
- 4.92 The SoCG between the applicant and EH records that there are no matters not agreed [REP-050], and EH have not objected to the proposal. EH also specifically supported the ExA's first draft DCO [REP-100], and there have been no changes material to the historic environment since then. The submitted LIRs also advise that the proposal would not have any adverse impacts on heritage assets that could not be satisfactorily mitigated [REP-044 to 047]. Moreover, the prevention or minimisation of significant disturbance to known archaeological or other heritage features would accord with SDLP Saved Policies EV1 and EV11.
- 4.93 In view of all of the above points, I am satisfied that there would be no loss of significance of designated heritage assets and that the loss of significance of other heritage assets identified in the ES is justified on the merits of the proposal. This conclusion takes into account the presumption in favour of conserving such assets where designated, as set out in EN-1¹⁰⁰.

RATIONALE FOR THE SELECTION OF THE ROUTE, WORKSITES AND PIPELAYING STRATEGIES

- 4.94 These matters are included in the ES [APP-022]. Two reports were prepared to assist in the route selection process. Initially, a route corridor selection report was prepared [APP-043], and then a final

⁹⁸ Paragraphs 5.8.2, 19 & 22

⁹⁹ Paragraph 5.8.6

¹⁰⁰ Paragraph 5.8.9

route selection report [APP-044]. These reports accord with EN-1¹⁰¹. The pipeline would be routed through countryside to avoid unacceptable impacts. Its countryside location would therefore be appropriate and would accord with ESLP Saved Policy NE1 and SDLP Saved Policy EV1 in this regard.

- 4.95 Many construction methods are presented as options in the ES [APP-024, 063-055 & 106], with the final methods to be chosen following detailed design. I am satisfied however that the worst and maximum extent cases have been assessed in the ES in accordance with EN-1¹⁰² [REP-040 question 27.3 response]. The ES also considers waste associated with construction activities and decommissioning and abandonment issues [APP-024 & 035]. It is also of note that, should an HDD operation fail, then micro tunnelling would be the alternative option for these types of crossing [APP-024].
- 4.96 As a consequence of the above reports, I am satisfied that the detail of the route, work sites, pipelaying strategies for different locations, designs, layouts, construction programmes and operational processes, including decommissioning and abandonment, together with their selection and construction waste have been adequately addressed in the application. Furthermore, alternative pipelaying strategies would be available should HDD fail at a particular location.

AIR QUALITY AND EMISSIONS

- 4.97 This matter is included in the ES [APP-035]. In terms of construction, there would be sufficient separation between the Works limits and the Old River Dove SSSI to avoid adverse impacts. Furthermore, draft DCO Requirement 20 requires a dust management and mitigation schedule to be approved by the relevant planning authority. This would enable temporary construction impacts to residential properties to be reduced to an acceptable level in accordance with EN-1¹⁰³. Construction transport routes in the locality of the Works limits would also be sufficiently physically separated from any air quality management areas (AQMAS) for there not to be any potential impact. Cumulative impacts in conjunction with power station construction have also been considered in response to my first written question 19.1 [REP-040]. This does not change the conclusion of the ES that there would not be any significant impacts.
- 4.98 There is no reason to doubt the findings of the ES. Air quality impacts from construction vehicles travelling through the village of King's Bromley was raised by Lichfield DC in its LIR [REP-045]. As noted previously, construction traffic in relation to the proposal

¹⁰¹ Paragraph 4.4.1

¹⁰² Paragraph 4.2.5

¹⁰³ Paragraph 5.6.4

would not trigger a requirement for a transport assessment and King's Bromley is not an AQMA. Furthermore, there have not been any other objections in relation to air quality during the examination. I therefore consider that there would not be any unacceptable impacts in this regard.

- 4.99 In view of all of the above points, I am satisfied that the proposal would not have any unacceptable effects in terms of air quality from construction and transportation, including the cumulative effect of pipeline and proposed Willington C Power Station construction .

RIVER CHANGE

- 4.100 The crossing of many watercourses is included within the ES [APP-028], together with the crossing methods (from flumes to horizontal directional drilling) and mitigation [APP-064] in accordance with EN-4¹⁰⁴. The draft DCO would not modify the Water Resources Act 1991, which requires flood defence consent from the EA for the crossing of main rivers. It also would not modify the Land Drainage Act 1991, which requires land drainage consent from the relevant county council for the crossing of ordinary watercourses. Such consents would require the consideration of any effects on the watercourse channel, bank erosion and deposition. Furthermore, the applicant's SoCGs with the EA and the relevant county councils state that there are no matters that are not agreed between the parties [REP-058, 048 & 057].
- 4.101 From the above, it is therefore unlikely that the proposal would result in any unacceptable changes in watercourses to be crossed.

WATER QUALITY AND RESOURCES

- 4.102 This matter is included in the ES [APP-028] in accordance with EN-4¹⁰⁵. It also fully identifies construction operations that would have the potential to affect the water environment [APP-024] and considers the relationship between the proposal and the local river basin management plan (RBMP) [APP-079]. There is nothing to suggest that the proposal would lead to any deterioration in water quality standards or any failure to meet RBMP objectives. The proposal would therefore be compliant with the Water Framework Directive.

¹⁰⁴ Paragraph 2.19.7

¹⁰⁵ Paragraph 2.22.2

5 OVERALL CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

- 5.1 In deciding the application in accordance with s104 of the Planning Act 2008, the Secretary of State (SoS) must have regard to any relevant National Policy Statement, local impact report, prescribed matter and other matters considered to be important and relevant to the decision. My overall conclusion on the case for development consent for this scheme is based on an assessment of these matters, including the strong levels of agreement between various bodies and the absence of significant levels of objection.
- 5.2 The need for the proposal is clearly set out in Government policy within National Policy Statements EN-1 and EN-4.
- 5.3 I have set out the reasons for my conclusions on each of the matters in Section 4. My conclusions on the main issues in summary are that I am satisfied that:
- (i) there is sufficient evidence to allow the SoS to conclude that significant effects can be excluded for all European protected wildlife conservation sites or on any site to which the same protection is applied as a matter of policy, either alone or in combination with other projects. Furthermore, such information has been provided, as is reasonably required, for the SoS to determine that an appropriate assessment is not required. I am also satisfied that the proposal would not result in any unacceptable adverse impacts on wildlife sites and protected species generally.
 - (ii) there would be sufficient regulation of the construction process in the floodplain of the River Dove to avoid any increased flood risk and that the potential impacts of climate change have been fully considered. I am also satisfied that: the application is supported by an appropriate flood risk assessment; the sequential test has been applied as part of the route corridor selection process; the proposal is in line with the relevant flood risk management strategy; and the proposal is appropriately flood resilient and resistant and any risk can be safely managed.
 - (iii) the proposal would avoid significant adverse noise, disturbance and vibration effects and minimise other such effects.
 - (iv) the proposal would incorporate adequate excavation and reinstatement measures and that the proposal and its associated zones for Health and Safety Executive land use planning advice would not have an unacceptable adverse impact on existing or future development. I am also satisfied that mine workings would not have an unacceptable effect on the stability of the proposed pipeline and that the proposal would have a satisfactory relationship with actual, planned and former mineral extraction and mining areas.

- (v) the proposal would not have an unacceptable adverse impact on existing transport networks, including traffic routing and management, highway and rail safety, physical impacts and settlement.
- (vi) any adverse impacts on landscape would be temporary and reversible in a reasonable timescale, and unacceptable impacts would be unlikely due to the capacity of the existing landscape to accommodate significant temporary and minor residual changes to its character and quality.
- (vii) the proposal would have a positive socio-economic effect.
- (viii) there would be no loss of significance of designated heritage assets and the loss of significance of other heritage assets is justified on the merits of the proposal.
- (ix) the detail of the route, work sites, pipelaying strategies for different locations, designs, layouts, construction programmes and operational processes together with their selection have been adequately addressed in the application.
- (x) the proposal would not have any unacceptable effects in terms of air quality from construction and transportation.
- (xi) it is unlikely that the proposal would result in any unacceptable changes in watercourses to be crossed.
- (xii) there is nothing to suggest that the proposal would lead to any deterioration in water quality standards or any failure to meet river basin management plan objectives.

5.4 In conclusion therefore, I consider that the application accords with EN-1 and EN-4 and that there are no adverse impacts which would outweigh the need for the project to be delivered and the other benefits of the scheme. There is therefore a clear justification in favour of granting development consent for the Wellington C Gas Pipeline Scheme.

6 COMPULSORY ACQUISITION AND RELATED MATTERS

THE REQUEST FOR COMPULSORY ACQUISITION POWERS

- 6.1 In broad terms, the purpose of the compulsory acquisition is to enable the undertaker to construct, operate and maintain the Wellington C Gas Pipeline. This pipeline would supply gas to a new power station from the national gas transmission system (NTS). The development necessary would be authorised by a Development Consent Order (DCO). The land that would be the subject of compulsory acquisition is predominantly agricultural land.
- 6.2 The draft DCO includes provisions which would authorise the undertaker to compulsorily acquire rights in land, interfere with or extinguish existing rights in land and create new rights in land, including the subsoil. The draft DCO seeks to incorporate the provisions of the Compulsory Purchase (General Vesting Declarations) Act 1981 with certain modifications (article 21). The purpose and justification for the compulsory acquisition sought is set out in a Statement of Reasons, submitted with the application [APP-017].
- 6.3 The draft DCO however only seeks the compulsory acquisition of land rights by the creation of new rights for the construction of the pipeline from landowners where the applicant has been unable to secure such rights by private agreement (article 18 and Schedules 5 and 6). There is however one exception to this, where the draft DCO seeks to compulsorily acquire outright the manorial rights over plots 3, 3B and 4 (article 16). The draft DCO also seeks the compulsory acquisition of land rights by the creation of new rights for the construction of the pipeline, or the extinguishment of rights, in relation to statutory undertakers (article 27). In addition, the draft DCO seeks to compulsorily extinguish or suspend private rights of way (article 20).
- 6.4 The details of the land in relation to interests to be acquired are set out in the Book of Reference [APP-019] and shown on the land plans [APP-015] submitted with the application, both of which were updated during the examination [REP-091 & 092 respectively] and submitted as final versions [REP-113 & 114 respectively].
- 6.5 The Statement of Reasons concludes that there is sufficient justification to exercise compulsory acquisition over all identified rights and interests [APP-017]. The Funding Statement, submitted with the application, concludes that, barring any unprecedented circumstance, there would be no funding shortfall in meeting the implementation and compulsory acquisition costs of the Order [APP-018].

THE REQUEST FOR RELATED COMPULSORY POWERS

- 6.6 Whilst the draft DCO only seeks compulsory acquisition where private agreements have not been possible, it does seek temporary powers over the whole of the Order land within the Works limits. These powers would give temporary possession, to the exclusion of all others, for carrying out and maintaining the authorised development and would allow the undertaker to remain in possession for a period up to one year from its completion (article 24 and Schedule 8) and for maintenance, where necessary, within a period of five years of the authorised development being opened for use (article 25). General powers are also sought to survey and investigate any land within the Order limits. This includes the ability to carry out intrusive and non-intrusive investigations and surveys within the Works limits and non-intrusive surveys elsewhere within the Order limits (article 15 and Schedule 4).
- 6.7 The draft DCO also seeks additional powers in respect of:
- Street works (article 10 and Schedule 2)
 - Rights under or over streets (article 23)
 - Public rights of way (article 11)
 - Access to works (article 12 and Schedule 3)
 - Discharge of water (article 14)
 - Power to override easements and other rights (article 19)
 - Felling or lopping of trees (article 32)
- 6.8 In each of the last three cases, the owner of the land affected may be entitled to compensation.

THE PURPOSES FOR WHICH THE LAND IS REQUIRED

- 6.9 The Book of Reference identifies affected persons and land in three parts [REP-113]. Part 1, which is sub-divided into 1a, 1b and 1c, lists the plots over which compulsory acquisition powers are sought and includes persons falling within Categories 1 and 2 as set out in s57 of the Planning Act 2008 (PA2008). A Category 1 person is an owner, lessee, tenant or occupier of the land. A Category 2 person has an interest in the land or the power to sell, convey or release the land.
- 6.10 Part 1a identifies 44 plots totalling approximately 44.4ha. Of the 44 plots, 17 relate to unknown owners, lessees, tenants, occupiers or persons with an interest in the land, and these total 38.1ha. The majority of these plots relate to the compulsory acquisition of pipeline construction rights and are hatched blue on the land plans (articles 18 and 27 and Schedule 5).
- 6.11 The exceptions to the plots for the compulsory acquisition of pipeline construction rights are: Plots 1 and 2; Plots 3, 3B and 4; and Plots 11, 80, 81 and 84C. On Plots 1 and 2, the draft DCO seeks compulsory rights for pipeline construction and/or the Yoxall

above ground installation (AGI) (article 18), in addition to pipeline construction rights over Plot 1. On Plots 3, 3B and 4, the outright compulsory acquisition of manorial rights is sought (article 16), and these plots are hatched red on the land plans. On Plots 11, 80, 81 and 84C, the compulsory acquisition of construction access rights is sought (article 18).

- 6.12 In addition to pipeline construction rights, obligations not to construct, build, excavate or plant are sought over some of the 44 plots (articles 18 and 27 and Schedule 6). These obligations would relate to a 7m wide strip, or an 18.1m wide strip in Plot 1, in which the pipeline would be centrally situated [APP-017].
- 6.13 Part 1b of the Book of Reference identifies 167 plots totalling approximately 258.5ha [REP-113]. These plots are those where authority is sought to survey and investigate land (article 15 and Schedule 4) and where temporary possession is sought to carry out and maintain the authorised development (articles 24 and 25 and Schedule 8). These plots are coloured yellow on the land plans.
- 6.14 Part 1c of the Book of Reference identifies some 242 plots totalling approximately 505ha [REP-113]. These plots are those where authority is only sought to carry out non-intrusive surveys (article 15 and Schedule 4), and the plots are coloured pink on the land plans.
- 6.15 Part 2 of the Book of Reference list all Category 3 persons who the applicant thinks would or might be entitled to make a claim under the Compulsory Purchase Act 1965 or the Land and Compensation Act 1973. Part 2 is sub-divided into 2a, 2b and 2c. Part 2a identifies the 146 persons who are listed in Part 1 as owners, lessees, tenants or occupiers of the land or with an interest in the land or the power to sell, convey or release the land.
- 6.16 Part 2b identifies 90 persons with easements or other private rights which could be extinguished, suspended or interfered with and statutory undertakers and other like bodies with a right to keep equipment within the Works limits that may be affected by the authorised development. Part 2b also includes further references to unknown persons where relevant and includes all plots within the Order limits where unknown persons may be entitled to enjoy easements or private rights over the land. Furthermore, within the 90 persons, there is some duplication due to the nature of the table. Part 2c identifies one possible claimant not listed within Parts 2a and 2b.
- 6.17 Part 3 identifies 91 persons entitled to enjoy easements or private rights over the land which would be extinguished, suspended or interfered with and statutory undertakers and other like bodies with a right to keep equipment within the Works limits that would be affected by the authorised development. Part 3 also includes

further references to unknown persons where relevant and includes all plots within the Order limits where unknown persons may be entitled to enjoy easements or private rights over the land. Again, within the 91 persons, there is some duplication due to the nature of the table.

- 6.18 At the time of the application, the route of the pipeline crossed land where the mines and minerals were vested in the Crown. These interests have now been transferred to the applicant. There is therefore now no Crown interest in any of the land to be used for the authorised development. There is also no acquisition which would be subject to special parliamentary procedure. Parts 4 and 5, as described in the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, are therefore not relevant to the draft DCO and have not been used in the Book of Reference.

THE REQUIREMENTS OF THE PLANNING ACT 2008

- 6.19 Compulsory acquisition powers can only be granted if the conditions set out in s122 and s123 of the PA2008 are met.
- 6.20 Section 122(2) provides that the land to be compulsorily acquired must be required for the development to which the development consent relates and is required to facilitate or is incidental to the development. In respect of land required for the development, the land to be taken must be no more than is reasonably required and be proportionate.
- 6.21 Section 122(3) requires that there must be a compelling case in the public interest for compulsory acquisition. For this condition to be met, the Department for Communities and Local Government (DCLG) Guidance¹⁰⁶ advises that the SoS will need to be persuaded that there is compelling evidence that the public benefit that would be derived from the compulsory acquisition would outweigh the private loss that would be suffered by those whose land is to be compulsorily acquired. In balancing public interest against private loss, compulsory acquisition must also be justified in its own right. The proposed compulsory acquisition cannot however be considered in isolation from the wider consideration of the merits of the project. There must be a need for the project to be carried out and there must be consistency and coherency in the decision-making process.
- 6.22 Section 123 requires that one of three conditions is met by the proposal, one of which is that the Order includes a request for compulsory acquisition of land to the authorised.
- 6.23 Section 138 requires that the extinguishment of a statutory undertaker's right or the removal of its apparatus under an Order

¹⁰⁶ Planning Act 2008, Guidance related to procedures for compulsory acquisition of land (CLG, 2013)

must be necessary for the purpose of carrying out the development to which the Order relates.

- 6.24 Section 120(5) allows a DCO to apply, modify or exclude a statutory provision which relates to any provision within the DCO.
- 6.25 Other general considerations also have to be addressed as a result of following guidance and in accordance with the legal duties on decision-makers, including that:
- (i) all reasonable alternatives to compulsory acquisition must have been explored¹⁰⁷;
 - (ii) the applicant must have a clear idea of how it intends to use the land and to demonstrate a reasonable prospect of funds being available¹⁰⁸; and
 - (iii) the decision-maker must be satisfied that the purposes stated for the acquisition are legitimate, necessary and proportionate and sufficiently justify the inevitable interference with the human rights of those with an interest in the land affected¹⁰⁹.

HOW THE CASE FOR COMPULSORY ACQUISITION WAS EXAMINED

- 6.26 I asked two rounds of questions of which 14 in the first round were specifically directed at Part 5 of the draft DCO in relation to powers of acquisition [PD-006 & REP-040]. Furthermore, 9 questions in the second round related to acquisition [PD-011 & REP-087]. In addition, I asked 8 first round questions about the protective provisions in Schedule 9 of the draft DCO [PD-006 & REP-040].
- 6.27 No affected persons notified me of a wish to be heard at a compulsory acquisition hearing. In view of the nature of the compulsory acquisition sought however, I held such a hearing on 12 March 2014 [HE-08, 09 & REP-072]. I also generally inspected the land on which compulsory acquisition is sought at my unaccompanied and accompanied site visits, on 12 September 2013 and 29 April 2014 respectively [PD-009, HE-15 & 16].
- 6.28 The application included an appendix to the Statement of Reasons which provided details of, and the status of negotiations on, the plots over which principal acquisition powers are being sought [APP-017]. The applicant intended to continue to negotiate private agreements during the course of the examination in relation to rights to construct and maintain the authorised development. I therefore requested updates to this appendix, in my Rule 8 letter [PD-005], and these updates were provided during [REP-033] and

¹⁰⁷ Paragraph 8 DCLG PA2008 Guidance relating to procedures for the compulsory acquisition of land

¹⁰⁸ Paragraph 9 of DCLG PA2008 Guidance on compulsory acquisition

¹⁰⁹ Paragraphs 8 and 10 DCLG PA2008 Guidance on compulsory acquisition and Article 1 of the First Protocol and Article 8 of the European Convention on Human Rights

towards the end of the examination in June 2014 [REP-109 & 110]. The updates identified the reductions in the extent of compulsory acquisition necessary in relation to the authorised development as a consequence of the agreements made. The updates also summarised the changes from the previous version. My report therefore considers acquisition matters up to and including the applicant's Deadline 7 submission in June 2014 and the final Book of Reference version 3 [REP-113].

- 6.29 My Rule 8 letter further requested a schedule to identify those landowners, tenants and other parties with whom private agreements are in place [PD-005]. This schedule was provided [REP-031] and updated during the examination with a final version being provided within the applicant's Deadline 7 submission [REP-111 & REP-112]. It included a useful explanation of the categorisation of these agreements [REP-031]. Again, my report considers these matters up to and including the applicant's Deadline 7 submission in June 2014.

Statutory Undertakers

- 6.30 My Rule 8 letter [PD-005] also requested a schedule to show the status of negotiations with each statutory undertaker having identified rights or apparatus within the Works limits. This schedule was provided [REP-032] and updated during the examination with a final version being provided within the applicant's Deadline 7 submission [REP-107 & 108]. Again, my report considers these matters up to and including the applicant's Deadline 7 submission in June 2014.
- 6.31 The PA2008 sets out particular considerations in respect of statutory undertakers' land (s127) and the extinguishment of rights, and removal of apparatus, of statutory undertakers etc. (s138).
- 6.32 Prior to the examination, National Grid Electricity Transmission plc. and National Grid Gas plc. [REP-016], South Staffordshire Water plc. [REP-017], Network Rail Infrastructure Limited [REP-020], Severn Trent Water Limited [REP-022] and the Canal and River Trust [REP-025] submitted relevant representations. These representations sought to protect their positions as statutory undertakers having infrastructure and apparatus that could be affected by the proposal. They did however acknowledge that negotiations were in progress with the applicant and that it was anticipated that outstanding matters would be agreed.
- 6.33 During the examination, Network Rail Infrastructure Limited [REP-026], Severn Trent Water Limited [REP-035], Vodafone [REP-038], BSkyB Telecommunications Services Ltd [REP-084] and GTC Pipelines [REP-085] submitted written representations. The Network Rail Infrastructure Limited and Severn Trent Water Limited representations again sought to protect their positions as

above. The Vodafone, BSkyB Telecommunications Services Ltd and GTC Pipelines representations did not express any objection to the compulsory acquisition powers sought.

- 6.34 During the examination, and as I requested in my Rule 8 letter [PD-005], the applicant agreed Statements of Common Ground (SoCGs) with: National Grid Gas plc. and National Grid Electricity plc. [REP-087]; Network Rail Infrastructure Limited [REP-087]; South Staffordshire Water plc. [REP-087]; the Highways Agency [REP-059]; the Canal and River Trust [REP-082]; and Severn Trent Water [REP-083]. In respect of National Grid Gas plc. and National Grid Electricity plc., Network Rail Infrastructure Limited and South Staffordshire Water plc., the SoCGs were updated during the examination, again at my request. The versions referred to above are the final versions in each case. None of the final versions of the SoCGs identified any outstanding matters in relation to compulsory acquisition.
- 6.35 During the examination, the applicant also agreed protective provisions with: Network Rail Infrastructure Limited; the Canal and River Trust; and National Grid Gas plc. and National Grid Electricity plc. [REP-078 to 080]. Each of these provisions seeks to limit the powers conferred by the draft DCO in relation to the relevant body that is the subject of the provisions.
- 6.36 During the examination, Network Rail Infrastructure Limited withdrew previous representations relating to compulsory acquisition [REP-064]. Severn Trent Water Limited [REP-065], South Staffordshire Water plc. [REP-069] and National Grid Gas plc. and National Grid Electricity Transmission plc. [REP-098] also withdrew their previous representations. Furthermore, the SoCG agreed with the Canal and River Trust (CRT) included the withdrawal of its relevant representation [REP-082]. The draft DCO seeks the compulsory acquisition of rights by the creation of new rights in land owned by British Telecommunications PLC (BT). BT however did not make any representations in relation to the examination.

THE CASE FOR THE APPLICANT

- 6.37 The applicant has set out much of its case in the Statement of Reasons [APP-017]. It considers that the inclusion of compulsory acquisition powers within the draft DCO meets the conditions of the PA2008 and that the interests being sought are no more than are reasonably required [APP-017 section 12]. The authorised development conforms with national energy strategy for the UK, which identifies a need for national infrastructure energy projects, and national and local plan policy. The authorised development is financially sound and commercially viable and can be delivered by the applicant. There is a compelling case in the public interest for the compulsorily acquisition of the powers and rights being sought by the Order.

- 6.38 The powers sought meet the compulsory acquisition tests, in that the land and rights that are being acquired are being properly requested and are required to facilitate the authorised development. The powers in the draft DCO also justify interference with the human rights of those persons with an interest in the land over which interests and rights are to be permanently acquired and created for the longer term.
- 6.39 The requisite funds are also available to meet the costs of any acquisition and the amounts of compensation which will be payable as a result of the use of the compulsory purchase powers.

Compulsory acquisition outright of manorial rights

- 6.40 Whilst the applicant has secured a private agreement to purchase the freehold of the Yoxall AGI Land, Plots 3, 3B and 4, manorial rights were historically reserved from the title [APP-017]. These rights, if exercised would affect both the surface of the land and the subsoil. Despite full title investigation and enquiries having been made, the current owner of the manorial rights is unknown. The power to compulsorily acquire this land interest outright is therefore sought in the draft DCO. This is to ensure that construction of the authorised development is not interrupted by claims (article 16).

Compulsory acquisition of new rights for the construction of the pipeline

- 6.41 The draft DCO seeks powers to create new rights for the construction of the authorised development (articles 18 and 27). The powers are sought where the applicant has to date been unable to secure those rights by private agreement, and the rights mirror those secured elsewhere by private agreements [APP-017]. These powers are sought within the plots identified in Schedule 5 of the draft DCO. The applicant is therefore not seeking rights beyond those which it would have enjoyed had the individual landowners entered into an agreement as is the case elsewhere.
- 6.42 The applicant has already carried out extensive surveys and investigations. Detailed design work can however only be carried out once the construction contractor has been appointed, and this can only take place after the Order has been granted. A corridor is therefore needed to allow the contractor to: finalise the precise route; select the most appropriate construction methods to lay the pipeline under roads, a road/railway level crossing, a canal, marsh land and rivers; and to accommodate constraints such as archaeology, ground conditions (for example high water table levels, sand and gravel); unknown statutory undertakers' apparatus; and environmental considerations. The need for flexibility within this corridor is to ensure that the pipeline can in practice physically be laid and that the impact of the pipeline works on the landowner can be minimised. As a result, the draft

DCO seeks to acquire these new rights within the Limits of Deviation and the Works limits.

- 6.43 The draft DCO seeks to minimise the land over which these rights are required on an individual plot basis. For example, where a plot adjoins a river or road, the construction method required to lay the pipe beneath that river or road would require rights over a large area on each side of the crossing to ensure adequate surface working areas for the construction process. Once the authorised development has been constructed, the draft DCO then only seeks to require that a strip of land 7m in width (or 18.3m in relation to the NTS Spur Pipeline) will not be built upon. These rights are sought within the plots identified in Schedule 6 of the draft DCO.

Compulsory powers to interfere with private rights of way

- 6.44 The draft DCO seeks to ensure that existing private rights of way over land that is required to carry out the authorised development and subject to compulsory acquisition are extinguished or suspended, so as not to interfere with the authorised development (article 20). Extinguishment would apply where the land was subject to compulsory acquisition or its ownership transferred to the undertaker [APP-017]. Suspension would apply where the undertaker took temporary possession of the land.

Compulsory powers for temporary use of land for carrying out the authorised development and for maintaining authorised development

- 6.45 The draft DCO seeks temporary possession of land within the Works limits for the provision of work sites, accesses and compounds for the construction of the pipeline, temporary bridges, micro-tunnels and other works (article 24). The article includes compensation provisions. The temporary powers are sought along the length of the pipeline route to ensure that the undertaker can, if necessary, commence construction as soon as the Order is granted [APP-017]. This would give certainty over access to the worksite and areas to lay down the necessary construction equipment and to ensure a continuous construction programme. These powers are sought on all plots within the Works limits. They would avoid delay to the construction work if, for any reason, there are problems in the enforcement of the agreements with the individual landowners and/or their successors in title.
- 6.46 The draft DCO also seeks temporary powers, within the Works limits, to enter onto and take possession of land which may be reasonably necessary to maintain the authorised development (article 25). The article includes compensation provisions. These powers are again sought on all plots within the Works limits.

Compulsory powers to survey and investigate the land

- 6.47 General survey powers are being sought within the draft DCO to investigate land within the Order limits because of the possibility of further surveys being required in the future (article 15). Within the Works limits, there could be a need to carry out further ground investigations, archaeological trial trenching and non-intrusive surveys [APP-017]. These powers are sought within the plots identified in Schedule 4 of the draft DCO. These powers are sought over the entirety of the Works limits, even where the applicant has secured an agreement with the relevant landowner. This is to ensure that no difficulties are encountered which might prejudice the detailed design phase of the project and delay the implementation of the authorised development.
- 6.48 Within the Order limits, non-intrusive environmental wildlife surveys may be required over a wider area on land and water bodies, including the assessment of habitats. This is to ensure that the undertaker can comply with all environmental obligations. These powers are sought within the plots identified in Schedule 4 of the draft DCO and prefixed with the letter S.
- 6.49 Natural England has been consulted on the authorised development and has seen the Environmental Statement. It issued a letter dated 16 May 2012 confirming that it is satisfied with the applicant's proposals to protect European Protected Species [APP-078].

Compulsory powers to carry out street works and powers under or over streets

- 6.50 These powers, sought in the draft DCO, would enable the undertaker to enter onto certain streets within the Works limits to carry out the authorised development (articles 10 and 23). They would ensure that construction of the pipeline at road crossings is not dependent on the undertaker obtaining a street works licence under Part 3 of the New Roads and Street Works Act 1991 [APP-017]. These powers are sought on the streets identified in Schedule 2.

Compulsory powers to interfere with public rights of way

- 6.51 The draft DCO seeks the right to vary the route of public footpath Yoxall 59 and create an alternative public right of way (article 11). This would ensure that construction of this stretch of the pipeline is not dependent on the undertaker obtaining a footpath diversion order by other legal means and process [APP-017].
- 6.52 The temporary closures of other footpaths required for pipeline construction activity are outside the scope of the draft DCO. A strategy for the management of these other footpaths has been agreed with both the relevant planning and local highway authorities. It would be confirmed following detailed design work.

Any temporary closures would require additional statutory consents.

Compulsory powers to access the works

- 6.53 The draft DCO seeks the right to form and lay out accesses that may be required as part of the authorised development (article 12). These powers are sought in the locations identified in Schedule 3 and any other locations within the Works limits as would be reasonably required.

Compulsory powers to discharge water

- 6.54 These powers, sought in the draft DCO, would allow the undertaker to use any water course, public sewer or drain for the drainage of water for the carrying out or maintenance of the authorised development (article 14). These powers are sought in relation to any watercourse, public sewer or drain and any connections to them within the Works limits.

Compulsory powers to override easements and other rights

- 6.55 The applicant has carried out ownership and title investigations of the majority of land affected by the authorised development. In some instances, where negotiations for an agreement are still on going with a landowner, it has not been possible to fully progress title investigation and enquiries. However, for the majority of the pipeline route, the applicant has carried out detailed title investigation and raised enquiries of landowners, occupiers and statutory undertakers.
- 6.56 These investigations have revealed various third party rights, easements and covenants which would or could affect the authorised development. Where possible, the applicant has negotiated variations, releases or suspensions of these third party rights. The applicant is continuing negotiations in relation to others and hopes to secure these before a grant of the Order.
- 6.57 In addition however, and despite such diligence being carried out by the applicant, the existence of further easements and other third party rights affecting the construction of the pipeline, whose exact position would not be known until it is laid, may not be revealed until the undertaker enters the land to start construction. Accordingly, the draft DCO seeks rights to interfere with such known and unknown easements or rights to avoid any interruption of the construction of the pipeline once it is under way (article 19). It is imperative to avoid any possible beneficiaries of these rights potentially trying to take injunction proceedings against the authorised development once construction has commenced.

Compulsory powers for the felling or lopping of trees and shrubs

- 6.58 The draft DCO seeks powers to fell or lop trees and shrubs within or overhanging the Works limits and to cut back any roots (article 32). This applies to every plot within the Works limits. It would ensure that the undertaker could remove growth from trees and shrubs and limit root growth where necessary to prevent interference with or damage to the pipeline over its lifetime [APP-017].

Possible alternatives to compulsory acquisition

- 6.59 In order to identify the optimum route for the pipeline, the applicant carried out a five stage route assessment process [APP-043 & 044]. The first stage of this process identified 25 options which satisfied human, environmental, engineering and pipeline length criteria. These 25 options were then appraised in more detail for their environmental effects. Apart from the four shortest of these routes, all other options were eliminated because of their proximity to settlements. Of the remaining four potential route corridors, the one selected was the shortest and significantly less restricted, in terms of environmental constraints, than the other three options. In any event, none of the other three options would have obviated the need for compulsory acquisition, particularly because of the need to compulsorily acquire certain interests where ownership is unknown.
- 6.60 The pipeline route crosses some 88 ownerships and occupations. Rather than apply for the compulsory acquisition of land and new rights over the entire length of the route, the applicant has, for over three years, sought to acquire the land rights it needs by way of private agreement from landowners and occupiers [APP-017]. At the time of the application, some 82% of the ownerships and occupations were the subject of agreements in the form of exchanged options to acquire the necessary land rights.

The case under s122 of the PA2008

- 6.61 The pipeline is required in order to connect the proposed Willington C Power Station to the NTS. The applicant considers that the pipeline would be essential to supply the power station and, without the interests in or rights over land being compulsorily acquired, the authorised development could not take place [APP-017].
- 6.62 The applicant also considers that the location of the works on the works plans demonstrates that the extent of the land shown on the land plans would be needed to construct and maintain the authorised development. The long term maintenance of the pipeline would also be essential for the continuous supply of gas to the power station and for public health and safety reasons. There would be an overriding need to ensure that the pipeline

functions efficiently and that there are no factors, such as corrosion or cracking, which could affect the integrity of the pipeline and its operation. The HSE is responsible for regulating pipelines such as is proposed here and would dictate an inspection and maintenance regime. It would be essential that the undertaker has the rights to carry out the required inspections and undertake appropriate maintenance. Maintenance rights would therefore also be required for the lifetime of the pipeline to ensure that it functions properly and safely.

The case under s127 and s138 of the PA2008

- 6.63 The draft DCO seeks to compulsorily acquire new rights over land owned by British Telecommunications plc (BT), Network Rail Infrastructure Limited (NRIL) and the Canal and River Trust (CRT). In each case, the land affected is being used in connection with that statutory undertaker's undertaking. However, in each case the rights which are sought would not cause serious detriment to the carrying out of undertaking as follows [APP-017].
- 6.64 The BT land affected comprises the subsoil under one half of the A515 trunk road adjacent to a BT telephone exchange. The method of construction would be a non-open cut method, and the points of ingress and egress would be either side of BT's ownership. This, together with the depth at which the pipeline would be constructed at this point, means that there would be no serious detriment to BT's undertaking.
- 6.65 The NRIL land affected comprises two operational railway lines, one of which bisects a highway where there is a level crossing. The construction method would also be a non-open cut method. Again, the surface of NRIL's land would not be affected, as the ingress and egress points of such a method would be either side of NRIL's ownership. The pipeline would also be laid at a sufficient depth to ensure that it would not interfere with the stability of the operational railway or the footings of any future road bridge which may, in future, replace the level crossing. There would therefore be no serious detriment to NRIL's undertaking.
- 6.66 CRT's land comprises a canal and adjoining marsh land. The construction method used would again be non-open cut, and similarly the ingress and egress points would be situated to either side of CRT's ownership. This, together with the depth which the pipeline would be constructed at this point, means that CRT's undertaking would not suffer any serious detriment.
- 6.67 The draft DCO seeks to authorise the construction of the pipeline over or underneath apparatus belonging to statutory undertakers and other like bodies performing similar functions. It also seeks to authorise protective works necessary at such crossing points to protect the apparatus.

- 6.68 The proposed methods of construction would be designed and agreed with each statutory undertaker or other like body to avoid having to remove or reposition any third party's apparatus. The applicant is however not currently aware of any apparatus crossing point where either action may be necessary.
- 6.69 The protective works and any removal or repositioning works would be carried out at the undertaker's expense and the undertaker would be responsible for any damage or loss suffered by the statutory undertaker or other like body. The right to remove or reposition the apparatus of any statutory undertaker or other like body would therefore only ever be exercised by the undertaker as a last resort in the event of a design method to avoid it not being possible. Such rights would nevertheless be required to address cases that could arise at the detailed design or pre-construction stage, particularly in view of the length of the pipeline route.
- 6.70 At the end of the examination, all previous objections from statutory undertakers had been withdrawn on the basis that satisfactory protective provisions had been incorporated in the draft DCO.

Availability and adequacy of funds

- 6.71 The applicant is a public limited company, incorporated in the UK, and considers that it is one of the country's big six energy companies dedicated to electricity generation and supply [APP-018]. It operates and manages a portfolio of power stations as well as a portfolio of cogeneration plants. It produces around 10% of the electricity used in the UK and owns 10 major power station sites in the UK. It has recently delivered projects such as two new gas-fired power stations at Staythorpe in Nottinghamshire and in Pembroke in Wales, including the associated gas pipeline for the latter. It has a proven track record in funding and developing major electricity generation infrastructure in the UK.
- 6.72 The applicant is a wholly owned subsidiary of RWE AG. Listed in the Frankfurt stock exchange, RWE AG is part of the DAX 30 which includes the thirty largest quoted companies in Germany, comparable to the FTSE 100. RWE AG is one of Europe's five leading electricity and gas companies, active in the generation, trading, transmission and supply of electricity and gas. RWE AG supplies over 16 million customers with electricity and around 8 million customers with gas. In the 2012 financial year RWE AG recorded about €53.2 billion in revenue and total assets over €88 billion and continues to maintain a sound financial standing and credit status [APP-018].
- 6.73 The applicant has evaluated the estimated costs of developing the pipeline and the associated power station taking in to

consideration financial projections of revenue, market conditions and the general commercial merit and viability of developing and operating the pipeline and the power station. The applicant is confident that the project is commercially viable.

- 6.74 In this evaluation, the applicant has taken expert advice on the likely cost of implementing the pipeline and the power station projects. Expert advice has also been sought on costs associated with land acquisition (whether obtained by compulsion or by private agreement), compensation, reinstatement, design, engineering and construction. Professional and other related fees have also been taken into account.
- 6.75 The applicant therefore considers that it would be fully able to meet the land acquisition, including any compensation claims, and the construction costs of the pipeline and the associated power station. The applicant's parent company, RWE AG, may also provide funds as and when required. It is not the applicant's intention to seek funding from a third party.
- 6.76 As part of the application, it is proposed that a small part of the authorised development, the NG Works, would be implemented by National Grid Gas plc (NG). Article 9 of the draft DCO allows for a transfer of any part of the provisions of the Order to NG without requiring the consent of the SoS. The NG Works comprises a spur pipeline, approximately 120m in length, and parts of the Yoxall AGI to connect the pipeline to the NTS. The cost of implementing the NG Works would however be fully met by the applicant.

Human rights

- 6.77 The applicant's case is that the land to be compulsorily acquired has been kept to a minimum and the proposal is designed to minimise interference with the peaceful enjoyment of a person's possessions under Article 1 of the First Protocol of the Human Rights Act [APP-017]. There would be a very significant public benefit arising from the grant of the Order. That benefit can only be realised if the Order is accompanied by the grant of powers of compulsory acquisition. The public interest can only be safeguarded by the acquisition of this land, and such acquisition would not place a disproportionate burden on the affected landowners.
- 6.78 In relation to Article 6, the applicant considers that there has been an opportunity for members of the public to make representations on the application. This included known owners and occupiers and those who might make claims either under the Compulsory Purchase Act 1965 or the Land Compensation Act 1973. The beneficiaries of restrictive covenants and other rights overridden by the exercise of powers in the Order would be capable of making claims under s152 of the PA2008.

- 6.79 For the above reasons, the applicant asserts that any infringement of convention rights of those whose interests are affected by the inclusion of powers of compulsory acquisition in the Order is in the public interest and according to national and European law. The applicant therefore considers that it would be appropriate and proportionate to make the Order including the grant of compulsory acquisition powers.

OBJECTOR'S CASES

- 6.80 There were no objections to compulsory acquisition that had not been withdrawn by the end of the examination.

THE EXAMINING AUTHORITY'S CONCLUSIONS

- 6.81 I have considered the application documents and all of the representations submitted in the examination on compulsory acquisition matters in the light of s122, s123 and s120 of the PA2008, the Human Rights Act 1998 (HRA1998) and DCLG Guidance¹¹⁰; and, in the light of the representations received and the evidence submitted, to consider whether a compelling case has been made in the public interest, balancing the public interest against private loss.
- 6.82 As a consequence of the withdrawal of representations from statutory undertakers, s127 of the PA2008 is not engaged in the consideration of the application. There are however relevant statutory undertaker rights and apparatus on land that is the subject of compulsory acquisition of new rights under the draft DCO. Section 138 of the PA2008 is therefore engaged, and I have considered the application and representations accordingly.
- 6.83 The draft DCO deals with both the development itself and compulsory acquisition powers. The case for compulsory acquisition powers cannot properly be considered unless and until a view has been formed on the case for the development overall, and the consideration of the compulsory acquisition issues must be consistent with that view.
- 6.84 In my conclusions to Sections 4 and 5 of this report, I have reached the view that development consent should be granted. The question therefore that I address here is the extent to which, in the light of the factors set out above, the case is made for compulsory acquisition powers necessary to enable the development to proceed.

¹¹⁰ Planning Act 2008, Guidance related to procedures for compulsory acquisition of land – September 2013

Section 122 of the PA2008

- 6.85 The applicant's case, and my consideration of the proposal in the light of national energy policy, are relevant under this section of the PA2008. The proposed Willington C Power Station requires a gas supply. From the work carried out on route options, the route selected would appear to satisfactorily balance potential negative impacts and route length [APP-043 & 044]. Furthermore, on the selected route, the vast majority of land rights are to be acquired by agreement and, during the examination period, there were no representations in relation to the compulsory acquisition that were not subsequently withdrawn. Moreover, much of the land which is the subject of compulsory acquisition includes unknown ownerships, occupations or rights. This is the case following diligent enquiry by the applicant which is explained in the application [APP-017]. I am therefore satisfied that the preferred route appears to minimise the extent of compulsory acquisition to the extent that the land rights to be acquired are those which are properly required for the authorised development.
- 6.86 From the evidence provided with the application [APP-017] and during the examination [REP-031, 033 & 109 to 112], the applicant has engaged comprehensively with those whose land or rights would be the subject of compulsory acquisition under the draft DCO. This has resulted in the vast majority of the required acquisition being achieved by private agreement, and this alternative has therefore been fully explored.
- 6.87 The scale of the development proposed and its characteristics are set by the specific gas requirements of the power station in terms of the plant and apparatus that needs to be used. There is therefore little scope for the consideration of alternatives in this regard. In any event, modifications that may be possible at a future detailed design stage cannot be pre-judged, as this would introduce unjustifiable risk into the proposal.
- 6.88 In view of all of the above points, I am satisfied that the applicant has adequately demonstrated that all reasonable alternatives to compulsory acquisition, including modifications to the route, have been explored in accordance with DCLG Guidance.
- 6.89 The application includes a section of the ES which describes intended construction methodologies [APP-024]. An indicative arrangement for the Yoxall AGI, which was updated during the examination, is also included [REP-116]. Furthermore, details of the private option agreements have also been provided [REP-031, 111 & 112], against which the appropriateness of the requests for compulsory acquisition powers can be gauged. The applicant has therefore provided a sufficiently clear idea of the intended use of the land, and a satisfactory case for the inclusion of each parcel of land to be subject to compulsory acquisition powers has been made.

- 6.90 In view of all of the above points, the applicant has demonstrated that the land to be taken would be no more than would be reasonably required in accordance with DCLG Guidance.
- 6.91 The applicant has made a satisfactory case that the land to be acquired under the draft DCO would be required for and to facilitate, or would be incidental to, the authorised development. There would be no need for replacement land to be given in exchange for Order land under s131 or s132 of the PA2008. The proposal would therefore satisfy s122(2) of the PA2008.
- 6.92 The proposed Willington C Power Station that requires a gas supply would accord with national policy in terms of security of supply and the necessary transition to a low carbon economy [APP-017]. There is therefore a clear need for this project to be delivered, and the power station has consent under s36 of the Electricity Act 1989. In view of the considerable work that has been undertaken to obtain private agreements along the length of the pipeline route, I am satisfied that the project could not be delivered without compulsory acquisition powers on the areas where agreements have not been possible [REP-109].
- 6.93 Indeed, between submission of the application and examination Deadline 7, private agreements were exchanged on 10 stretches of the pipeline route and, out of the 21 remaining and requiring compulsory acquisition, 13 related to unknown ownerships or interests [REP-109]. Book of Reference version 3 represents the final position considered in this report [REP-113]. An insight into the work carried out is given in the schedule of correspondence relating to private agreements on Plots 134 and 134B [REP-073].
- 6.94 There is thus compelling evidence that the public benefit that would be derived from the compulsory acquisition for the authorised development, when considered in the context of the limited extent of compulsory acquisition in relation to the pipeline route length, would clearly outweigh the private loss that would be suffered by those whose land is to be the subject of compulsory acquisition.
- 6.95 The applicant has provided information as to its status within the energy industry and details of its parent company. This is in terms of the resource implications of both acquiring the land and implementing the proposal, including the implications of possible acquisition resulting from a blight notice [APP-018]. From this, it has been demonstrated to my satisfaction, and in accordance with DCLG Guidance, that there is more than a reasonable prospect of funds being available for the proposal within the project timescales, without the need for external funding sources. In coming to this view, I have taken into account the scope of the authorised development and the related power station in the context of the applicant's other UK operations.

- 6.96 I therefore conclude that there is a compelling case in the public interest for the land to be acquired compulsorily. The proposal would therefore satisfy s122(3) of the PA2008.
- 6.97 The draft DCO also includes powers to access land temporarily should private agreements be unenforceable in the short term. It is my view that it would not be in anyone's interests, including those who would be affected by adverse impacts during the construction period, to allow a situation where the project was held up by the unenforceability of private land agreements. Furthermore, the additional areas requiring access for survey purposes are limited to features where there would be a potential need for future survey work.
- 6.98 Although these powers do not comprise compulsory acquisition, their extent is such that consideration of their need and justification is appropriate for inclusion at this point in this report. I have therefore considered the above matters relating to compulsory acquisition in respect of the powers of temporary possession and access for surveys. This has led me to conclude that there is sufficient justification for their inclusion in the draft DCO.

Section 123 of the PA2008

- 6.99 The application for the Order included a request for compulsory acquisition of the land to be authorised [APP-003]. I therefore conclude that the proposal would satisfy s123 of the PA2008.

Section 138 of the PA2008

- 6.100 The draft DCO includes provisions for the extinguishment of rights and the removal and repositioning of apparatus of statutory undertakers within the Works limits. The protective provisions within the draft DCO require the approval of the statutory undertaker concerned prior to any work on or around apparatus or any extinguishment. Any associated costs would also be the responsibility of the undertaker.
- 6.101 Whilst no extinguishment or removal has been identified to date, the relevant protective provisions would be necessary to cover eventualities during detailed design and construction. In view of the involvement of the statutory undertaker concerned, the responsibility for costs and the restriction to within the Works limits, the applicant has demonstrated, to my satisfaction, that extinguishment or removal would be necessary for the purpose of carrying out the development. I therefore conclude that the proposal would satisfy s138 of the PA2008.

Section 120(5) of the PA2008

- 6.102 The draft DCO seeks to apply and modify legislative provisions. Firstly, the Hedgerow Regulations 1997 would be modified so that

no separate authorisation would be required in connection with the authorised development. Secondly, the provisions of the Town and Country Planning Act 1990 would apply to allow appeals to be made, fees to be charged and rules and regulations to apply in relation to submissions under draft DCO requirements. Thirdly, the undertaker would be treated as a statutory undertaker under the Electricity Act 1989. These applications and modifications relate to matters for which provision may be made in the Order. I therefore conclude that the proposal would accord with s120(5) of the PA2008 in this regard.

Human Rights Act 1998

- 6.103 The draft DCO engages Article 1 of the First Protocol and Article 8 of the European Convention on Human Rights. The rights and freedoms under this convention are given effect through the HRA1998. Article 1 provides a right to the protection of property, which can include the peaceful enjoyment of property or possessions or any effect of development on property values. Article 8 provides a right to respect for private and family life, which can include interference with home life through disturbance. These rights are however qualified and can be interfered with in certain circumstances, such as if it is necessary to protect the legitimate interests of the wider community.
- 6.104 In this case, the need to provide security in terms of energy supply, through the provision of the pipeline and the associated power station, is a legitimate interest of the wider community. The compulsory acquisition powers sought by the draft DCO are an integral part of the overall scheme. I have already found that the proposal demonstrates a satisfactory balance between potential negative impacts and route length. The proposal also exhibits a low level of compulsory acquisition powers, and these are without objection at the end of the examination. The powers are also no more than is required to secure the interests of the wider community and are not likely to place an excessive burden on those whose human rights could be affected. I therefore consider that there would be no violation of Articles 1 and 8.
- 6.105 The draft DCO also engages Article 6 of the Convention which relates to the equality of arms between the parties. There have not been any representations that have made any claims under this article in relation to compulsory acquisition. In any event, the application and its examination procedurally accord with the PA2008 and related guidance. There is therefore nothing to suggest that parties have not had a reasonable chance to put their case or been put at a substantial disadvantage in relation to other parties. There would therefore be no violation of Article 6.
- 6.106 Finally, in terms of the overarching aims of the HRA1998, DCLG Guidance and the required balancing exercise, the pipeline would supply gas to a power station that accords with national

policy and is already consented. It is necessary to provide fuel to the power station, a legitimate public interest. I am therefore of the view that the case has been sufficiently made that the pipeline would be a proportionate solution, taking into account the balance between environmental considerations and route length. The purposes for the compulsory acquisition powers sought are therefore legitimate, necessary and proportionate and sufficiently justify, and clearly outweigh, any interference with the human rights of those with an interest in the land affected.

- 6.107 I therefore conclude that the proposal would not violate human rights in relation to the HRA1998 and the European Convention on Human Rights.

**THE EXAMINING AUTHORITY'S RECOMMENDATIONS ON
THE GRANTING OF COMPULSORY ACQUISITION POWERS**

- 6.108 My recommendation arises from the examination process, including consideration of the application, all submissions and the proceedings of the compulsory acquisition hearing.
- 6.109 In view of my foregoing conclusions, I recommend that the compulsory acquisition powers included in the draft DCO in respect of the land detailed in the Book of Reference, final version 3, are approved if the Secretary of State is minded to grant development consent for this proposal.

7 DRAFT DEVELOPMENT CONSENT ORDER

GENERAL MATTERS

- 7.1 The draft Development Consent Order (DCO) constitutes the consent sought for the proposed development. It sets out the authority to be given to the undertaker (including the permanent and temporary acquisition of land and interests in land), the commitments that the applicant must accept to facilitate the development, the further approvals that are required before particular works can commence, the protective provisions necessary to safeguard the interests of other parties and the requirements (corresponding to planning conditions) to be met when implementing the consent. The application draft DCO is accompanied by the required Explanatory Memorandum [APP-014], and both form an integral part of the application.
- 7.2 Section 120(5)(a) of the Planning Act 2008 (PA2008) provides that a DCO may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the DCO. If the Order includes such provision, s117(4) requires that it must be in the form of a statutory instrument. The draft DCO includes such provision and is in the form of a statutory instrument.
- 7.3 The draft DCO developed during the examination and was amended iteratively in response to my questions and responses thereto, together with representations, submissions and hearing proceedings. It also developed in response to negotiations between the applicant and interested parties, who submitted representations to the examination, and affected persons, whose land would be affected. Consequently, there were four versions of the draft DCO that were considered during the examination and a fifth version that accompanies this report. Tracked changes were used on successive drafts to illustrate revisions and allow comparisons.
- 7.4 The application included the **applicant's initial draft DCO** for the purposes of the examination [APP-013]. This, together with the associated Explanatory Memorandum [APP-014], Book of Reference [APP-019] and relevant responses and comments on these responses to my initial questions submitted at Deadlines 1 and 3 [REP-039 to 043 & REP-062], was considered at the first DCO issue specific hearing on 11 March 2014. This consideration resulted in the submission of the **applicant's second and third draft DCOs** at examination Deadlines 4 and 5 [REP-078 to 080 & REP-088 to 090]. The third draft was then the subject of consideration at the second DCO issue specific hearing on 22 May 2014.
- 7.5 I then issued the **ExA's initial draft DCO** on 4 June 2014 [PD-014], taking into account matters raised at the second DCO

hearing. At this stage, certain requirements were renumbered. This was to accommodate the numbering of the requirement in relation to interpretation and the omission of the requirement relating to temporary flood defence measures. This initial draft was the subject of responses and comments on these responses from the interested parties which were submitted at Deadlines 7 and 8 [REP-099 to 103]. The **ExA's final draft DCO**, which forms part of my recommendation and takes into account these comments, is at Appendix A to this report.

- 7.6 This section reports on any points in the draft DCO which were contentious, or explains any significant changes to the draft DCO submitted with the application which result from the examination. If there is no mention of particular provisions, requirements or schedules in the draft DCO, the Secretary of State (SoS) can be clear that I am satisfied that such particular matters are appropriate for the proposed development. Furthermore, if there is no mention of interested parties DCO drafting suggestions submitted at Deadlines 7 or 8, the SoS can be clear that I am satisfied that such suggestions are appropriate for the draft DCO.
- 7.7 The reasons for seeking the powers in my view have been adequately explained in the Explanatory Memorandum submitted with the application [APP-014], with the exception of that relating to the deletion of application draft DCO Requirement 16, which is explained below. Again, this and the numbering of the requirement relating to interpretation have resulted in differences between the requirement numbering in the Explanatory Memorandum and the ExA's final draft DCO. The requirement headings however remain unaltered, with the exception of the combination of 'Provision of landscaping' and 'Implementation of landscaping' into 'Landscaping'.

ARTICLES

- 7.8 The articles set out the principal powers to be granted if consent is given. Whilst the Localism Act 2011 has changed the approach to the Model Provisions in SI 2009:2265, they remain a sensible starting point for those drafting an Order, and they have generally been used in that way here. At the examination, regard was also had to the wording of articles that have been included in recent Orders, such as for infrastructure at the Redditch Branch Enhancement Scheme, North London Reinforcement Project, King's Lynn and Norton Bridge Area Improvements. Further detail in relation to the purpose of and background to each of the articles is contained within the Explanatory Memorandum [APP-014]. Where departures from the Explanatory Memorandum have been made in respect of the ExA's final draft DCO, they are identified.
- 7.9 Article 33 – Crown Rights was included in the application draft DCO as, at that time, the authorised development crossed land where the mines and minerals interests were vested in the Crown.

These interests have now been transferred to the applicant [REP-081], and the article is therefore no longer required. The deletion of this article has resulted in the re-numbering of subsequent articles in the ExA's final draft DCO.

Article 2 – Interpretation

- 7.10 This article follows the Model Provisions, with amendments where appropriate. The inclusion of the term 'any other development authorised by this Order' within the scope of 'authorised development' is necessary, and is subject to the overall limits of the Order. An example of its use would be to ensure that the undertaker has the power to comply with the Protective Provisions in Schedule 9. It would apply where the undertaker could elect to reposition the apparatus of statutory undertakers, which is not identified in Part 1 of Schedule 1 of the draft DCO. A similar definition was accepted by the SoS under the recent North London Reinforcement Project Order.
- 7.11 The definition of 'maintain' is taken from the Model Provisions for railways, with some amendments. The amendments serve to widen the definition to ensure that work to comply with the Pipeline Safety Regulations 1996 would be authorised under the draft DCO. Such work could include the diversion of the pipeline within the limits of deviation set out in articles 5 and 7. This is an acceptable and not unusual practice within the industry where problems are encountered with existing pipelines [HE-014]. I am therefore satisfied that the wider definition of maintenance is justified.
- 7.12 The draft DCO relies upon a wider definition of the term 'statutory undertaker' than is defined in the PA2008. It is therefore necessary to apply a wider definition and to include 'those bodies who have the benefit of the protective provisions in Schedule 9 to this Order' to specifically ensure that bodies such as operators of telecommunications code networks have a status within the draft DCO.

Article 3 - Application and Modification of Legislative provisions

- 7.13 This article mainly follows General Model Provision 6. The proposed pipeline would cross a number of hedgerows, and the Hedgerow Regulations 1997 would be modified so that no separate authorisation would be required in connection with the authorised development. The relevant planning authorities and county councils are however satisfied that the draft DCO would sufficiently regulate the authorised development in relation to hedgerows [REP-048, 049, 055 & 057]. This has been subject to the inclusion of their suggested amendments to draft DCO Requirement 6 [REP-036], which have been accepted by the applicant [HE-07]. The avoidance, in this manner, of the need for separate authorisations under the Regulations for hedgerow work

would reduce the level of public administration necessary whilst retaining sufficient protection for the hedgerows concerned.

- 7.14 The draft DCO contains a number of situations where post consent decisions would be made by the relevant planning authorities. This is appropriate in terms of the regulation of detailed aspects of the proposal in the local environment. Furthermore, on a linear proposal of this nature, there are many interfaces with other interests. Whilst there is nothing to suggest that any approval would be unreasonably withheld, the above factors increase the risk of delay to the project.
- 7.15 The timing of construction would be driven by a seasonal window of opportunity [APP-024]. The completion of construction in a single summer season would limit the environmental impact of the proposal, as the site would more rapidly return to its original condition. It would also limit any impact on the floodplain of the River Dove which is crossed by the pipeline route.
- 7.16 In view of the above risks and potential consequences, it is important that post consent approvals are dealt with in a reasonable and timely manner. The article therefore gives effect to the appeal provisions of the Town and Country Planning Act 1990. This would allow appeals to be made, fees to be charged and rules and regulations to apply in relation to submissions under draft DCO requirements. The use of the existing appeal provisions in this manner would utilise procedures familiar to those involved, further reducing the risk of delay. In view of all of the above points, and in this particular case, the use of the appeal provisions under this article is both reasonable and appropriate.
- 7.17 The appeal provisions in relation to a failure to give notice of a decision were added as a result of a submission made by the applicant at Deadline 7 [REP-103]. No comments on this addition were received at Deadline 8. In view of the above points, this addition is also reasonable and appropriate.

Article 5 – Maintenance and diversion of the authorised development

- 7.18 This article mainly follows General Model Provision 3. The addition of article 5(3) in the ExA's initial draft DCO, which would generally limit maintenance works to the scope of the application ES, was considered in the second DCO issue specific hearing [REP-105]. The applicant opposes this addition and considers that it would place a disproportionate and unnecessary burden on the authorised development that could risk commercial operation of the new power station [REP-103]. There is no doubt that the pipeline would be critical to the operation of the power station and that its failure would have significant consequences [APP-017]. Indeed, the definition of maintenance has necessarily been widely drawn to ensure continuity of supply. In this regard, maintenance

includes for pipeline diversion, relaying and improvement within the Works limits. Such operations however could result in a level of disruption similar to that experienced during initial construction.

- 7.19 The Environmental Statement (ES) submitted with the application is limited to a single construction event [APP-022], and the draft DCO limits commencement to a period of five years from the date at which the Order comes into force (draft DCO Requirement 2). Following construction, the presence of the pipeline and its routine maintenance would have negligible impact on the environment [APP-024 & 025].
- 7.20 This is not the case with the Redditch Branch Enhancement Scheme, North London Reinforcement Project, King's Lynn and Norton Bridge Area Improvements where the DCOs consent significant infrastructure above ground. It is also not the case with development usually associated with the Model Provisions for Railways, on which the definition of maintenance has been based. The applicant has identified these examples, which do not include an article similar to article 5(3), in support of the deletion of article 5(3). The examples are however very different to the case under consideration here and, in my view, they therefore do not add weight to the applicant's argument.
- 7.21 Whilst it would appear to be highly unlikely [APP-025 paras 24 & 25], a repeat of the construction operations in relation to the proposed pipeline could significantly increase the overall impact of the authorised development. Such an eventuality would require environmental regulation if the effects on the environment were not described in the ES submitted with the application. This is also acknowledged in the ES in terms of maintenance diversions outside of the works limits [APP-025 para 27]. In view of all of the above points, the inclusion of draft DCO article 5(3) would thus be a proportionate and necessary response.
- 7.22 Article 5(3) would exclude maintenance works associated with an emergency from the possibility of environmental regulation as set out above. This would ensure that, if emergency work was required, the pipeline could continue to be operated in compliance with other regulations, such as the Pipeline Safety Regulations 1996. Article 5(3) would not therefore be likely to result in any interruption to the supply of gas to the power station, and the draft DCO would still accord with the pressing need for reliable energy supplies set out in National Policy Statements for Energy (EN-1) and Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4).
- 7.23 The applicant has suggested that article 5(3) should only apply to a diversion as opposed to maintenance as a whole [REP-103]. The issue in question however is whether future maintenance would lie within the scope of the ES and not the type of maintenance to be carried out. In view of the wide range of

maintenance operations that could be carried out under the draft DCO definition, and the safeguards set out above, the suggestion would not satisfactorily regulate any future environmental impacts.

- 7.24 The applicant has also suggested that article 5(3) should only apply to diversion work whose likely significant effects on the environment are not described in an ES rather than in the ES submitted with the application. The purpose of article 5(3) is however to limit maintenance work to that whose likely significant effects on the environment are described in the application ES. Any maintenance work whose likely significant effects are not so described, and is not associated with an emergency, would require a new authorisation.
- 7.25 The ES considers examples of routine maintenance, inspections and repairs together with diversions within the limits of deviation, but does not, and indeed probably cannot, consider examples of improvement which would be within the draft DCO definition of maintenance. The ES also recognises that Environmental Impact Assessment (EIA) issues for diversions outside the limits of deviation would need to be addressed in the process to obtain any new authorisation. Moreover, it suggests that, in advance of any intrusive work, the applicant would normally carry out an environmental review of the repair location in order to identify any potential environmental issues and appropriate mitigation measures. If there were any likely significant effects not described in the application ES, Article 5(3) would then require a further authorisation. The article is therefore a mechanism to ensure compliance with this element of the ES. The suggested amendment to 'an ES' would not necessarily require any further authorisation and would not ensure such compliance.
- 7.26 Furthermore, the applicant's draft DCOs, at the end of Part 1 of Schedule 1, refer to the DCO Works including any further associated development and incidental works in connection with the specified works having to fall within the scope of the environmental impact assessment recorded in the ES [APP-013, REP-078 to 080 & REP-088 to 090]. This restriction, whilst I have found it not to be necessary at this point in the draft DCO and have removed it from the ExA's versions, would have been similar to that sought by article 5(3). In view of all of the above points, I consider that the inclusion of article 5(3) within the DCO is justified.

Article 7 – Limits of Deviation

- 7.27 The article is an adaptation of Model Provision 6 for Railways. The lateral limits of deviation for the pipeline would form a corridor some 60m wide. Whilst this would be appropriate for the proposed development, it would be significantly less than the standard limits under the Pipe-lines Act 1962, which would give a corridor some

400m in width. Furthermore, the width of the proposed corridor has been reduced in places due to constraints imposed by environmental, amenity or land ownership issues and extended in other areas to accommodate different installation methodologies. Both the lateral and vertical limits set out in the article would be appropriate and certainly not excessive.

Article 9 – Consent to transfer the benefit of the Order

- 7.28 This article mainly follows General Model Provision 5. The ExA's second written question 1.1 [PD-011] related to the adequacy of funding should the benefit of the provisions of the Order be granted to a transferee or lessee without the consent of the SoS. The applicants response, at Deadline 5 [REP-087], suggested that, if this was a concern, then article 9(4)(a) in the applicant's initial draft DCO [APP-013] could be deleted. This article related to the transfer of the benefit of the provisions of the Order to various licensees or exempt bodies without the consent of the SoS.
- 7.29 There is no mechanism within the applicant's article 9(4)(a) by which the SoS could be satisfied in relation to adequacy of funding should the benefit of the Order be transferred to a currently unknown licensee or exempt body. The applicant's article 9(4)(a) has therefore been omitted from the ExA's draft DCO.
- 7.30 The applicant's article 9(1)(b) relates to the transfer of benefits to National Grid Gas (NG). From the applicant's submissions, I am satisfied that NG would be likely to be adequately funded to fulfil their obligations under this article. Furthermore, the applicant has confirmed that it would be responsible for all construction and land acquisition costs relating to the works associated with this article [APP-018]. The article has therefore been retained in the ExA's draft DCO.

Article 10 - Street works

- 7.31 This article accords with General Model Provision 8.

Article 11 – Public rights of way

- 7.32 This article accords with General Model Provision 10. Following submission of the local impact report from Staffordshire County Council (SCC) [REP-047], a revised route for the Yoxall 59 footpath was submitted during the examination at Deadline 5. This would avoid the diverted footpath having to use part of the A515 highway [REP-094]. No further representations were received in relation to this revision.

Article 12 – Access to works

- 7.33 This article accords with General Model Provision 12. The ExA's initial draft DCO omitted the need to consult with the local highway authority from article 12(2) following discussion at the

second DCO issue specific hearing and on the basis that it represented a duplication of draft DCO Requirement 7. This omission attracted Deadline 7 comments from the two local highway authorities, SCC and Derbyshire County Council (DCC) [REP-101 & 102] and a Deadline 7 response from the applicant to the two sets of comments [REP-103].

- 7.34 Notwithstanding its previous acceptance of the need to consult with the local highway authority and then obtain approval from the relevant planning authority, SCC now wishes the article to require the undertaker to get sole approval from the local highway authority for any further accesses to the works other than those described in Schedule 3. This is not the position of DCC who remain content with consultation.
- 7.35 The considerations relating to access to the works could extend beyond the responsibilities of the local highway authority, and could include effects on the human and natural environments. It is therefore appropriate in this case that approval for further accesses rests with the relevant planning authority. SCC has suggested that, in situations where urgent work is required, such a mechanism could prove to be cumbersome. Expedition however would be a matter for the undertaker, as a further access would not be authorised until approved by the relevant planning authority, and the applicant is content with the omission from article 12(2).
- 7.36 In considering applications for any accesses to the works other than those described in Schedule 3, the relevant planning authority would need to take into account the views of the local highway authority. To satisfy the associated draft DCO Requirement 7 therefore, the undertaker must take into account consultation responses from the local highway authority and provide copies of such consultation responses within the application to show to the relevant planning authority that this consultation has taken place. The requirement would therefore ensure that safety considerations had been satisfactorily taken into account in relation to any further accesses beyond those described in Schedule 3.
- 7.37 This leaves the matter of duplication between article 12(2) and Requirement 7 outstanding. The concern expressed by DCC, whilst acknowledging duplication, is that the article, without reference to the need to seek approval for any further accesses beyond those described in Schedule 3, would appear to give the undertaker the power to create such accesses without approval. This however is not the case, as article 4 places the provisions of the Order subject to the requirements.
- 7.38 It also would not appear to be the case, as no other articles refer to their associated requirements. This is apart from article 11(2), where the reference is necessary to import a point in time at

which part of the authorised development has been completed. It is therefore unlikely that the amended article would create any impression that approval would not be required, and there is thus no cogent reason to duplicate to emphasise the point made in the requirement.

- 7.39 In view of all of the above points, the omission of the reference to approval and consultation from the article 12 in the ExA's draft DCOs is appropriate.

Article 13 - Agreements with street authorities

- 7.40 This article is adapted from General Model Provision 13. It is necessary because the relevant street authorities, DCC and SCC, have asked that the applicant enter into an agreement to cover the costs of necessary works or the undertaking of duties of the street authority [REP-048, 057 & 074].

Articles 14 and 15

- 7.41 The Explanatory Memorandum explains any material departures from the Model Provisions and the reasons for these articles being included within the Order.

Article 16 – Compulsory acquisition of existing rights in land

- 7.42 This article mainly follows General Model Provision 18, without the use of 18(4) as it would not be necessary. The article empowers the undertaker to compulsorily acquire and extinguish rights, amongst other things, as described in the Book of Reference. In this case, the rights to be acquired are interests in land to perfect title. The ExA's final draft DCO therefore incorporates this point.

Article 18 – Compulsory acquisition of new rights

- 7.43 This article empowers the undertaker to compulsorily create and acquire new rights as described in the Book of Reference. The ExA's final draft DCO therefore incorporates this point.

Article 27 – Statutory undertakers

- 7.44 In view of the scope of the definition of statutory undertakers in article 2, the inclusion of 'and other like bodies' in articles 27(2) and 27(3) is unnecessary and has been deleted from the ExA's final draft DCO.

Articles 17, 19 to 26 and 28 to 32

- 7.45 The Explanatory Memorandum explains any material departures from the Model Provisions and the reasons for these articles being included within the Order. The Explanatory Memorandum also explains the powers granted by these articles. I am satisfied that,

without these powers and those under articles 16, 18 and 27, the undertaker would need to acquire a number of plots identified in the Book of Reference to facilitate the construction and the safe operation and maintenance of the pipeline.

Article 33 – Certification of plans etc.

- 7.46 This article follows General Model Provision 41, although it does not identify specific document numbers. These have been updated from the application version of the draft DCO and identify the relevant documents at Deadline 7 on 12 June 2014 towards the end of the examination. The model provision does not define the Explanatory Memorandum as a key document. It has therefore not been amended to reflect matters at the close of the examination. The Explanatory Memorandum should therefore be considered in the context of this report, which identifies areas where the ExA's final draft DCO has departed from the explanation within the Explanatory Memorandum.

Articles 34 to 36

- 7.47 The Explanatory Memorandum explains any material departures from the Model Provisions and the reasons for these articles being included within the Order.

SCHEDULE 1 PART 1 – AUTHORISED DEVELOPMENT

- 7.48 The purpose of and background to each of the schedules is set out in the Explanatory Memorandum.

Works Nos.1 to 6

- 7.49 These works are satisfactorily described in the Explanatory Memorandum [APP-014] and constitute works that are of a permanent nature and integral to the proposed pipeline.
- 7.50 The applicant has suggested that relevant associated equipment and any other necessary works in connection with the works described should be added to the descriptions for Works Nos.1 and 2 [REP-103]. The applicant is also of the opinion that the inclusion of any other necessary works in connection with the works described would also be appropriate for all other works descriptions.
- 7.51 Under Works Nos.1 and 2 however, the text describes the pipeline, not the individual works, and therefore includes works to implement this element of the proposal. Furthermore, the use, inspection, maintenance and diversion of the pipeline are included in the initial paragraph. In relation to Works Nos.3, 6, 7, 8, 9, 11, 13 and 14, the lists of works are not exhaustive. The description for Works No.4 includes the valve with all relevant associated equipment. For Works No.5, the description again includes micro-tunnels and shafts with all relevant associated equipment. Lastly,

in terms of Works Nos.10 and 12, there is sufficient flexibility in the description to ensure that all associated and necessary work can be accommodated. In all of the above cases therefore, the applicant's suggestion represents an unnecessary duplication, which could be seen to extend the scope of the draft DCO. The ExA's final draft DCO therefore excludes this suggestion in relation to Works Nos.1 to 14.

- 7.52 The applicant has also suggested that the route line on the works plans should be described as indicative [REP-103]. The route could need to vary within the limits of deviation during design, construction and if diversion was necessary for repair purposes, and such a variation would lie within the scope of the ES. An indicative description would therefore be appropriate.
- 7.53 The ExA's versions of the draft DCO include an amendment that Works No.3 is indicatively shown on the Yoxall above ground installation (AGI) plan [PD-014]. This is because the detailed plant arrangements shown on the plan could need to be amended following detailed design of the authorised development. The limits of deviation are as set out in the schedule for Works No.3 and article 7, and such a variation would lie within the scope of the ES. An indicative description would therefore be appropriate.
- 7.54 The applicant's suggested addition of security fencing to a maximum height of 2.8m around Works No.4 would appear to comprise a reasonable security measure [REP-103].
- 7.55 The ExA's versions of the draft DCO also omit the reference to the crossing of Findern Lane under Works 5.6 [PD-014]. Such a crossing is not shown on Sheet 10 of the works plans [REP-115], and the omission is to maintain compatibility between the schedule and the plans. Should micro-tunnels and vertical shafts become necessary at the Findern Lane crossing, such work would be authorised by the draft DCO under the reference to any other crossing points within Works No.5.

Works Nos.7 to 14

- 7.56 These temporary works are necessary to facilitate the construction of the proposed pipeline. They are therefore associated with it and can be classified as associated development under s115(1)(b) of the PA2008.
- 7.57 The applicant's Deadline 7 suggestion for Works No.10 provides clarity in terms of the types of temporary crossing structures proposed [REP-103].
- 7.58 The ExA's versions of the draft DCO omit the applicant's final paragraph to Part 1 of Schedule 1. This paragraph adds any further associated development and incidental works as may be required in connection with Works Nos.1 to 14 [REP-088 & 089] to the authorised works. In a manner similar to the applicant's

suggested 'any other necessary' and 'in connection with' works paragraphs at the end of each individual works description, it would somewhat generalise the potential additions to the authorised works and allow incidental works to be added. The paragraph is therefore unnecessary and indeed inappropriate.

SCHEDULE 1 PART 2 – REQUIREMENTS

- 7.59 The key requirements relate to the operation of plans, schemes and stages of the works to regulate the construction of the authorised development together with the approval of further layout, scale, appearance and other details within the parameters of the draft DCO. The detailed design of the proposed pipeline has yet to take place, and construction methods have yet to be confirmed. It is therefore important that mechanisms for the approval of further design details and the regulation of construction operations are put in place in conjunction with the relevant stakeholders. This is as provided for in the draft DCO.
- 7.60 Further detail in relation to the purpose of, and background to, each of the requirements is contained within the Explanatory Memorandum [APP-014]. Where departures from the Explanatory Memorandum, submitted at application stage, have been made in respect of the draft DCO, they are identified.

Tailpieces

- 7.61 Draft DCO Requirements 4 to 17 and 19 to 21 include mechanisms whereby variations to details, schemes and plans previously approved under the requirements by the relevant planning authority can be subsequently approved in a similar manner. Such mechanisms have been referred to as tailpieces.
- 7.62 The tailpieces identified above would return previously approved matters to the authority that the draft DCO gave responsibility for their approval to in the first instance. They therefore would not have the potential to extend the scope of the works beyond that detailed in articles and schedules of the draft DCO. Such variations would thus not go to the heart of the proposal. Furthermore, they would not prejudice the interests of any affected parties, on the basis that the tailpieces would not have the potential to vary the draft DCO that has been the subject of public consultation.
- 7.63 Moreover, the tailpieces in the draft DCO do not allow any post consent modification of the requirements to which they refer, only to matters approved under that requirement. Tailpieces also do not allow any post consent modification of any other elements the Order, either material or non-material.
- 7.64 The above tailpieces are specific to areas of work authorised by the draft DCO. It could be said that the use of this number of tailpieces is unduly repetitive. Indeed, the applicant has suggested

the use of a general and overarching tailpiece Requirement 24 in its versions of the draft DCO [APP-013, REP-078 to 080 & REP-088 to 090]. The use of a general requirement however would not achieve the control necessary to ensure that any variations did not have the potential to vary the DCO or prejudice the interests of any affected parties.

- 7.65 The applicant's overarching tailpiece requirement derives from Requirement Model Provision 37. SI2009:2265 is however no longer extant, and case law has subsequently clarified the legal position on tailpieces, including the need for the extent of their effect to be clearly defined. The fact that such an overarching requirement may have been included in other DCOs does not therefore weigh heavily in favour of including it here.
- 7.66 Furthermore, the Norton Bridge Area Improvements DCO, which includes an overarching tailpiece requirement, does not include tailpieces to various plan and programme approvals, unlike here. It therefore could have been seen to need some mechanism for the variation of previously approved details and, in any event, each case should be treated on its own merits.
- 7.67 I have therefore omitted the applicant's Requirement 24 from the ExA's draft DCOs. This has however necessitated the addition of tailpieces to Requirements 17 and 19 in the ExA's versions of the draft DCO [PD-014]. This course of action has been accepted by the applicant [REP-103].
- 7.68 The applicant has also referred to Requirement 17(2) of the North London Reinforcement Project DCO [REP-104] and has suggested amendments to it. In the case under consideration now however, the tailpieces would not and could not extend the scope of the draft DCO. The scope of the authorised development, set out in the draft DCO schedules, could not therefore be extended and any significant effects would have been within the scope of the environmental impact assessment. In this case therefore, the requirement would not be necessary.
- 7.69 Whilst I have found the applicant's suggested requirement to be unnecessary, if the SoS is minded to include such a requirement, the applicant's amendments would add precision to the requirement, and I recommend that they should then be incorporated in any such requirement, but with the substitution of 'the' for 'an' environmental statement, to limit the proposal to the scope of the application.
- 7.70 In considering tailpieces, there is a need to balance between two scenarios in relation to requirements. The first is to incorporate requirements to regulate the authorised development in terms of detailed initial submissions which can be subsequently amended and regulated following further approval. The second scenario is to incorporate initial requirement submissions at a lower level of

detail which cannot be varied. This second scenario could subsequently allow unregulated variations within the approved details without the need for further approval. It could also result in the delivery of the scheme in a sub-optimal manner or applications to change the DCO (or possibly apply for another DCO) with consequential delays in the start of power station operation.

- 7.71 In view of all of the above, together with the applicant's Deadlines 5 and 7 responses concerning tailpieces [REP-087 & REP-103], the tailpiece mechanisms within the draft DCO (whereby variations to details, schemes and plans previously approved by the relevant planning authority can be subsequently approved in a similar manner) are both appropriate and necessary for the effective and regulated implementation of this proposal.

General

- 7.72 The local highway authorities, the Environment Agency (EA), Natural England (NE) and English Heritage (EH) are all content with the requirements whereby approval is the responsibility of the relevant planning authority following consultation with other specified bodies [REP-048, 057, 058, 052 & 050]. The submissions for approval are required to include copies of, and take account of, any consultation responses from the specified bodies. This is in order that the consultation can be effectively regulated by the relevant planning authority.
- 7.73 As the flood defence measures at Egginton have now been completed, the EA has agreed [REP-077] that there is no need for Requirement 16 in the applicant's versions of the draft DCO [APP-013 & REP-078 & 088]. Egginton Parish Council attended the flood risk assessment issue specific hearing and had no objection to this deletion.
- 7.74 Requirement 23 in the applicant's versions of the draft DCO seeks to avoid the unreasonable withholding of approval in respect of requirement submissions [APP-013, REP-078 to 080 & REP-088 to 090]. The requirement lacks the precision that is sought in the Use of Conditions section in the Department for Communities and Local Government (DCLG) Planning Practice Guidance. The requirement also places a responsibility for an action on the relevant planning authority, where the authority would also be responsible for the enforcement of the requirement. The requirement therefore lies outside the scope of the draft DCO. In any event, it is appropriate that reasonableness is determined on appeal under article 3. I have therefore omitted the applicant's Requirement 23 from the ExA's draft DCOs.
- 7.75 I am satisfied that, in all of the requirements in the ExA's final draft DCO, the Use of Conditions section in the DCLG Planning Practice Guidance has been followed. Furthermore, the requirements would be necessary, relevant to planning, related to

the development to be consented, enforceable, precise and reasonable in all other respects in accordance with EN-1.

Requirement 1 – Interpretation

- 7.76 The ExA's draft DCO versions number the interpretation section as a requirement to accord with other DCOs. This results in the renumbering of former Requirements 1 to 3 and the combination of 4 and 5 as 5. The ExA's versions also add the addendum to the applicants flood risk assessment following the additional work carried out subsequent to the ExA's first written questions. In view of the omission of former Requirement 16, which has already been explained, the ExA's versions also omit the reference to the 'Willington C Gas Pipeline Flood Risk Assessment'.

Requirement 4 – Detailed design approval

- 7.77 The flexibility that this requirement provides, and the reasons for it, is satisfactorily justified in the applicant's Deadline 5 response to my second questions [REP-087]. The draft DCO would adequately control the details of the works to be submitted in accordance with the Rochdale Envelope principle, including firstly the Yoxall AGI and block valve: overall height; extent; and pipeline height and secondly the pipeline: diameter; depth; and route corridor. Furthermore, the EIA for the proposal is based on development and construction work disruption within the works limits (which allows for a pipeline route anywhere within the route corridor) and the Yoxall AGI site and temporary works compounds (which are defined by co-ordinates within the draft DCO).

Requirement 6 – Hedgerows and trees

- 7.78 Staffordshire County Council (SCC) submitted a representation concerning this requirement and suggesting amendments to the requirement as submitted at the application stage [REP-036]. These amendments were incorporated in the applicant's third draft DCO, submitted at Deadline 5 [REP-088 to REP-090], and remain in the ExA's versions [PD-014].
- 7.79 The amended requirement would limit the removal of hedgerows to those necessary in line with the aims of the Hedgerows Regulations 1997. No TPO trees would be affected by the proposal.

Requirement 7 – Construction traffic and highway accesses

- 7.80 In view of SCC's submission at Deadline 7 [REP-101], the applicant suggested an additional Requirement 7(7) also at Deadline 7 [REP-103]. The SCC submission, which related to article 12(2), has already been considered earlier in this section of the report. The applicant's additional Requirement 7(7) sought sole approval of the local highway authority for urgent works or works necessary on highway safety grounds which would need an

amendment to the approved construction traffic and highway access plan.

- 7.81 In principle, the applicant's suggested requirement is acceptable. SCC's submission, in relation to article 12(2), however suggested that sole local highway authority approval would only be necessary to ensure that highway safety is maintained in exceptional or emergency situations. SCC was also of the opinion that, as an example, approval via the relevant planning authority could be somewhat cumbersome for the creation of an emergency access if the need should arise.
- 7.82 In view of the detail in SCC's submission, in relation to article 12(2), there would only appear to be a call for sole local highway authority approval for urgent works necessary on highway safety grounds. The applicant's suggested requirement should therefore be revised in this manner, to exclude works that are only urgent and not necessary on highway safety grounds. This revision has been incorporated in the ExA's final draft DCO.
- 7.83 Such an amendment to the suggested requirement would however mean that a non-urgent change of access location would still require relevant planning authority approval. This would be an appropriate course of action, bearing in mind that environmental issues could also require consideration.
- 7.84 Furthermore, the unrevised applicant's suggested requirement could be used as a mechanism to accommodate a late and therefore urgent application not necessarily related to highway safety. This would not be acceptable, as the purpose of the addition to the requirement is not to circumvent the regular DCO approval process.

Requirement 18 – Construction hours

- 7.85 The applicant's Deadline 5 submission suggested that, should the applicant's general and overarching tailpiece Requirement 24 be omitted, a tailpiece would be necessary within Requirement 18 [REP-087]. The applicant's tailpiece Requirement 24 has already been considered and found to be inappropriate earlier in this section of the report. In view of the flexibility afforded by Requirement 18(1)(b) however, the applicant subsequently agreed that the addition of a tailpiece to Requirement 18 would not be necessary [REP-103].

SCHEDULES 5 AND 6 – LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED AND LAND OVER WHICH RESTRICTIVE OBLIGATIONS AND RIGHT OF SUPPORT ARE REQUIRED

- 7.86 The applicant has advised, at Deadline 7, that consent for the works has been exchanged with the landowner of Plot 87

[REP-103]. This plot has therefore been removed from Schedules 5 and 6.

SCHEDULE 9 – PROTECTIVE PROVISIONS

Parts 1 and 2 – For the Protection of Electricity, Gas, Water and Sewerage Statutory Undertakers and For the Protection of Operators of Electronic Communications Code Networks

- 7.87 The form of these provisions at application stage had been agreed with the various bodies concerned. These agreements, which would regulate the extinguishment of rights and the removal of apparatus of statutory undertakers under s138 of the PA2008, form part of the relevant SoCGs [REP-087 and REP-083].

Part 3 - For the Protection of Network Rail

- 7.88 The form of these provisions, as submitted by the applicant at Deadline 5, was agreed with Network Rail during the course of the compulsory acquisition hearing [REP-064]. This agreement, which would regulate the extinguishment of rights and the removal of apparatus of statutory undertakers under s138 of the PA2008, forms part of the relevant SoCG [REP-087].

Part 4 - For the Protection of the Canal & River Trust

- 7.89 The form of these provisions, as submitted by the applicant at Deadline 5, was agreed with the Canal & River Trust during the course of the examination. This agreement, which would regulate the extinguishment of rights and the removal of apparatus of statutory undertakers under s138 of the PA2008, forms part of the relevant SoCG [REP-082].

Part 5 - For the Protection of National Grid Gas plc. and National Grid Electricity Transmission plc.

- 7.90 The form of these provisions, as submitted by the applicant at Deadline 5, was agreed with National Grid Gas plc. and National Grid Electricity Transmission plc. during the course of the examination [REP-098]. This agreement, which would regulate the extinguishment of rights and the removal of apparatus of statutory undertakers under s138 of the PA2008, forms part of the relevant SoCG [REP-087].

OTHER LEGAL AGREEMENTS

- 7.91 The applicant has made and given a unilateral undertaking, under s106 of the 1990 Act, to the relevant highway authorities to pay the costs of the public rights of way (PRoW) and highway safety works and to carry out the highway works [REP-074]. In the undertaking, the PRoW works means the making of orders for the temporary closure of PRoWs, the carrying out of inspections and reinstatement works under draft DCO Requirement 8. The highway

works means the creation of road access points and crossings under draft DCO Requirement 7. The highway safety works means road signage and speed restriction works under draft DCO Requirement 7.

- 7.92 The works identified above are necessary elements of the authorised development to retain the integrity of the PRow and highway network whilst the proposal is being implemented. They are therefore necessary to make the development acceptable in planning terms and are directly related to the proposed development. The works are also all sought by equitable requirements in the draft DCO and are therefore all reasonably related in scale and kind to the development and reasonable in all other respects. The unilateral undertaking therefore accords with EN-1.

CONCLUSION AND RECOMMENDATION

- 7.93 In view of all of the above points, I conclude that the ExA's final draft DCO is appropriate in relation to the proposal. I therefore recommend that, should the consent be given, the Order is made in the form set out in Appendix A.

8 OVERALL CONCLUSIONS AND RECOMMENDATION

- 8.1 In coming to my overall conclusion I have had regard to the relevant National Policy Statements, local impact reports submitted during the examination, any prescribed matters and all matters that I consider are both important and relevant to this application. The legal and policy context that I consider applies to this application is set out in Section 3. My findings in relation to policy and factual issues are in Section 4. My overall conclusion on the case for development consent and my recommendation that development consent is granted is set out in Section 5.
- 8.2 I have also considered the request for compulsory acquisition powers in Section 6 and concluded that there is a compelling case in the public interest for the grant of the compulsory acquisition powers sought by the applicant.
- 8.3 In Section 7, I concluded and recommended that, if development consent is granted as recommended, the Order should be made in the form set out in Appendix A.
- 8.4 In coming to my view that development consent should be granted in the form proposed in Appendix A, I have taken into account all matters raised in the representations and consider that there is no reason either individually or collectively that would lead me to a different conclusion.
- 8.5 Other consents are required and some may be required to implement the scheme but, from the submitted statements of common ground, there is every reason to suppose that they would be granted if required. None of the consents identified in Section 1 would be a prerequisite of making the Development Consent Order.
- 8.6 I therefore recommend that the Secretary of State, for the reasons set out in the above report, makes the Wellington C Gas Pipeline Order as set out in Appendix A.

APPENDICES

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**APPENDIX A - RECOMMENDED DEVELOPMENT CONSENT
ORDER**

2014 No. 000

INFRASTRUCTURE PLANNING

The Wellington C Gas Pipeline Order 2014

Made - - - - 2014

Coming into force - - 2014

CONTENTS

PART 1

PRELIMINARY

1. Citation and Commencement
2. Interpretation
3. Application and Modification of Legislative provisions

PART 2

PRINCIPAL POWERS

4. Development consent etc. granted by the Order
5. Maintenance and diversion of the authorised development
6. Operation and use of the authorised development
7. Limits of Deviation
8. Benefit of Order
9. Consent to transfer benefit of Order

PART 3

STREETS

10. Street works
11. Public rights of way
12. Access to works
13. Agreements with street authorities

PART 4

SUPPLEMENTAL POWERS

14. Discharge of water
15. Authority to survey and investigate the land

**PART 5
POWERS OF ACQUISITION**

16. Compulsory acquisition of existing rights in land
17. Time limit for exercise of authority to acquire land compulsorily
18. Compulsory acquisition of new rights
19. Power to override easements and other rights
20. Private rights of way
21. Application of the Compulsory Purchase (Vesting Declarations) Act 1981
22. Acquisition of subsoil
23. Rights under or over streets
24. Temporary use of land for carrying out the authorised development
25. Temporary use of land for maintaining authorised development
26. No double recovery
27. Statutory undertakers
28. Recovery of costs of new connections
29. Railway and navigation crossings

**PART 6
MISCELLANEOUS AND GENERAL**

30. Defence to proceedings in respect of statutory nuisance
31. Operational land for purposes of the 1990 Act
32. Felling or lopping of trees
33. Certification of plans etc
34. Arbitration
35. Protection of Interests
36. Service of Notices

SCHEDULES

- SCHEDULE 1 — AUTHORISED DEVELOPMENT AND REQUIREMENTS
- PART 1 — AUTHORISED DEVELOPMENT
- PART 2 — REQUIREMENTS
- SCHEDULE 2 — STREETS SUBJECT TO STREET WORKS
- SCHEDULE 3 — ACCESS TO WORKS
- SCHEDULE 4 — LAND IN WHICH SURVEYS AND INVESTIGATIONS MAY BE CARRIED OUT
- SCHEDULE 5 — LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED
- SCHEDULE 6 — LAND OVER WHICH RESTRICTIVE OBLIGATIONS AND RIGHT OF SUPPORT ARE REQUIRED
- SCHEDULE 7 — MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS
- SCHEDULE 8 — LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN
- SCHEDULE 9 — PROTECTIVE PROVISIONS
- PART 1 — FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE STATUTORY UNDERTAKERS
- PART 2 — FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

PART 3 — FOR THE PROTECTION OF NETWORK RAIL
PART 4 — FOR THE PROTECTION OF THE CANAL & RIVER TRUST
PART 5 — FOR THE PROTECTION OF NATIONAL GRID GAS PLC
AND NATIONAL GRID ELECTRICITY TRANSMISSION
PLC

An application has been made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009^(a) for an Order under sections 14, 21, 37, 55, 114, 115, 117(4), 120, 122 and 123 of the Planning Act 2008^(b) (“the 2008 Act”).

The application was examined by a single appointed person appointed by the Secretary of State pursuant to Chapter 3 of Part 6 of the 2008 Act, and the examination was carried out in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010^(c).

The single appointed person, having considered the application with the documents that accompanied the application, and the representations made and not withdrawn, has, in accordance with section 83(1) of the 2008 Act, made a report and recommendation to the Secretary of State.

The Secretary of State, having considered the report and recommendation of the single appointed person, and decided the application, has determined to make an Order giving effect to the proposals comprised in the application.

Now, therefore, in exercise of the powers conferred by sections 114, 115, 120 and 122 of the 2008 Act and all other powers enabling it in that behalf, the Secretary of State makes the following Order:

PART 1 PRELIMINARY

Citation and Commencement

1. This Order may be cited as the Willington C Gas Pipeline Order 201[] and shall come into force on [] 201[].

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961^(d);

“the 1965 Act” means the Compulsory Purchase Act 1965^(e);

-
- (a) S.I. 2009/2264, amended by S.I. 2010/439, 602, 2012/635, 2654, 2732, 2013/522, 755. Schedule 1 of those Regulations should be read in accordance with article 2(6) of the British Waterways Board (Transfer of Functions) Order 2012 S.I. 2012/1659.
- (b) 2008 c.29, as amended by the Localism Act 2011 and the Growth and Infrastructure Act 2013.
- (c) S.I. 2010/103, amended by S.I. 2012/635.
- (d) 1961 c.33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c.65). There are other amendments to the 1961 Act which are not relevant to this Order.
- (e) 1965 c.56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c.34). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c.67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the

“the 1980 Act” means the Highways Act 1980(a);

“the 1990 Act” means the Town and Country Planning Act 1990(b);

“the 1991 Act” means the New Roads and Street Works Act 1991(c);

“the 1997 Regulations” means the Hedgerows Regulations 1997(d);

“the 2008 Act” means the Planning Act 2008(e);

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

“authorised development” means the development and associated development described in Part 1 of Schedule 1 (authorised development) and any other development authorised by this Order, which is development within the meaning of section 32 of the 2008 Act;

“the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“carriageway” has the same meaning as in the 1980 Act;

“commence” means beginning to carry out any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the authorised development, other than operations consisting of ecological or archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and the cutting of hedges, trees and other vegetation and “commencement” shall be construed accordingly;

“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;

“electronic transmission” means a communication transmitted—

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

(b) by other means but while in electronic form;

“highway” has the same meaning as in the 1980 Act;

“local highway authority” means Staffordshire County Council or Derbyshire County Council as appropriate for the area in which the land to which the provisions of this Order apply is situated or any successors to their statutory functions as highway authorities;

Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c.23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c.15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c.39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34) and by section 14 of, and paragraph (12)2 of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.

- (a) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22). Section 1(2), (3) and (4) was amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51). Section 1(2A) was inserted, and section 1(3) was amended, by section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c.29). Section 1(3A) and (5) was inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraph 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1), (2) and (3) of the Transport and Works Act 1992 (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37). Section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177. Section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51). Section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.
- (b) 1990 c.8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c.29) (date in force to be appointed see section 241(3), (4)(a) and (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.
- (c) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18). There are other amendments to the 1990 Act which are not relevant to this Order.
- (d) SI 1997/1160.
- (e) 2008 c.29, as amended by the Localism Act 2011 and the Growth and Infrastructure Act 2013.

“the land plans” means the plans certified as the land plans by the Secretary of State for the purposes of this Order;

“the limits of deviation” means the area(s) shown on the works plans and referred to in article 7;

“maintain” includes to inspect, maintain, adjust, alter, repair, test, cleanse, re-lay, divert, make safe, decommission, reconstruct, demolish, abandon, replace, remove and improve the authorised development or any of its parts but not so as to vary from the description of the authorised development in Schedule 1 and any derivative of “maintain” should be construed accordingly and includes diversion of the authorised development in accordance with articles 5 and 7;

“National Grid Gas” means National Grid Gas plc (Company registration number 02006000) or any successor company performing the same functions;

“NG works” means those works to be constructed, owned and operated by National Grid Gas and described in Part 1 of Schedule 1 as (a) Works No.2 (shown on sheet 1 of the works plans) and (b) those works within Works No.3 which comprise National Grid Gas’s part of the above ground installation, and are shown within the turquoise bounded area on the Yoxall AGI Plan;

“Order land” means the land shown on the land plans which is within the limits of land to be acquired or used and described in the book of reference;

“Order limits” means the limits (including the limits of deviation, the Works limits and any additional land to be used) shown on the works plans within which the authorised development may be carried out;

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

“relevant planning authority” means South Derbyshire District Council or East Staffordshire Borough Council as appropriate for the area in which the land to which the provisions of this Order apply is situated or any successors to their statutory functions as planning authorities;

“requirement” means a requirement set out in Part 2 of Schedule 1 to this Order;

“statutory undertaker” means any person falling within sections 127(8) and 138(4)(A) of the 2008 Act or those bodies who have the benefit of the protective provisions in Schedule 9 to this Order;

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“the tribunal” means the Lands Chamber of the Upper Tribunal;

“undertaker” means RWE Npower plc (Company registration number 03892782) whose registered office is at Windmill Hill Business Park, Whitehill Way, Swindon, SN5 6PB or successor body or any other person to whom RWE Npower plc transfers any or all of the benefit of this Order in accordance with article 9;

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

“the Works limits” means the limits of land shown by a broken green line on the works plans within which the authorised development can be carried out and maintained;

“the works plans” means the plans certified as the works plans by the Secretary of State for the purposes of this Order;

“the Yoxall AGI Plan” means the plan certified as the Yoxall AGI Plan by the Secretary of State for the purposes of this Order; and

“the Yoxall AGI Site” means the land hatched blue on sheet 1 of the works plans and shown on the Yoxall AGI Plan.

(a) 1981 c.67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Paragraph 1(5) of Part 1 of Schedule 2 was amended by section 67 of, and paragraph 27(3) of Schedule 9 to, the Coal Industry Act 1994 (c.21). There are other amendments to the 1981 Act which are not relevant to this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the air-space above its surface.

(3) All distances, directions and lengths referred to in this Order are approximate.

(4) All areas described in the Book of Reference are approximate.

(5) References in this Order to a numbered Work are references to a work numbered in Part 1 of Schedule 1.

Application and Modification of Legislative provisions

3. The following provisions are incorporated in this Order—

(1) The provisions of regulation 6(1) of the 1997 Regulations apply to the development consent granted by this Order except that it shall be modified so as to read for the purposes of this Order only as if there were inserted after sub-paragraph (e) the following—

“(ee) for the carrying out of development for which development consent has been granted under the Planning Act 2008”;

(2) The provisions of section 72 of the 1990 Act shall apply so that the requirements in Part 2 of Schedule 1 are deemed to be imposed as if they were conditions imposed upon the grant of planning permission pursuant to section 72 of the 1990 Act.

(a) Subsection (1) of section 78 of the 1990 Act shall apply to the development consent granted by this Order and to the requirements except that it shall be modified so as to read for the purposes of this Order only as if there were inserted after subsection (b) the following—

“(bb) refuse an application for any consent, agreement or approval of that authority required by a requirement imposed on a grant of development consent or contained in a development consent order, or grant it subject to conditions;

(bbc) refuse an application for any consent, agreement or approval of that authority required by a condition imposed on any consent, agreement or approval of that authority given pursuant to a requirement imposed on a grant of development consent or contained in a development consent order;

(bbd) fail to give notice to the applicant of their decision on an application of the kind referred to in (bb) or (bbc) above, within the time prescribed by a development order or such extended time as may at any time be agreed in writing between the applicant and the planning authority or”

(b) Sections 78 and 79 of the 1990 Act shall have effect in relation to any appeal under section 78(1) as so applied.

(c) The provisions of regulation 16 of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (a) shall apply to any application to discharge a requirement of this Order.

(d) The terms of any development order, and other rules and regulations, including without limitation regulations requiring environmental impact assessment, and which apply to applications pursuant to conditions or the subject matter of section 78 of the 1990 Act, shall apply to any application or appeal made under the requirements or terms of this article.

(e) Appeals by the undertaker under section 78 of the 1990 Act as modified by this article shall be dealt with by the Secretary of State and appropriate Minister as if the appeal were made by a statutory undertaker against a determination of an application to which section 266(1) of the 1990 Act applies, provided that the undertaker making the appeal holds a licence under section 6 of the Electricity Act 1989.

(a) S.I. 2012/2920 as amended by S.I. 2013/2153 and S.I. 2014/357.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

4. Subject to the provisions of this Order and to the requirements set out in Part 2 of Schedule 1 to this Order, the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

Maintenance and diversion of the authorised development

5.—(1) The undertaker may at any time maintain the authorised development within the Works limits and, in so far as a diversion would not be contrary to the provisions of section 21 of the 2008 Act, divert the authorised development within the limits of deviation.

(2) Any diversion of the authorised development is subject to the provisions of this Order and the requirements set out in Part 2 of Schedule 1.

(3) No maintenance works, apart from that which is associated with an emergency, whose likely significant effects on the environment are not described in the Environmental Statement shall take place.

Operation and use of the authorised development

6. The undertaker may at any time operate and use the authorised development, except to the extent that this Order or an agreement made under this Order provides otherwise.

Limits of Deviation

7. In carrying out, maintaining or diverting the authorised development the undertaker may—

(1) deviate Works No. 1, 2, 3(f), 3(k), 4, 5 and 6 laterally from the lines or situations of the authorised development shown on the works plans within the extent of the limits of deviation shown on those plans; and

(2) deviate Works No. 1 and 2 vertically—

(a) upwards to a limit of not less than 1.1 metres below the surface of the ground; and

(b) to any extent downwards as may be found to be necessary or practical to a maximum depth of 70 metres below the surface of the ground,

except that sub-paragraph (2) (a) above shall not apply to those parts of Works No. 1 and 2 that are built within the Yoxall AGI Site, where such works may deviate upwards to a limit of 2.8 metres above ground level.

(3) deviate and/or place Works No. 3, 4, 5 and 6 vertically upwards and/or above ground level to the height limits set for each of these works in part 1 of Schedule 1.

Benefit of Order

8. Subject to article 9 (consent to transfer the benefit of Order), this Order is for the benefit of the undertaker.

Consent to transfer benefit of Order

9.—(1) The undertaker may, with the consent of the Secretary of State—

(a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed in writing between the undertaker and the transferee; or

- (b) grant to another person (“the lessee”) for a period agreed in writing between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

Except where paragraph (4) applies in which case no such consent shall be required.

(2) Where an agreement has been made in accordance with paragraph (1), references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraphs (1) or (4) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) This paragraph applies to a transfer to National Grid Gas of any part of the benefit of the provisions of this Order and any related statutory rights which relate to, or may be necessary or expedient for, the construction, operation, maintenance and diversion of the NG works or any works carried out in pursuance of Part 5 of Schedule 9.

PART 3

STREETS

Street works

10.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 2 of this Order (streets subject to street works) as are within the Works limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus in and/or under the street;
- (d) maintain apparatus in and/or under the street or change its position; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c) and (d).

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

(3) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

(4) In this article “apparatus” has the same meaning as in Part III of the 1991 Act.

Public rights of way

11.—(1) The undertaker may create an alternative public right of way to the section of footpath named the Yoxall 59 footpath (as shown by a broken orange line between the points A and C on the Yoxall AGI Plan) between the points A, B and C (shown by a broken purple line on the Yoxall AGI Plan).

(2) With effect from the date of certification by the local highway authority that the agreed alternative right of way has been created in accordance with the implementation plan and specification approved under requirement 8, the original right of way as shown by the broken orange line between the points A and C on the Yoxall AGI Plan shall be extinguished.

Access to works

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

(1) form and lay out means of accesses or improve existing means of access in the indicative locations specified in columns (1) and (2) of Schedule 3 (access to works) as shown coloured pink on sheets 1 – 10 (excluding 8) of the works plans; and

(2) form and lay out such other means of access or improve existing means of access at such locations within the Works limits as the undertaker reasonably requires for the purposes of the authorised development.

Agreements with street authorities

13.—(1) A street authority and the undertaker may enter into agreements with respect to the carrying out in or under the street of any of the works referred to in article 10(1) (street works).

(2) Such an agreement may, without limitation on the scope of paragraph (1)—

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

14.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Works limits, make openings into, and connections with, that watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991(a)(right to communicate with public sewers).

(3) The undertaker shall not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but shall not be unreasonably withheld.

(4) The undertaker shall not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval shall not be unreasonably withheld; and
- (b) where that person has been given the opportunity to observe the making of the opening.

(5) The undertaker shall not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The undertaker shall take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by regulation 12 of the Environmental Permitting (England and Wales) Regulations 2010.(b)

(8) In this article—

(a) 1991 c.56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c.37). There are other amendments to this section which are not relevant to this Order.

(b) SI 2010/675. Regulation 12 was amended by S.I. 2011/2043 and 2013/390. There are other amendments to these Regulations which are not relevant to this Order.

- (a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964(a) (interpretation), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Environmental Permitting (England and Wales) Regulations 2010 have the same meaning as in those regulations.

Authority to survey and investigate the land

15.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits and—

- (a) survey or investigate the land;
- (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

This shall be limited to the right to carry out the surveys and investigations specified in column (2) of Schedule 4 to this Order (land in which surveys and investigations may be carried out) over the land specified in column (1) of that Schedule.

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

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

- (a) shall, if so required on entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

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

- (a) in land located within the highway boundary without the consent of the local highway authority; or
- (b) in a private street without the consent of the street authority,
- (c) but such consent shall not be unreasonably withheld.

(5) The undertaker shall compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(a) 1964 c.40. Paragraph 9B was inserted into Schedule 2 by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 9(1) and (5). There are other amendments to the 1964 Act which are not relevant to this Order.

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of existing rights in land

16.—(1) The undertaker may acquire compulsorily the existing rights in so much of the Order land within the Works limits (including for the avoidance of doubt the subsoil) as is required for the authorised development or to facilitate or is incidental to it and as is described in the book of reference and shown on the land plans.

(2) As from the date on which a compulsory acquisition notice under section 134(3) of the 2008 Act is served or the date on which the land acquired under paragraph (1) or any part of it is vested in the undertaker, whichever is the later, that land or that part of it which is vested (as the case may be) shall be discharged from all rights, easements, liberties, privileges, advantages, restrictions, covenants, trusts and incidents to which it was previously subject.

(3) Any person who suffers loss by the extinguishment or suspension of any private right under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Time limit for exercise of authority to acquire land compulsorily

17.—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

- (a) no notice to treat shall be served under Part 1 of the 1965 Act; and
- (b) no notice or declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 21 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)(a).

(2) The authority conferred by article 24 (temporary use of land for carrying out the authorised development) shall cease at the end of the period referred to in paragraph (1), except that nothing in this paragraph shall prevent the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of new rights

18.—(1) The undertaker may create and acquire compulsorily new rights over those parts of the Order land specified in column (1) of Schedule 5 to this Order (land in which only new rights etc. may be acquired) as may be required for the purpose specified in relation to that land in column (2) of that Schedule and/or facilitating the construction of, or incidental to, the authorised development. The undertaker may also impose the restrictive obligations specified in column (3) of Schedule 6 to this Order (land over which restrictive obligations and right of support are required) over the Order land specified in column (2) of Schedule 6.

(2) As from the date on which a compulsory acquisition notice is served, the date on which any new right is vested in the undertaker or the date on which a restrictive obligation applies, whichever is the later, the land over which any new rights are acquired shall be discharged from all rights, easements, liberties, privileges, advantages, restrictions, covenants, trusts and incidents to which it was previously subject so far as their continuance would be inconsistent with the exercise of that new right.

(3) Any person who suffers loss as a result of the extinguishment or suspension of any private right under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(a) 1981 c.66. Sections 2 and 116 were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). There are other amendments to the 1981 Act which are not relevant to this Order.

(4) Schedule 7 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right.

Power to override easements and other rights

19.—(1) The carrying out or use of development authorised by this Order and the doing of anything else authorised by this Order is authorised by virtue of section 158 of the 2008 Act, notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the user of land arising by virtue of a contract.

(2) The interests and rights to which this article applies include any easements, liberties, privileges and advantages annexed to land and adversely affecting other land, including any natural right to support, and include restrictions as to the user of the land arising by virtue of a contract having that effect and/or any other covenants, trusts and/or incidents.

(3) Where any interest or right to which this article applies is interfered with or any restriction breached by any authorised activity in accordance with the terms of this article, the interest or right may, if necessary, be extinguished, abrogated or discharged at the time that the interference or breach in respect of the authorised activity in question commences.

(4) In respect of any interference, breach, extinguishment, abrogation or discharge in pursuance of this article, compensation—

- (a) is payable under section 152 of the Planning Act 2008;
- (b) shall be assessed subject to subsection (2) of section 10 of the 1965 Act which applies by virtue of section 152 (5) of the 2008 Act; and
- (c) any rule or principle applied to the construction of section 10 of the 1965 Act shall be applied to the construction of this paragraph (4) with any necessary modifications.

(5) Nothing in this article should be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1).

Private rights of way

20.—(1) Subject to the provisions of this article, all private rights of way over land subject to compulsory acquisition under this Order shall be extinguished—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry),

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights of way over land owned by the undertaker which, being within the limits of land which may be acquired shown on the land plans, are required for the purposes of this Order shall be extinguished on the appropriation of the land by the undertaker for any of those purposes.

(3) Subject to the provisions of this article, all private rights of way over land of which the undertaker takes temporary possession under this Order shall be suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(4) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article does not apply in relation to any right of way to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 27 (statutory undertakers) applies.

- (6) Paragraphs (1) to (3) have effect subject to—
- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land;
 - (ii) the undertaker’s appropriation of it;
 - (iii) the undertaker’s entry onto it; or
 - (iv) the undertaker’s taking temporary possession of it,
 provided that any or all of those paragraphs shall not apply to any right of way specified in the notice; and
 - (b) any agreement made at any time between the undertaker and the person in or to whom the right of way in question is vested or belongs.
- (7) If any such agreement as is referred to in paragraph (6)(b)—
- (a) is made with a person in or to whom the right of way is vested or belongs; and
 - (b) is expressed to have effect also for the benefit of those deriving title from or under that person,
- it shall be effective in respect of the persons so deriving title, whether the title was derived before or after the making of such agreement.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

21.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(a) shall apply as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, shall have effect with the following modifications.

(3) In section 3 (preliminary notices), for sub-section (1) there shall be substituted—

“(1) Before making a declaration under section 4 with respect to any land or rights over land which is subject to a compulsory purchase order, the acquiring authority shall include the particulars specified in sub-section (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.”

(4) In that section, in sub-section (2), for “(1)(b)” there shall be substituted “(1)” and after “given” there shall be inserted “and published”.

(5) In that section, for sub-sections (5) and (6) there shall be substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”

(6) In section 5 (earliest date for execution of declaration)—

- (a) in sub-section (1), after “publication” there shall be inserted “in a local newspaper circulating in the area in which the land is situated”; and

(a) 1981 c.66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c.17). Paragraph 1 of Schedule 2 was amended by: section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c.50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c.28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c.51). There are other amendments to the 1981 Act which are not relevant to this Order.

(b) sub-section (2) shall be omitted.

(7) In section 7 (constructive notice to treat), in sub-section (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” shall be omitted.

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 shall be construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land or rights over land under this Order.

Acquisition of subsoil

22.—(1) In connection with the compulsory acquisition of the existing rights and the compulsory creation and acquisition of the new rights referred to in article 18 (compulsory acquisition of rights) and article 27 (statutory undertakers), the undertaker may acquire compulsorily such rights in the subsoil as may be required for any purpose for which such rights may be acquired under that provision for the purposes of the authorised development.

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

Rights under or over streets

23.—(1) The undertaker may enter on and appropriate so much of the subsoil of, or air-space over, any street within the Works limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

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

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

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

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person’s interest in the land, and who suffers loss as a result, shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation shall not be payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised development

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

- (a) enter on and take temporary possession of the land specified in columns (1) and (2) of Schedule 8 (land of which temporary possession may be taken) for the purpose specified in column (3) of that Schedule;
- (b) remove any buildings and vegetation from that land; and
- (c) construct temporary works (including the provision of means of access) and buildings on that land.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article, the undertaker shall serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owner of the land, remain in possession of any plot specified in Schedule 8 after the expiration of one year from the date that

the authorised development has been completed in that plot unless notice of entry has been given under Section 11 of the 1965 Act or the land is the subject of a general vesting declaration.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker shall not be required to replace a building removed under this article.

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

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.

(7) Nothing in this article shall affect any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1) except that the undertaker shall not be precluded from acquiring new rights over any part of that land including the subsoil under article 18 (compulsory acquisition of rights) and article 22 (acquisition of subsoil).

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

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

(11) Nothing in this article shall prevent the taking of temporary possession more than once in relation to any land specified in Schedule 8.

Temporary use of land for maintaining authorised development

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

- (a) enter on and take temporary possession of any land within the Works limits if such possession is reasonably required for the purpose of maintaining the authorised development; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

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

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article, the undertaker shall serve notice of the intended entry on the owners and occupiers of the land, except as provided in paragraph (12).

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

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

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

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

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

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

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

(11) In this article "the maintenance period", in relation to any part of the authorised development, means the period of 5 years beginning with the date on which that part of the authorised development is first opened for use.

(12) Where the undertaker has identified a potential risk to the safety of—

- (a) the authorised development or any of its parts;
- (b) the public; or
- (c) the surrounding environment,

the requirement to serve not less than 28 days' notice under paragraph (3) shall not apply, and the undertaker may enter the land pursuant to paragraph (1) subject to giving such period of notice (if any) as is reasonably practicable in all the circumstances.

No double recovery

26. Compensation shall not be payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

Statutory undertakers

27. Subject to compliance with the provisions of Schedule 9 (protective provisions), the undertaker may—

(1) create and acquire compulsorily the new rights over those parts of the Order land belonging to statutory undertakers as specified in column 1 of Schedule 5 to this Order (land in which only new rights etc may be acquired) as may be required for the purpose specified in relation to that land in column 2 of that Schedule);

(2) construct the authorised development in such a way as to cross underneath or over apparatus belonging to statutory undertakers within the Works limits and/or as described book of reference;

(3) extinguish the rights of, and/or remove, and/or reposition the apparatus belonging to statutory undertakers within the Works limits; and

(4) construct over existing apparatus belonging to statutory undertakers any necessary track or roadway (whether temporary or permanent) together with the right to maintain and or remove the same, and install such service media under and/or over the existing apparatus needed in connection with the authorised development.

Recovery of costs of new connections

28.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 27 (statutory undertakers), any person who is the owner or occupier of premises to which a supply was given from that apparatus shall be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) shall not apply in the case of the removal of a public sewer but where such a sewer is removed under article 27, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

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

(3) In this article -

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003; and

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

Railway and navigation crossings

29.—(1) Subject to the following provisions of this article, the undertaker may not under article 10 (street works) break up or open a street where the street, not being a highway maintainable at public expense (within the meaning of the 1980 Act)—

- (a) is under the control or management of, or is maintainable by, railway or tramway undertakers or a navigation authority; or
- (b) forms part of a level crossing belonging to any such undertakers, to such an authority or to any other person, except with the consent of the undertakers, authority or, as the case may be, of the person to whom the level crossing belongs.

(2) Paragraph (1) shall not apply to the carrying out under this Order of emergency works, within the meaning of Part 3 of the 1991 Act.

(3) A consent given for the purpose of paragraph (1) may be made subject to such reasonable conditions as may be specified by the person giving it but shall not be unreasonably withheld.

(4) In this article -

“navigation authority” means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary or harbour.

PART 6

MISCELLANEOUS AND GENERAL

Defence to proceedings in respect of statutory nuisance

30.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order shall be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

- (a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or section 65 (noise exceeding registered level) of the Control of Pollution Act 1974(b); or

(a) 1990 c.43. There are amendments to this Act which are not relevant to this Order.

(b) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 (c.25). There are other amendments to the 1974 Act which are not relevant to this Order.

- (b) is a consequence of the use, construction or maintenance of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded) shall not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Operational land for purposes of the 1990 Act

31. Development consent granted by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Felling or lopping of trees

32.—(1) The undertaker may at any time fell or lop any tree or shrub within or overhanging land within the Works limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development.

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

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

Certification of plans etc

33.—(1) The undertaker shall, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the book of reference submitted as document reference WCGP 013.3, version 3, June 2014, in the application for this Order;
- (b) the land plans submitted as document reference WCGP 011.1 version 3, June 2014, sheets 1-10 in the application for this Order;
- (c) the works plans submitted as document reference WCGP 012.1 version 3, June 2014, sheets 1-10 in the application for this Order;
- (d) the Yoxall AGI plan submitted as document reference WCGP 023.1 in the application for this Order and updated to Version C, June 2014, Drawing Reference No. – UK/PWLC0233/C;
- (e) the environmental statement submitted as documents reference WCGP 014.1 (Chapters), WCGP 014.2 (Appendices), WCGP 014.3 (Figures), and WCGP 030.013 (Addendum, Version 2, April 2014) in the application for this Order and
- (f) any other plans, drawings or documents referred to in this Order,
for certification that they are true copies of the plans, drawings and documents referred to in this Order.

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

Arbitration

34. Any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal), unless otherwise provided for, shall be referred to and settled by a

single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

Protection of Interests

35. Schedule 9 (protective provisions) to this Order has effect.

Service of Notices

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

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the written consent of the recipient and subject to paragraphs (6) to (8) by electronic transmission.

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

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

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

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

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purpose of this Order is served or sent by electronic transmission, the requirement shall be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or other document is capable of being accessed by the recipient;
- (c) the notice or other document is legible in all material respects; and
- (d) the notice or other document is in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document, the sender shall provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(a) 1978 c.30. There are amendments to this Act not relevant to this Order.

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

- (a) that person shall have given notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation shall be final and shall take effect on a date specified by the person in the notice but that date shall not be less than 7 days after the date on which the notice is given.

(9) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be served, given or supplied by means of a notice or document in printed form.

Signed by authority of the Secretary of State for Energy and Climate Change

Date

Name
Head of National Infrastructure Consents
Department of Energy and Climate Change

SCHEDULES

SCHEDULE 1

Articles 2 and 4

AUTHORISED DEVELOPMENT AND REQUIREMENTS

PART 1

AUTHORISED DEVELOPMENT

The authorised development is a Nationally Significant Infrastructure Project as described in sections 14 and 21 of the 2008 Act, comprising the construction of an up to 800 mm diameter cross-country pipeline (to be known as the Willington C Gas Pipeline) for the conveyance of gas and covering a distance of approximately 27 km starting from the National Transmission System at Yoxall in the district of East Staffordshire and ending at the proposed Willington C Power Station to be constructed at Willington in South Derbyshire. It shall include the laying, placing, use, inspection, maintenance and diversion of the Willington C Gas Pipeline and the works numbered and described below—

In both East Staffordshire and South Derbyshire

Works No.1 - The Yoxall – Willington Pipe section

A high pressure pipeline up to 800mm in diameter with all relevant associated equipment for the transport of gas. Its proposed indicative route is shown by a red line (subject to the limits of deviation in article 7) on works plans sheets 1-10.

The indicative start point of the proposed route is shown on sheet 1 of the works plans at the numbered Grid Reference A (SK13481800). Subject to the limits of deviation in article 7 of this Order, such start point can deviate within the area defined by the following grid references—

B - SK13441796

C - SK13431802

D - SK13461804

E - SK13541804

F - SK13551798

The indicative end point of the proposed route is shown on sheet 10 of the works plans at the numbered Grid Reference G (SK30402904). Subject to the limits of deviation in article 7 of this Order, such end point can deviate within the area defined by the following grid references—

H - SK30112894

J - SK30132891

K - SK30172893

L - SK30342897

M - SK30992942

N - SK30922949

In East Staffordshire

Works No.2 - The NTS Spur Pipeline

A high pressure gas pipeline (with partially buried valves, control cables and all other relevant associated equipment) up to 800mm in diameter and approximately 120m in length, starting at the national transmission system pipeline at the indicative Grid Reference P (SK13391797) and ending at the indicative start point of Works No.1, shown on sheet 1 of the works plans.

The indicative start point Grid Reference is P (SK13391797). Subject to the limits of deviation in article 7 of this Order, such start point can deviate within the area defined by the following grid references—

R - SK13391795

S - SK13381797

T - SK13361798

V - SK13371800

W - SK13401798

X - SK13421795

The indicative end point Grid Reference is A (SK13481800). Subject to the limits of deviation in article 7 of this Order, such end point can deviate within the area defined by the following grid references—

B - SK13441796

C - SK13431802

D - SK13461804

E - SK13541804

F - SK13551798

In East Staffordshire

Works No.3 - The Yoxall Above Ground Installation (The Yoxall AGI)

Two secure compounds with equipment for the monitoring and control of gas (together comprising an approximate area of 60m x 60m with a maximum height of 5m), as shown indicatively on the Yoxall AGI Plan, to be built within the Yoxall AGI Site which is identified by the following numbered co-ordinates—

North-East corner – 9 (SK13531805)

South-East corner – 11 (SK13551796)

South-West corner – 10 (SK13441795)

North-West corner – 1 (SK13421805)

Works to be carried out within the Yoxall AGI Site include—

- a) Security fencing (with a maximum height of 2.8 metres)
- b) Access roadways (including access from the A515), car parking and hard standings
- c) Power, water and telecommunications connections
- d) Installation of data transmission equipment
- e) Installation of instrument kiosks
- f) Installation of equipment to control (block valves), monitor and transmit flow of gas
- g) Lighting (with a maximum height of 5 metres)
- h) Landscaping and hedge planting
- i) Changes to ground levels as may be necessary
- j) Drainage works as may be necessary
- k) Installation of an inspection vehicle launch facility (pig launcher)

In South Derbyshire

Works No.4 - The Willington Block Valve

A partially buried valve with all relevant associated equipment at which the authorised development shall terminate within the Willington C Power Station site at the indicative Grid Reference G (SK30402904) shown on sheet 10 of the works plans. Subject to the limits of deviation in article 7 of this Order, the block valve can deviate within the area defined by the following grid references—

H - SK30112894

J - SK30132891

K - SK30172893

L - SK30342897

M - SK30992942

N - SK30922949

The block valve may deviate above ground level to a maximum height of 2 metres and may be securely fenced to a maximum height of 2.8 metres.

In both East Staffordshire and South Derbyshire

Works No.5 - Micro-Tunnels and Vertical Shafts

Micro-tunnels and shafts with all relevant associated equipment including—

- a) Horizontal micro-tunnels not greater than 2.3 metres in internal diameter at a depth not greater than 20 metres below the surface of the ground
- b) Vertical shafts at either end of the tunnels not greater than 8 metres in internal diameter.

This work may deviate permanently to ground level and may (during construction) temporarily deviate above ground level to a maximum height of 1 metre. It comprises works at the following indicative locations (in addition to other micro-tunnels and shafts that may become necessary in any other locations within the limits of deviation) —

In East Staffordshire

Works 5.1 for the purpose of crossing under the River Swarbourn at the indicative Grid Reference SK14101816 which can vary subject to the limits of deviation shown on sheet 1 of the works plans.

Works 5.2 for the purpose of crossing under the dismantled Burton – Hilton railway line at the indicative Grid Reference SK24662824 which can vary subject to the limits of deviation shown on sheet 8 of the works plans.

In East Staffordshire and South Derbyshire

Works 5.3 for the purpose of crossing under the River Dove at the indicative Grid Reference SK25172826 which can vary subject to the limits of deviation shown on sheet 8 of the works plans.

In South Derbyshire

Works 5.4 for the purpose of crossing under the A38 Trunk Road at the indicative Grid Reference SK27992839 which can vary subject to the limits of deviation shown on sheet 9 of the works plans.

Works 5.5 for the purpose of crossing under the Derby – Stoke railway line at the indicative Grid Reference SK29402896 which can vary subject to the limits of deviation shown on sheet 10 of the works plans.

Works 5.6 for the purpose of crossing under the Trent & Mersey Canal and the Derby – Stoke and Derby – Birmingham railway lines at the indicative Grid Reference SK30262914 which can vary subject to the limits of deviation shown on sheet 10 of the works plans.

In both East Staffordshire and South Derbyshire

Works No.6 - Pipeline Marking

The marking of Works No. 1 and 2, shown at indicative locations on works plans sheets 1-10 and including—

- a) Marker posts at each field boundary and both sides of roads, rivers, canals and railways
- b) Aerial markers at intervals of approximately 500 metres or closer where required
- c) Any other marking required to comply with current or future legislation and regulations

This work shall extend above ground level to a maximum height of 2 metres.

Additionally, the authorised development comprises, within the meaning of Section 115(1)(b) of the 2008 Act, the following associated development (which falls within the scope of the environmental impact assessment recorded in the Environmental Statement)—

In East Staffordshire

Works No.7 - The Yoxall Temporary Works Compound

A temporary works compound for use during the construction of the authorised development, located within the land described by the Grid References—

- 1 - SK13421805
- 2 - SK13421816
- 3 - SK13501820
- 4 - SK13511812
- 5 - SK13651814
- 6 - SK13661809
- 7 - SK13551802
- 8 - SK13541802
- 9 - SK13531805

and shown hatched green on sheet 1 of the works plans, including—

- a) Temporary car parking, hardstandings and roadways
- b) Temporary offices and staff welfare portacabins
- c) Temporary fabrication areas
- d) Temporary materials, tools and fuel storage areas
- e) Temporary pipe handling and storage
- f) Temporary storage of plant and equipment
- g) Wheel washing facilities
- h) Temporary lighting

In South Derbyshire

Works No.8 - The Carriers Road Temporary Works Compound

A temporary works compound for use during the construction of the authorised development, located within the land described by the Grid References—

10 - SK26942896

11 - SK26932914

12 - SK27242901

13 - SK27192891

14 - SK27062897

and shown hatched green on sheet 9 of the works plans, including—

- a) Temporary car parking, hardstandings and roadways
- b) Temporary offices and staff welfare portacabins
- c) Temporary fabrication areas
- d) Temporary materials, tools and fuel storage areas
- e) Temporary pipe handling and storage
- f) Temporary storage of plant and equipment
- g) Wheel washing facilities
- h) Temporary lighting

In South Derbyshire

Works No.9 - The Willington Power Station Temporary Works Compound

A temporary works compound for use during the construction of the authorised development at the indicative location described by Grid References—

15 - SK30332905

16 - SK30362911

17 - SK30412907

18 - SK30382902

and shown hatched green on sheet 10 of the works plans. Subject to the limits of deviation given by article 7 of this Order, these works could be located anywhere within the area described by the following grid references—

H - SK30112894

J - SK30132891

K - SK30172893

L - SK30342897

M - SK30992942

N - SK30922949

The temporary works compound includes—

- a) Temporary car parking, hardstandings and roadways
- b) Temporary offices and staff welfare portacabins
- c) Temporary fabrication areas
- d) Temporary materials, tools and fuel storage
- e) Temporary pipe handling and storage
- f) Temporary storage of plant and equipment
- g) Wheel washing facilities
- h) Temporary lighting

In both East Staffordshire and South Derbyshire

Works No.10 - Temporary structures during the construction period to allow construction access across watercourses, to be located within the Works limits at the indicative locations below, comprising either temporary bridges, pipe flumes or culverts at—

- a) East Staffordshire – River Swarbourn (shown at an indicative location as Works 10.1 on sheet 1 of the works plans)
- b) East Staffordshire – Mill Fleam 1 (shown at an indicative location as Works 10.2 on sheet 8 of the works plans)
- c) East Staffordshire – Mill Fleam 2 (shown at an indicative location as Works 10.3 on sheet 8 of the works plans)
- d) East Staffordshire / South Derbyshire – River Dove (shown at an indicative location as Works 10.4 on sheet 8 of the works plans)
- e) South Derbyshire – Hilton Brook (shown at an indicative location as Works 10.5 on sheet 8 of the works plans)
- f) South Derbyshire – Egginton Brook (shown at an indicative location as Works 10.6 on sheet 9 of the works plans)
- g) South Derbyshire – Willington Brook (shown at an indicative location as Works 10.7 on sheet 9 of the works plans)
- h) Any other watercourses within the works limits as may be required

In both East Staffordshire and South Derbyshire

Works No.11 - Temporary construction and maintenance works for the authorised development, to be located within the Works limits that are shown on works plans sheets 1-10, and contained by temporary fencing of no more than 2.0 metres in height.

The temporary construction and maintenance works shall include—

- a) The erection of temporary fencing
- b) The creation of temporary gaps in hedgerows and the removal of trees and other vegetation
- c) The stripping of topsoil and creation of temporary soil storage stockpiles
- d) The creation of temporary tracks
- e) The laying out, welding and testing of steel pipes
- f) Boring, tunnelling or drilling operations at roads, rivers, canals, railways and other obstacles
- g) The temporary damming of watercourses
- h) Trenching work and the stockpiling of subsoil
- i) The installation of the pipeline and backfilling of the trench
- j) Pipeline pressure testing
- k) Reinstatement and replanting works
- l) Land drainage remedial works and reinstatement
- m) Dewatering works
- n) The removal of surplus excavated material
- o) The removal and/or repositioning of Statutory Undertaker's equipment
- p) Temporary lighting
- q) The carrying out of any works and construction activities required in connection with the laying, placing, use, inspection, maintenance and diversion of the authorised development including drainage works, temporary bridges, ditch crossings, protective concrete slabs, inspection and maintenance culverts, cathodic and other protection works.

In both East Staffordshire and South Derbyshire

Works No.12 - Temporary Access Works

Temporary accesses within the works limits for construction, maintenance, or diversion of the authorised development at the indicative locations shown in Schedule 3 and described below—

In East Staffordshire

Works 12.1, an existing field access to be improved to provide permanent access to the Yoxall AGI site and also to be used as a temporary construction access for ‘primary’ use (as defined in Schedule 3) from the A515 into the Yoxall AGI site, south of Yoxall. Shown at an indicative location on sheet 1 of the works plans.

Works 12.2, a temporary construction access for ‘secondary’ use (as defined in Schedule 3), on the western side of the A515, south of Yoxall. Shown at an indicative location on sheet 1 of the works plans.

Works 12.3, a temporary construction access for ‘primary’ use, on the eastern side of the A515, south of Yoxall. Shown at an indicative location on sheet 1 of the works plans.

Works 12.4, a temporary construction access for ‘restricted’ use (as defined in Schedule 3), on the western side of Meadow Lane. Shown at an indicative location on sheet 1 of the works plans.

Works 12.5, a temporary construction access for ‘restricted’ use, on the eastern side of Meadow Lane. Shown at an indicative location on sheet 1 of the works plans.

Works 12.6, a temporary construction access for ‘primary’ use, on the southern side of the B5106, west of Barton Gate. Shown at an indicative location on sheet 2 of the works plans.

Works 12.7, a temporary construction access for ‘primary’ use, on the northern side of the B5106, west of Barton Gate. Shown at an indicative location on sheet 2 of the works plans.

Works 12.8, a temporary construction access for ‘primary’ use, on the southern side of Dunstall Cross Lane. Shown at an indicative location on sheet 3 of the works plans.

Works 12.9, a temporary construction access for ‘primary’ use, on the northern side of Dunstall Cross Lane. Shown at an indicative location on sheet 3 of the works plans.

Works 12.10, a temporary construction access for ‘secondary’ use, on the western side of Scotch Hills Lane. Shown at an indicative location on sheet 3 of the works plans.

Works 12.11, a temporary construction access for ‘secondary’ use, on the eastern side of Scotch Hills Lane. Shown at an indicative location on sheet 3 of the works plans.

Works 12.12, a temporary construction access for ‘primary’ use, on the western side of Rangemore Hill. Shown at an indicative location on sheet 4 of the works plans.

Works 12.13, a temporary construction access for ‘restricted’ use, on the eastern side of Rangemore Hill. Shown at an indicative location on sheet 4 of the works plans.

Works 12.14, a temporary construction access for ‘primary’ use, on the southern side of Tatenhill, Rangemore. Shown at an indicative location on sheet 4 of the works plans.

Works 12.15, a temporary construction access for ‘primary’ use, on the northern side of Tatenhill, Rangemore. Shown at an indicative location on sheet 4 of the works plans.

Works 12.16, a temporary construction access for ‘primary’ use, on the southern side of the B5017 at Needwood. Shown at an indicative location on sheet 5 of the works plans.

Works 12.17, a temporary construction access for ‘primary’ use, on the northern side of the B5017 at Needwood. Shown at an indicative location on sheet 5 of the works plans.

Works 12.18, a temporary construction access for 'primary' use, on the southern side of Hanbury Road, Anslow Gate. Shown at an indicative location on sheet 5 of the works plans.

Works 12.19, a temporary construction access for 'primary' use, on the northern side of Hanbury Road, Anslow Gate. Shown at an indicative location on sheet 5 of the works plans.

Works 12.20, a temporary construction access for 'secondary' use, on the western side of Bushton Lane. Shown at an indicative location on sheet 6 of the works plans.

Works 12.21, a temporary construction access for 'secondary' use, on the eastern side of Bushton Lane. Shown at an indicative location on sheet 6 of the works plans.

Works 12.22, a temporary construction access for 'primary' use, on the western side of the A511 Burton Road, south of Tutbury. Shown at an indicative location on sheet 7 of the works plans.

Works 12.23, a temporary construction access for 'primary' use, on the eastern side of the A511 Burton Road, south of Tutbury. Shown at an indicative location on sheet 7 of the works plans.

Works 12.24, a temporary construction access for 'primary' use, on the southern side of Church Road, Rolleston. Shown at an indicative location on sheet 7 of the works plans.

Works 12.25, a temporary construction access for 'primary' use, on the northern side of Church Road, Rolleston. Shown at an indicative location on sheet 7 of the works plans.

Works 12.26, a temporary construction access for 'restricted' use, on the western side of Marston Lane, Rolleston. Shown at an indicative location on sheet 7 of the works plans.

Works 12.27, a temporary construction access for 'restricted' use, on the eastern side of Marston Lane, Rolleston. Shown at an indicative location on sheet 7 of the works plans.

In South Derbyshire

Works 12.28, a temporary construction access for 'restricted' use, on the western side of Etwall Road, Egginton. Shown at an indicative location on sheet 9 of the works plans.

Works 12.29, a temporary construction access for 'restricted' use, on the eastern side of Etwall Road, Egginton. Shown at an indicative location on sheet 9 of the works plans.

Works 12.30, a temporary construction access for 'primary' use, on the southern side of the A5132, Carriers Road. Shown at an indicative location on sheet 9 of the works plans.

Works 12.31, a temporary construction access for 'restricted' use, on the western side of Ash Grove Lane, Egginton. Shown at an indicative location on sheet 9 of the works plans.

Works 12.32, a temporary construction access for 'restricted' use, on the eastern side of Ash Grove Lane, Egginton. Shown at an indicative location on sheet 9 of the works plans.

Works 12.33, a temporary construction access for 'primary' use, on the southern side of the A5132, The Castleway, Willington. Shown at an indicative location on sheet 9 of the works plans.

Works 12.34, a temporary construction access for 'primary' use, on the northern side of the A5132, The Castleway, Willington. Shown at an indicative location on sheet 9 of the works plans.

Works 12.35, a temporary construction access for 'primary' use, on the western side of Findern Lane, Willington. Shown at an indicative location on sheet 10 of the works plans.

Works 12.36, a temporary construction access for 'primary' use, on the eastern side of Findern Lane, Willington. Shown at an indicative location on sheet 10 of the works plans.

Works 12.37, an existing power station access to be used for permanent access to the Willington Block Valve (Works No.4), also to be used for temporary construction access for 'primary' use, on the northern side of the A5132, Twyford Road, Willington. Shown at an indicative location on sheet 10 of the works plans.

Following construction of the authorised development, Works 12.37 shall be retained as the permanent access to Works No.4.

In East Staffordshire and South Derbyshire

Works No.13 - Streetworks

Streetworks at the indicative locations set out in Schedule 2, including –

- a) Pipeline installation work (at indicative locations 13.2 – 13.15 and 13.17 – 13.20)
- b) Access creation work (at indicative locations 13.1 – 13.21)
- c) Reinstatement work (at indicative locations 13.1 – 13.21)
- d) Marker post installation (at indicative locations 13.2 – 13.15 and 13.17 – 13.20)
- e) Cathodic protection test cable installation (at indicative locations 13.2 – 13.15 and 13.17 – 13.20)
- f) Temporary lighting

In East Staffordshire

Works No 14 - Creation of temporary car parking facilities for anglers

The creation of a temporary car park for approximately 5 cars, no larger than 15 metres x 5 metres and to be situated approximately in the indicative location shown hatched turquoise on sheet 8 of the works plans, including—

- a) The stripping and storage of topsoil
- b) The laying of geotextile
- c) The laying of hardcore
- d) Temporary fencing

PART 2 REQUIREMENTS

Interpretation

1. In this part of this Schedule—

“the County Council” means the county planning authority for the area in which the land to which the provisions of this Order apply is situated (Staffordshire County Council or Derbyshire County Council as the case may be) or any successors to their statutory functions as county planning authorities;

“the Environmental Statement” means the document certified as the Willington C Gas Pipeline Environmental Statement by the Secretary of State for the purposes of this Order;

“European Protected Species” has the meaning given in Part 3 of the Conservation of Habitats and Species Regulations 2010;

“Flood Risk Area” means the 1 in 100 year flood plain of the River Dove as identified in the Willington C Gas Pipeline Flood Risk Assessment submitted to the Secretary of State in accordance with article 34(e) of this Order and the addendum to that assessment (WCGP 030.013, Version 2, April 2014);

“highway” and “local highway authority” have the same meaning as in the Highways Act 1980; and

“stage” means a defined section or part of the authorised development (including maintenance), the extent of which is shown in a scheme submitted to and approved, in writing,

by the relevant planning authority pursuant to requirement 3 (stages of authorised development).

Time limits

2. The authorised development must commence no later than the expiration of five years beginning with the date that this Order comes into force or such longer period as the Secretary of State may hereafter direct in writing.

Stages of authorised development

3. No authorised development must commence until a written scheme setting out all the stages of the authorised development has been submitted to and approved, in writing, by the relevant planning authority.

Detailed design approval

4.—(1) No stage of the authorised development must commence until details of the layout, scale and external appearance of the following works within that stage (including any consultation responses from the Environment Agency, for those parts of the authorised development within the Flood Risk Area and from the County Council for the area of Works No.7 (The Yoxall Temporary Works Compound)) have been submitted to and approved, in writing, by the relevant planning authority—

- (a) Works No.3 - The Yoxall Above Ground Installation (the Yoxall AGI);
- (b) Works No.7 (The Yoxall Temporary Works Compound), Works No.8 (The Carriers Road Temporary Works Compound) and Works No.9 (The Willington Power Station Temporary Works Compound, lay down and storage areas and facilities);
- (c) The detailed pipeline route alignment; and
- (d) The construction corridor, including additional working areas.

(2) The works described in paragraphs (a) to (d) above must be carried out in accordance with the approved details or any subsequent revisions that have been submitted to and approved, in writing, by the relevant planning authority.

Landscaping

5.—(1) The construction of the Works No.3 (the Yoxall AGI) must not commence until a landscaping scheme, including an implementation timetable, in relation to that work has been submitted to and approved, in writing, by the relevant planning authority. The landscaping scheme must include details of all proposed hard and soft landscaping works and be based on the draft landscaping plan contained in the Environmental Statement.

(2) All landscaping works must be carried out in accordance with the approved landscaping scheme unless otherwise approved, in writing, by the relevant planning authority.

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

Hedgerows and trees

6.—(1) No construction or diversion of the authorised development, involving the cutting or lopping of trees authorised under article 32, must commence until (in relation to the relevant works) a written Hedgerow and Tree Management Plan for the management of the removal and (where appropriate) reinstatement or protection of affected hedgerows and trees within the Works limits has been approved, in writing, by the relevant planning authority.

(2) The plan must identify root protection areas and construction exclusion zones and detail the methods of protection for hedges and trees. The plan must have regard to the standards contained in BS 5837:2012 (Trees in relation to design, demolition and construction).

(3) The plan must identify affected hedges where mitigation measures are to be taken and include information, where appropriate, on the protection of retained sections, the enhancement of species poor hedgerows and a detailed reinstatement and after care plan.

(4) The plan must identify trees within and overhanging the construction area and provide a management and protection plan for those to be retained and a replanting plan for those to be removed.

(5) The removal, protection and reinstatement of the hedgerows and trees must be carried out in accordance with the approved plan unless otherwise approved, in writing, by the relevant planning authority.

(6) Hedges and trees must be reinstated in the first planting season following the completion of construction unless otherwise approved, in writing, by the relevant planning authority.

(7) Any hedge or tree planting which is part of an approved reinstatement plan that, within a period of 5 years after planting, is removed, dies or (in the opinion of the relevant planning authority) becomes seriously damaged or diseased, must be replaced in the first available planting season with planting material of the same specification as that originally planted unless otherwise approved, in writing, by the relevant planning authority.

(8) This requirement does not apply to the cutting and lopping of trees and vegetation carried out in relation to the operation or maintenance of the authorised development.

Construction traffic and highway accesses

7.—(1) No stage of the authorised development (including the removal of roadside hedges) must commence until, for that stage, a written plan based on the Transport Statement section of the Environmental Statement has been submitted to and approved, in writing, by the relevant planning authority. The plan must include details of construction traffic and highway access arrangements and include copies of and take account of any consultation responses from the local highway authority.

(2) The plan must contain details of the siting, design and layout of any new permanent or temporary means of access to a highway to be used by vehicular traffic, or any alteration to an existing means of access to a highway used by vehicular traffic.

(3) The plan must if required by the local highway authority include details of the management measures to be employed at the highway accesses and construction car parking.

(4) The plan must include details of all routes designated for construction delivery vehicles and must include details of a scheme for the signing of these routes. The designated routes must be based on those described in the Transport Statement within the Environmental Statement.

(5) Throughout the period of the construction of the authorised development, vehicle wheel washing facilities must be provided as a minimum at the sites of Works No.7 (The Yoxall Temporary Works Compound) and of Works No.8 (The Carriers Road Temporary Works Compound). Pursuant to the written plan approved under paragraph (1), all construction vehicles must have their wheels cleaned before leaving the sites.

(6) Subject to paragraph (7), the construction traffic and highway access arrangements plan must be implemented as approved unless otherwise approved, in writing, by the relevant planning authority. Any submission to vary the approved plan must include copies of and take account of any consultation responses from the local highway authority.

(7) Urgent works necessary on highway safety grounds, which would require an amendment to the approved plan, may proceed following the sole approval, in writing, of the local highway authority.

Public rights of way

8.—(1) No stage of the authorised development that would affect Staffordshire County Council Footpath 59 must commence until a written implementation plan and specification for the making up of an alternative right of way in accordance with article 11 of this Order and as described in the Public Rights of Way Management Strategy Document of the Environmental Statement has been submitted to and approved, in writing, by the relevant planning authority. The plan must include copies of and take account of any consultation responses from the local highway authority.

(2) The alternative right of way must be implemented in accordance with the approved plan and specification unless otherwise approved, in writing, by the relevant planning authority. Any submission to vary the approved plan must include copies of and take account of any consultation responses from the local highway authority.

(3) No stage of the authorised development that would affect any public right of way (other than that referred to in paragraph (1)) must commence until a written plan (based upon the Public Rights of Way Management Strategy Document of the Environmental Statement numbered WCGP 14.2.13.1) for the temporary closure and, where appropriate, diversion of the right of way has been submitted to and approved, in writing, by the relevant planning authority. The plan must include copies of and take account of any consultation responses from the local highway authority.

(4) Any temporary closure or diversion referred to in paragraph 8 (3) must be carried out in accordance with the approved plan unless otherwise approved, in writing, by the relevant planning authority. Any submission to vary the approved plan must include copies of and take account of any consultation responses from the local highway authority.

Temporary fencing and other means of enclosure

9.—(1) No stage of the authorised development must commence until details of all proposed temporary fencing or other means of enclosure for that stage have been submitted to and approved, in writing, by the relevant planning authority. The details must include copies of and take account of any consultation responses from the Environment Agency in relation to any temporary fencing that is within a Flood Risk Area.

(2) Works No.3 (The Yoxall AGI), Works No.11 (Temporary construction and maintenance works for the authorised development), Works No. 7, 8, and 9 (The Yoxall, Carriers Road and Willington Power Station Temporary Works Compounds) and any construction sites must remain enclosed with fencing at all times while they are being used for the construction, reinstatement or restoration of the authorised development.

(3) Any temporary fencing of the areas in paragraph 9(2) above must be removed when those areas cease to be used for the construction, reinstatement or restoration of the authorised development unless otherwise approved, in writing, by the relevant planning authority.

Surface water drainage and water discharge

10.—(1) No stage of the authorised development must commence until, for that stage, details of the surface water drainage system (including means of pollution control) for both temporary and permanent works have been submitted to and approved, in writing, by the relevant planning authority. The details must include copies of and take account of any consultation responses from the Environment Agency.

(2) The surface water drainage system must be constructed in accordance with the approved details unless otherwise approved, in writing, by the relevant planning authority. Any submission to vary the approved details must include copies of and take account of any consultation responses from the Environment Agency.

(3) No discharge of water used under article 14 of this Order must be made until written details of the location and rate of discharge have been submitted to and approved, in writing, by the relevant planning authority. The details must include copies of and take account of any consultation responses from the Environment Agency.

Contaminated land and groundwater

11.—(1) No stage of the authorised development must commence until a written scheme, applicable to that stage, to deal with the contamination of any land (including groundwater) within the Works limits which is likely to cause significant harm to persons or pollution of controlled waters or the environment has been submitted to and approved, in writing, by the relevant planning authority. The scheme must include copies of and take account of any consultation responses from the Environment Agency.

(2) The scheme must include an investigation and assessment report to identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose.

(3) Remedial measures must be carried out in accordance with the approved scheme unless otherwise approved, in writing, by the relevant planning authority. Any submission to vary the approved scheme must include copies of and take account of any consultation responses from the Environment Agency.

Soil handling and restoration

12.—(1) No stage of the authorised development must commence until a written scheme, applicable to that stage, to deal with the management of soil within the Works limits has been submitted to and approved, in writing, by the relevant planning authority.

(2) The scheme must include an investigation and assessment report giving details of the soil types and appropriate measures relating to the stripping, storage, handling, reinstatement and restoration of soils.

(3) Soil management works must be carried out in accordance with the approved scheme unless otherwise approved, in writing, by the relevant planning authority.

Agricultural land drainage

13.—(1) No stage of the authorised development must commence until a written scheme, applicable to that stage, to deal with agricultural land drainage within the Works limits has been submitted to and approved, in writing, by the relevant planning authority.

(2) The scheme must include an investigation and assessment report giving details of existing drainage arrangements and requirements for pre-construction works and post construction reinstatement.

(3) Works must be carried out in accordance with the approved scheme unless otherwise approved, in writing, by the relevant planning authority.

Archaeology

14.—(1) No stage of the authorised development must commence until, for that stage, a written scheme for the investigation (“WSI”) of areas of archaeological interest (as identified in the draft WSI numbered WCGP 14.2.12.5 contained in the Environmental Statement) has been submitted to and approved, in writing, by the relevant planning authority. The scheme must include copies of and take account of any consultation responses from the County Council and English Heritage.

(2) The scheme must be based on the draft WSI in the Environmental Statement and must identify areas where archaeological works are required and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(3) The WSI must identify a suitably qualified person or body that must carry out any archaeological works under the scheme.

(4) Any archaeological works must be carried out in accordance with the approved scheme unless otherwise approved, in writing, by the relevant planning authority. Any submission to vary the approved scheme must include copies of and take account of any consultation responses from the County Council and English Heritage.

Ecological Management Plan

15.—(1) No stage of the authorised development must commence until a written ecological management plan for that stage reflecting the survey results and ecological mitigation and enhancement measures included in the Environmental Statement and including details of the appointment and duties of an environmental manager/clerk of works has been submitted to and approved, in writing, by the relevant planning authority.

(2) The ecological management plan must include an implementation timetable and must be carried out in accordance with the approved plan unless otherwise approved, in writing, by the relevant planning authority.

Temporary external lighting

16. No stage of the authorised development must commence until details of any temporary external lighting to be installed at that stage, including measures to prevent light spillage, have been submitted to and approved, in writing, by the relevant planning authority. The details must include and take account of any consultation responses from the local highway authority. The temporary external lighting must be installed in accordance with the approved details unless otherwise approved, in writing, by the relevant planning authority. Any submission to vary the approved details must include copies of and take account of any consultation responses from the local highway authority.

Control of noise during construction and maintenance

17.—(1) No stage of the authorised development must commence until a written scheme for noise management during construction and maintenance of that stage has been submitted to and approved, in writing, by the relevant planning authority. The scheme must be based on the assessment and mitigation proposals contained in Chapter 10 of the Environmental Statement with reference to BS5228 (Code of Practice for noise and vibration control at construction and open sites).

(2) The scheme must set out the particulars of—

- (a) the works and the method by which they are to be carried out;
- (b) the noise attenuation measures to be taken to minimise noise resulting from the works, including any noise limits; and
- (c) the provision of mitigation and, where relevant, agreed compensation terms for noise disturbance.

(3) The construction and maintenance works must be undertaken in accordance with the approved scheme unless otherwise approved, in writing, by the relevant planning authority.

Construction hours

18.—(1) Construction work must not take place outside the following hours—

Monday to Friday 0700 – 1900 (excluding bank holidays)

Saturday 0700 – 1700

Except if it—

- (a) is associated with an emergency;
- (b) is carried out with the prior written approval of the relevant planning authority;
- (c) does not cause night-time noise limits approved under requirement 17 to be exceeded; or
- (d) is required for the crossings of the River Dove, Carriers Road (A5132), A38, A515, Trent and Mersey Canal or railway lines and any other crossing locations approved, in writing, by the relevant planning authority.

(2) Heavy commercial vehicle traffic associated with the construction of the authorised development must not enter or leave the construction site outside of the following hours—

Monday to Friday 0700 – 1900 (excluding bank holidays)

Saturday 0800 – 1600

Except if such movement—

- (a) is associated with an emergency; or
- (b) is carried out with the prior written approval of the relevant planning authority.

Control of dust emissions

19.—(1) The authorised development must not commence until a written scheme for the management and mitigation of dust emissions has been submitted to and approved, in writing, by the relevant planning authority.

(2) The approved scheme for the management and mitigation of dust emissions must be implemented before and maintained during the construction of the relevant stage of the authorised development unless otherwise approved, in writing, by the relevant planning authority.

European Protected Species

20.—(1) No stage of the authorised development must commence until, for that stage a scheme of protection and mitigation measures in compliance with all relevant licensing requirements for licensable activities in respect of European Protected Species within that stage has been submitted to and approved, in writing, by the relevant planning authority.

(2) The scheme must also include details of the measures to be taken to avoid or minimise —

- (a) significant adverse impacts to Great Crested Newts and their breeding habitats; and
- (b) significant adverse impacts on bats and bat roosts in relation to the final route selection, the arrangement and management of construction working areas and the construction of the authorised development.

(3) The authorised development must be carried out in accordance with the approved scheme unless otherwise approved, in writing, by the relevant planning authority, such variation to comply with the requirements of paragraphs (1) and (2) above.

Reinstatement of land used temporarily for construction

21. Any land within the Works limits which is used temporarily for construction must be reinstated to its former condition (or such condition as the relevant planning authority may approve in writing) within six months of completion of the authorised development unless otherwise approved, in writing, by the relevant planning authority.

SCHEDULE 2

Article 10

STREETS SUBJECT TO STREET WORKS

<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>
<i>Area</i>	<i>Street subject to street works</i>	<i>Indicative location on the works plans</i>	<i>Works plans sheet number</i>
East Staffordshire	A515, South of Yoxall	13.1	1
East Staffordshire	A515, South of Yoxall	13.2	1
East Staffordshire	Meadow Lane, Yoxall	13.3	1
East Staffordshire	B5016, Barton Gate	13.4	2
East Staffordshire	Dunstall Cross Lane	13.5	3
East Staffordshire	Scotch Hills Lane	13.6	3

East Staffordshire	Rangemore Hill	13.7	4
East Staffordshire	Tatenhill, Rangemore	13.8	4
East Staffordshire	B5017, Needwood	13.9	5
East Staffordshire	Hanbury Road, Anslow Gate	13.10	5
East Staffordshire	Bushton Lane	13.11	6
East Staffordshire	A511 Burton Road	13.12	7
East Staffordshire	Church Road, Rolleston	13.13	7
East Staffordshire	Marston Lane, Rolleston	13.14	7
South Derbyshire	Etwall Road	13.15	9
South Derbyshire	A5132 Carriers Road	13.16	9
South Derbyshire	Ash Grove Lane	13.17	9
South Derbyshire	A5132 The Castleway	13.18	9
South Derbyshire	B5008 Etwall Road	13.19	10
South Derbyshire	Findern Lane	13.20	10
South Derbyshire	Twyford Road	13.21	10

SCHEDULE 3
ACCESS TO WORKS

Article 12

<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>
<i>Area</i>	<i>Description of access</i>	<i>Type</i>	<i>Use Restrictions^(*)</i>	<i>Indicative location on the works plans</i>	<i>Works plans sheet number</i>
East Staffordshire	A515, South of Yoxall	Existing Permanent	Primary	12.1	1
East Staffordshire	A515 (West), South of Yoxall	Temporary	Secondary	12.2	1
East Staffordshire	A515 (East), South of Yoxall	Temporary	Primary	12.3	1
East Staffordshire	Meadow Lane (West)	Temporary	Restricted	12.4	1
East Staffordshire	Meadow Lane (East)	Temporary	Restricted	12.5	1
East Staffordshire	B5016 (South), Barton Gate	Temporary	Primary	12.6	2
East Staffordshire	B5016 (North), Barton Gate	Temporary	Primary	12.7	2
East Staffordshire	Dunstall Cross Lane (South)	Temporary	Primary	12.8	3
East Staffordshire	Dunstall Cross Lane (North)	Temporary	Primary	12.9	3
East Staffordshire	Scotch Hills Lane (West)	Temporary	Secondary	12.10	3
East Staffordshire	Scotch Hills Lane (East)	Temporary	Secondary	12.11	3
East Staffordshire	Rangemore Hill (West)	Temporary	Primary	12.12	4
East Staffordshire	Rangemore Hill (East)	Temporary	Restricted	12.13	4
East Staffordshire	Tatenhill (South), Rangemore	Temporary	Primary	12.14	4
East Staffordshire	Tatenhill (North), Rangemore	Temporary	Primary	12.15	4
East Staffordshire	B5017 (South), Needwood	Temporary	Primary	12.16	5
East Staffordshire	B5017 (North), Needwood	Temporary	Primary	12.17	5
East Staffordshire	Hanbury Road (West), Anslow Gate	Temporary	Primary	12.18	5
East Staffordshire	Hanbury Road (East), Anslow Gate	Temporary	Primary	12.19	5

East Staffordshire	Bushton Lane (West)	Temporary	Secondary	12.20	6
East Staffordshire	Bushton Lane (East)	Temporary	Secondary	12.21	6
East Staffordshire	A511 Burton Road (West), Tutbury	Temporary	Primary	12.22	7
East Staffordshire	A511 Burton Road (East), Tutbury	Temporary	Primary	12.23	7
East Staffordshire	Church Road, Rolleston (South)	Temporary	Primary	12.24	7
East Staffordshire	Church Road, Rolleston (North)	Temporary	Primary	12.25	7
East Staffordshire	Marston Lane, Rolleston (West)	Temporary	Restricted	12.26	7
East Staffordshire	Marston Lane, Rolleston (East)	Temporary	Restricted	12.27	7
South Derbyshire	Etwall Road (West), Egginton	Temporary	Restricted	12.28	9
South Derbyshire	Etwall Road (East), Egginton	Temporary	Restricted	12.29	9
South Derbyshire	A5132, Carriers Road	Temporary to compound	Primary	12.30	9
South Derbyshire	Ash Grove Lane (West), Egginton	Temporary	Restricted	12.31	9
South Derbyshire	Ash Grove Lane (East), Egginton	Temporary	Restricted	12.32	9
South Derbyshire	A5132, The Castleway (South), Willington	Temporary	Primary	12.33	9
South Derbyshire	A5132, The Castleway (North), Willington	Temporary	Primary	12.34	9
South Derbyshire	Findern Lane (West), Willington	Temporary	Primary	12.35	10
South Derbyshire	Findern Lane (East), Willington	Temporary	Primary	12.36	10
South Derbyshire	A5132, Twyford Road, Willington	Existing Permanent	Primary	12.37	10

(*) Use restrictions—

Primary use: suitable for all construction traffic

Secondary use: not to be used for HGVs but suitable for other construction traffic

Restricted use: not to be used for construction traffic but can be used as a plant crossing

SCHEDULE 4

Article 15(1)

LAND IN WHICH SURVEYS AND INVESTIGATIONS MAY BE CARRIED OUT

<i>(1)</i>	<i>(2)</i>
1, 2, 3, 3B, 4, 4B, 5, 5B, 6, 6B, 8, 9, 9B, 10, 11, 11B, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 23B, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 44, 45, 45B, 46, 47, 47B, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 77B, 78, 78B, 79, 79B, 79C, 80, 81, 82, 83, 84, 84B, 84C, 85, 86, 87, 88, 89, 90, 90B, 90C, 91, 92, 93, 94, 95, 98, 99, 100, 101, 102, 102B, 102C, 102D, 103, 104, 105, 106, 107, 108, 108B, 109, 109B, 109C, 109D, 109E, 110, 110B, 110C, 111, 112, 113, 114, 119, 119B, 120, 121, 122, 123, 124, 125, 126, 127, 128, 128B, 129, 131, 131B, 132, 134, 134B, 134C, 134D, 135, 136, 137	<p>Temporary rights of access, with or without vehicles, plant, apparatus and materials:</p> <p>(a) to carry out soil tests, surveys (including environmental, ecological and archaeological surveys) and other investigation works including the making of trial holes and boreholes; and</p> <p>(b) to carry out non-intrusive environmental wildlife surveys on the land and on each waterbody on the land including the assessment of habitats.</p>
7	<p>Temporary rights of access, with or without vehicles, plant, apparatus and materials:</p> <p>(a) to carry out surveys and other investigation works (including environmental, ecological and archaeological surveys but excluding the making of trial holes and boreholes); and</p> <p>(b) to carry out non-intrusive environmental wildlife surveys on the land and on each waterbody on the land including the assessment of habitats.</p>
139	Temporary right of access, plant, apparatus and materials to carry out surveys and other investigation work (including environmental, ecological and archaeological surveys but excluding the making of trial holes and boreholes).
Those plots described in the book of reference prefixed with S	The right to access the land from time to time, with or without vehicles, to carry out non-intrusive environmental wildlife surveys on the land and on each waterbody on the land including the assessment of habitats.

SCHEDULE 5

Article 18(1) and Article 27(1)

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

For the purposes of this Schedule “maintain” includes to inspect, maintain, adjust, alter, repair, test, cleanse, re-lay, divert, make safe, decommission, reconstruct, demolish, abandon, replace, remove and improve the authorised development or any of its parts and any derivative of “maintain” should be construed accordingly and includes diversion of the authorised development in accordance with articles 5 and 7.

<i>(1)</i>	<i>(2)</i>
<i>Number of land shown on land plans</i>	<i>New rights over the land to be acquired</i>
1	<p>(a) Right of access to construct, place and use the pipeline together with all necessary ancillary equipment, works and apparatus;</p> <p>(b) Right of access, once the pipeline is laid, to inspect and to excavate and to open up and/or carry out works on a strip of land 18.3 metres in width (under which the pipeline has been laid) in order to maintain the pipeline;</p> <p>(c) Right of access to execute any other works for the purposes of or incidental to the construction, use or maintenance of the pipeline or in consequence of its being placed there including but not limited to drainage works, ground and aerial marker posts, temporary bridges and pedestrian crossings over ditches, protective concrete slabs, culverts to facilitate inspection and maintenance and cathodic or other protection works; and</p> <p>(d) Right of access with or without vehicles, plant, apparatus and materials to pass over the land for the purposes of exercising or in connection with the rights referred to above.</p>
1, 2	<p>Right of access with or without vehicles, plant, apparatus and materials to pass over and use the land for construction purposes in connection with the construction of the pipeline and/or the above ground installation.</p>
7	<p>(a) Right of access to construct, place and use the pipeline together with all necessary ancillary equipment, works and apparatus;</p> <p>(b) Right of access, once the pipeline is laid, to maintain the pipeline; and</p> <p>(c) Right of access to execute any other works for the purposes of or incidental to the construction, use or maintenance of the pipeline or in consequence of its being placed there including but not limited to drainage works, ground and aerial marker posts, inspection and maintenance, culverts to facilitate inspection and maintenance and cathodic or other protection works.</p> <p>(d) Right of access with or without vehicles, plant, apparatus and materials to pass over the land for the purposes of exercising or in connection with the</p>

	rights referred to above.
10	<p>(a) Right of access to construct, place and use the pipeline together with all necessary ancillary equipment, works and apparatus;</p> <p>(b) Right of access, once the pipeline is laid, to excavate and to open up and/or carry out works on any unbuilt upon land in order to maintain the pipeline;</p> <p>(c) Right of access to execute any other works for the purposes of or incidental to the construction use or maintenance of the pipeline or in consequence of its being placed there including but not limited to drainage works, ground and aerial marker posts, temporary bridges and pedestrian crossings over ditches, protective concrete slabs, culverts to facilitate inspection and maintenance and cathodic or other protection works; and</p> <p>(d) Right of access with or without vehicles, plant, apparatus and materials to pass over the land for the purposes of exercising or in connection with the rights referred to above.</p>
11	Right of access with or without vehicles, plant, apparatus and materials to pass over the land in connection with the construction use or maintenance of the pipeline.
11B, 19, 20, 24, 26, 54, 58, 83, 89, 90, 90C, 91, 92, 93, 95, 108, 108B, 109B, 109D, 109E, 110, 112, 128B, 134, 134B	<p>(a) Right of access to construct, place and use the pipeline together with all necessary ancillary equipment, works and apparatus;</p> <p>(b) Right of access, once the pipeline is laid, to excavate and to open up and/or carry out works on any unbuilt upon land within a strip of land 30 metres in width (under which the pipeline has been laid) in order to maintain the pipeline;</p> <p>(c) Right of access to execute any other works for the purposes of or incidental to the construction, use or maintenance of the pipeline or in consequence of its being placed there including but not limited to drainage works, ground and aerial marker posts, temporary bridges and pedestrian crossings over ditches, protective concrete slabs, culverts to facilitate inspection and maintenance and cathodic or other protection works; and</p> <p>(d) Right of access with or without vehicles, plant, apparatus and materials to pass over the land for the purposes of exercising or in connection with the rights referred to above.</p>
80, 81, 84C	Right of access with or without vehicles, plant, apparatus and materials to pass over the land in connection with the construction use or maintenance of the pipeline.
102C	Right of access to create an access and, with or without vehicles, plant apparatus and materials, to pass over the land in connection with the construction and use of the Works No.8 Carriers Road Temporary Works Compound.
130, 130B, 133, 138	(a) Right of access to construct, place and use the

	<p>pipeline together with all necessary ancillary equipment, works and apparatus;</p> <p>(b) Right of access, once the pipeline is laid, to maintain the pipeline; and</p> <p>(c) Right of access to execute any other works for the purposes of or incidental to the construction of the pipeline or in consequence of its being placed there including but not limited to drainage works, and inspection, monitoring, maintenance, culverts to facilitate inspection and maintenance and cathodic or other protection works.</p>
<p>138B, 139, 139B</p>	<p>(a) Right of access to construct, place and use the pipeline together with all necessary ancillary equipment, works and apparatus;</p> <p>(b) Right of access, once the pipeline is laid, to maintain the pipeline; and</p> <p>(c) Right of access to execute any other works for the purposes of or incidental to the construction use or maintenance of the pipeline or in consequence of its being placed there including but not limited to drainage works, ground and aerial marker posts, and inspection, monitoring, maintenance, culverts to facilitate inspection and maintenance and cathodic or other protection works.</p> <p>(d) Right of access with plant, apparatus and materials to pass over the land on foot for the purposes of exercising or in connection with the rights referred to above.</p>

SCHEDULE 6 Article 18(1) and Article 27(1)

LAND OVER WHICH RESTRICTIVE OBLIGATIONS AND RIGHT OF SUPPORT ARE REQUIRED

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Number of land shown on land plans</i>	<i>Details of restrictive covenants and right of support required</i>
East Staffordshire	1	<p>(a) Not to erect, construct or place or allow to be erected, constructed or placed any building or structure on or carry out or allow to be carried out any excavation (save normal agricultural operations which shall not damage or otherwise affect the safety or integrity of the pipeline) of the part of the land comprising a strip eighteen point three (18.3) metres in width in which the pipeline is centrally situated (the “Plot 1 Easement Strip”).</p> <p>(b) Not to plant or allow to be planted or otherwise subsist on the Plot 1 Easement Strip any trees.</p> <p>(c) Not materially to raise or lower or allow to be raised or lowered the existing level of the Plot 1 Easement Strip.</p> <p>(d) Not to undermine or damage or allow to be undermined or damaged the pipeline comprising part of the authorised development or do or allow to be done anything which may interfere with free flow and passage through the pipeline.</p> <p>(e) The right to continuous vertical and lateral support for the authorised development.</p>
East Staffordshire and South Derbyshire	7, 10, 11B, 19, 20, 24, 26, 54, 58, 83, 89, 90, 90C, 91, 92, 93, 95, 108,108B,109B, 109D, 109E, 110, 112,128B, 134, 134B	<p>(a) Not to erect, construct or place or allow to be erected, constructed or placed any building or structure on or carry out or allow to be carried out any excavation (save normal agricultural operations which shall not damage or otherwise affect the safety or integrity of the pipeline) of the part of the land comprising a strip seven (7) metres in width in which the pipeline is centrally situated (the “Easement Strip”).</p> <p>(b) Not to plant or allow to be planted or otherwise subsist on the Easement Strip any trees.</p> <p>(c) Not materially to raise or lower or allow to be raised or lowered the existing level of the Easement Strip.</p> <p>(d) Not to undermine or damage or allow to be undermined or damaged the pipeline comprising part of the authorised development or do or allow to be done anything which may interfere with free flow and passage through the pipeline.</p> <p>(e) The right to continuous vertical and lateral support for the authorised development.</p>
South Derbyshire	130, 130B, 133, 138	<p>(a) Not to erect, construct or place or allow to be erected, constructed or placed any building or structure on or carry out or allow to be carried out</p>

		<p>any excavation (save normal railway apparatus and equipment which shall not damage or otherwise affect the safety or integrity of the pipeline) of the part of the land comprising the Easement Strip.</p> <p>(b) Not to plant or allow to be planted or otherwise subsist on the Easement Strip any trees.</p> <p>(c) Not materially to raise or lower or allow to be raised or lowered the existing level of the Easement Strip.</p> <p>(d) Not to undermine or damage or allow to be undermined or damaged the pipeline comprising part of the authorised development or do or allow to be done anything which may interfere with free flow and passage through the pipeline.</p> <p>(e) The right to continuous vertical and lateral support for the authorised development.</p>
South Derbyshire	139	<p>(a) Not to erect, construct or place or allow to be erected, constructed or placed any building or structure on or carry out or allow to be carried out any excavation (save normal waterways apparatus and equipment which shall not damage or otherwise affect the safety or integrity of the pipeline) of the part of the land comprising the Easement Strip.</p> <p>(b) Not to plant or allow to be planted or otherwise subsist on the Easement Strip any trees.</p> <p>(c) Not materially to raise or lower or allow to be raised or lowered the existing level of the Easement Strip.</p> <p>(d) Not to undermine or damage or allow to be undermined or damaged the pipeline comprising part of the authorised development or do or allow to be done anything which may interfere with free flow and passage through the pipeline.</p> <p>(e) The right to continuous vertical and lateral support for the authorised development.</p>
South Derbyshire	138B, 139B	<p>(a) Not to erect, construct or place or allow to be erected, constructed or placed any building or structure on or carry out or allow to be carried out any excavation (save normal railways or waterways apparatus and equipment which shall not damage or otherwise affect the safety or integrity of the pipeline) of the part of the land comprising the Easement Strip.</p> <p>(b) Not to plant or allow to be planted or otherwise subsist on the Easement Strip any trees.</p> <p>(c) Not materially to raise or lower or allow to be raised or lowered the existing level of the Easement Strip.</p> <p>(d) Not to undermine or damage or allow to be undermined or damaged the pipeline comprising part of the authorised development or do or allow to be done anything which may interfere with free flow and passage through the pipeline.</p> <p>(e) The right to continuous vertical and lateral support for the authorised development.</p>

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) for the words “land is acquired or taken” there are substituted the words “a right over land is purchased”; and
- (b) for the words “acquired or taken from him” there are substituted the words “over which the right is exercisable”.

Application of the 1965 Act

3.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired; or
- (b) the land over which the right is or is to be exercisable.

(2) Without limitation on the scope of sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

4. Section 11 of the 1965 Act (powers of entry) is modified so as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

(a) 1973 c.26. Section 20 was amended by subsection (6) and (12) of section 146 of, and Schedule 13 to, the Road Traffic Regulation Act 1984. Subsection (10) of section 20 was repealed by section 343(3) of, and Schedule 25 to, the Highways Act 1980 and subsection (11) was repealed by section 155 of, and Schedule 25 to, the Rent Act 1977 (c.42). Section 44 was amended by Schedule 24 to the Highways Act 1980, by section 67(1) and Schedule 7 to the Gas Act 1986 (c.44) and Schedule 1 to the Water Consolidation (Consequential Provisions) Act 1991 (c.60). There are other amendments to this Act not relevant to this Order.

SCHEDULE 8

Article 24

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Number of land shown on land plans</i>	<i>Purpose for which temporary possession may be taken</i>
East Staffordshire and South Derbyshire	All plots described in the Book of Reference and shown on the land plans excluding plots prefixed with 'S' and excluding the plot numbered 115	Carrying out the authorised development granted by this Order and shown on the works plans sheets 1-10, including— Fencing, vegetation clearance, ecological mitigation work (where necessary), topsoil stripping, hedgerow removal, construction of access facilities, taking of access, excavation of shafts and tunnels, pipeline construction work, constructing temporary bridges and culverts, constructing micro-tunnels and shafts, constructing temporary compounds, reinstatement and marking and any other works required for the carrying out of the authorised development.

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE
STATUTORY UNDERTAKERS

1. For the protection of the statutory undertakers referred to in this part of this Schedule, the following provisions, unless otherwise agreed in writing between the undertaker and the statutory undertaker concerned, will have effect.

2. In this part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the undertaker in question to fulfill its statutory functions in a manner not less efficient than previously;

“apparatus” means any apparatus within the Works limits as follows—

- (a) in the case of an electricity statutory undertaker, electric lines or electrical plant (as defined in section 64 of the Electricity Act 1989), belonging to or maintained by that undertaker for the purposes of electricity supply;
- (b) in the case of a gas statutory undertaker, any gas mains, pipes or other apparatus belonging to or maintained by that gas undertaker for the purposes of gas supply;
- (c) in the case of a water statutory undertaker, water mains, pipes or other apparatus belonging to or maintained by that water undertaker for the purposes of water supply; and
- (d) in the case of a sewerage statutory undertaker—
 - (i) any drain or works vested in the statutory undertaker under the Water Industry Act 1991; and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and in each case includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land; and

“statutory undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(a);
- (c) a water undertaker within the meaning of the Water Industry Act 1991; and
- (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991, for the area of the authorised development (save National Grid Gas plc and National Grid Electricity Transmission plc, which are not “statutory undertakers” for the purposes of

(a) 1986 c.44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45), and was further amended by section 76 of the Utilities Act 2000 (c. 27)

this part of this Schedule), and in relation to any apparatus, means the statutory undertaker to whom it belongs or by whom it is maintained.

3. This part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the statutory undertaker are regulated by the provisions of Part 3 of the 1991 Act.

4. Regardless of any provision in this Order or anything shown on the book of reference and on the land plans, the undertaker will not acquire any apparatus otherwise than by agreement.

5.—(1) If, in the exercise of the powers conferred by this Order or otherwise obtained by private treaty, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus will not be removed under this part of this Schedule and any right of a statutory undertaker to maintain that apparatus in that land will not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the statutory undertaker in question.

(2) If, for the purpose of executing any works in, on, over or under any land purchased, held, appropriated or used under this Order and/or in, on, over or under any land within the Works limits, the undertaker requires the removal of any apparatus placed in that land, it must give to the statutory undertaker in question written notice of that requirement, together with a plan and section of the work proposed.

(3) If alternative apparatus or any part of such apparatus is to be constructed as a consequence of the removal of apparatus placed on the land referred to in paragraph 5 (2), the statutory undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in other land in which the alternative apparatus is to be constructed.

(4) The statutory undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 35 (Arbitration), and after the grant to the statutory undertaker of any such facilities and rights as are referred to in paragraph 5 (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this part of this Schedule.

(5) Regardless of anything in paragraph 5 (4), if the undertaker gives notice in writing to the statutory undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus, that work, instead of being executed by the statutory undertaker, will be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the statutory undertaker.

(6) Nothing in paragraph 5 (5) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

6.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 5 (2) that will or may adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 5 (2), the undertaker will submit to the statutory undertaker in question a plan, section and description of the works to be executed.

(2) Those works are to be executed only in accordance with the plan, section and description submitted under paragraph 6 (1) and in accordance with such reasonable requirements as may be made in accordance with paragraph 6 (3) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the statutory undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a statutory undertaker under paragraph 6 (2) will be made within a period of 21 days beginning with the date on which a plan, section and description under paragraph 6 (1) are submitted to it.

(4) If a statutory undertaker in accordance with paragraph 6 (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written

notice to the undertaker of that requirement, paragraphs 1 to 6 will apply as if the removal of the apparatus had been required by the undertaker under paragraph 5 (2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with paragraph 6 (1) in a case of emergency but in that case it must give to the statutory undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with paragraph 6 (2) in so far as is reasonably practicable in the circumstances.

7.—(1) Subject to the following provisions of this paragraph, the undertaker will repay to a statutory undertaker the proper and reasonable expenses incurred by that statutory undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus (including the proper and reasonable costs or compensation payable in connection with the acquisition of land for that purpose) which may be required in consequence of the execution of any such works as are referred to in paragraph 5 (2).

(2) The value of any apparatus removed under the provisions of this part of this Schedule is to be deducted from any sum payable under paragraph 7 (1), that value being calculated after removal.

(3) If in accordance with the provisions of this part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by undertaker or, in default of agreement, is not determined by arbitration in accordance with article 35 (Arbitration) to be necessary, then, if such placing involves cost in the construction of works under this part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the statutory undertaker in question by virtue of paragraph 7 (1) is to be reduced by the amount of that excess.

(4) For the purposes of paragraph 7 (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this paragraph 7 (5) would be payable to a statutory undertaker in respect of works by virtue of paragraph 7 (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the statutory undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

8.—(1) Subject to paragraphs 8 (2) and 8 (3), if by reason, or in consequence, of the construction of any such works referred to in paragraph 5 (2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a statutory undertaker, or there is any interruption in

any service provided, or in the supply of any goods, by any statutory undertaker, the undertaker must—

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

(2) Nothing in paragraph 8 (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 a statutory undertaker, its officers, servants, contractors or agents.

(3) A statutory undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise may 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.

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

1. For the protection of the operator referred to in this part of the Schedule, the following provisions, unless otherwise agreed in writing between the undertaker and the operator concerned, will have effect.

2.—(1) In this Part of this Schedule—

“2003 Act” means the Communications Act 2003(a);

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system are to be construed in accordance with paragraph 1(3A) of that code;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act;

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

“operator” means the operator of an electronic communications code network.

3. The exercise of the powers conferred by article 27 (Statutory undertakers) is subject to paragraph 23 of Schedule 2 to the Telecommunications Act 1984(b).

4.—(1) Subject to paragraphs 4 (2) to 4 (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

(a) 2003 c.21

(b) 1984 c.12. There are amendments to this Act not relevant to this Order.

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works, or other property of an operator); or
- (b) there is any interruption in the supply of the service provided by an operator,
the undertaker will bear and pay the reasonable and proper cost incurred by the operator in making good such damage or restoring the supply as the case may be and will make proper and reasonable compensation to an operator for any other expenses, loss, damages, penalty or costs incurred by it.

(2) Nothing in paragraph 4 (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 an operator, its officers, servants, contractors or agents.

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

5. This part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

6. Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 3

FOR THE PROTECTION OF NETWORK RAIL

1. The following provisions of this Schedule will have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 15, any other person on whom rights or obligations are conferred by that paragraph.

2. In this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of his powers under section 8 of the Railways Act 1993;

“Network Rail” means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail Infrastructure Limited and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail Infrastructure Limited or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail Infrastructure Limited for the purposes of such railway or works, apparatus or equipment; and

“specified work” means so much of any of the authorised development to be situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

3.—(1) Where under this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition of rights over or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

4.—(1) The undertaker shall not exercise the powers conferred by article 15 (Authority to survey and investigate the land) and/or article 18 (Compulsory acquisition of rights), article 24 (Temporary use of land for carrying out the authorised development) and/or article 25 (Temporary use of land for maintaining authorised development) or the powers conferred by section 11(3) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, as applied by article 27 (Statutory Undertakers) to this Order, in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker shall not under the powers of this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld or delayed but may be given subject to reasonable conditions.

5.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated his disapproval of those plans and the grounds of his disapproval, the undertaker may serve upon the engineer written notice requiring the engineer to intimate his approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated his approval or disapproval, he will be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail will construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying his approval of the plans, the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation, de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes will be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works will be carried out at the expense of the undertaker in either case with all reasonable dispatch and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to his reasonable satisfaction.

6.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 5 (4) must, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable and proper expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Schedule will impose any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

7. The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as he may reasonably require with regard to a specified work or the method of constructing it.

8. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

9.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the

continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker will pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail will assume construction of that part of the specified work and the undertaker will, notwithstanding any such approval of a specified work under paragraph 5 (3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer will, in respect of the capitalised sums referred to in this paragraph and paragraph 10 (a), provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving will be set off against any sum payable by the undertaker to Network Rail under this paragraph.

10. The undertaker will repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5 (3) or in constructing any protective works under the provisions of paragraph 5 (4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by him of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it must be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

11.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph will apply to EMI only to the extent that such EMI is not attributable to any change to Network Rail's apparatus carried out after approval of plans under paragraph 5 (1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker's compliance with sub-paragraph (3)—

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution will be selected at the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5 (1) will have effect subject to the sub-paragraph.

(6) If at any time prior to the commencement of the commercial operation of the authorised development and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised development causes EMI, then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6)—

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 6.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15 (1) must apply to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and

facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 10 (a), any modifications to Network Rail's apparatus under this paragraph will be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph, the reference in article 35 (Arbitration) to a single arbitrator to be agreed between the parties will be read as a reference to the Institution of Electrical Engineers.

12. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

13. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

14. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work will, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

15.—(1) The undertaker will pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Schedule which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction or maintenance of a specified work or the failure thereof; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work,

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission. The fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision will not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand must be made without the prior written consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) will include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail will promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs will, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail’s railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

16. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Schedule (including the amount of the relevant costs mentioned in paragraph 15) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Schedule (including any claim relating to those relevant costs).

17. In the assessment of any sums payable to Network Rail under this Schedule there will not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Schedule or increasing the sums so payable.

18. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works and/or land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

19. Nothing in this Order, or in any enactment incorporated with or applied by this Order, will prejudice or affect the operation of Part I of the Railways Act 1993.

20. The undertaker will give written notice to Network Rail if any submission is proposed to be made by the undertaker for the Secretary of State’s certification, under article 34 (Certification of plans etc.) of this Order and any such notice must be given no later than 28 days before any such submission is made and must describe or give (as appropriate)—

- (a) the nature of the submission to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

21. The undertaker must, no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 34 (Certification of plans etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

PART 4

FOR THE PROTECTION OF THE CANAL & RIVER TRUST

1. The following provisions will have effect for the protection of the Canal & River Trust, unless otherwise agreed in writing between the undertaker and the Canal & River Trust.

2. In this part of this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by the Canal & River Trust and approved by the undertaker for the purposes of this Order;

“Canal & River Trust” means the Canal & River Trust acting as a trustee of the Waterways Infrastructure Trust or any successor body performing the same functions which holds any waterways within the Works limits;

“code of practice” means the Code of Practice for Works Affecting British Waterways April 2010 as amended from time to time;

“plans” includes sections, designs, design data, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), programmes and details of the extent, timing and duration of any proposed use and/or occupation of any Canal & River Trust property;

“specified work” means so much of any of the authorised development to be situated upon, across, under, over or within the waterway or that may in any way adversely affect the waterway;

“Canal & River Trust property” means any land owned by the Canal & River Trust within the Works limits and includes land covered with water, sub-soil, air space and waterways;

“1940 Conveyance rights” means such rights as may be enjoyed by the Canal & River Trust over plot 119 (as shown on the land plans) pursuant to a Conveyance dated 23 May 1940 as detailed in registered title number DY 160721; and

“waterway” means the canal within the Works limits and includes any pond or other waterway or course situated on Canal & River Trust property, any works, services, apparatus, equipment, lands (including subsoil) or premises belonging to or under the control of the Canal & River Trust and held or used by it in connection with its statutory functions.

3.—(1) Where under this Schedule or anywhere else under this Order the Canal & River Trust (or the engineer) is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that the Canal & River Trust should observe the provisions of its code of practice for works affecting waterways and where the Code of Practice is adhered to and its provisions observed, such consent must not be unreasonably withheld. For the avoidance of doubt, any consent may be issued subject to reasonable conditions including any condition which requires compliance with the Code of Practice or any applicable part thereof and in respect of article 14, it shall be reasonable to impose conditions requiring the payment of such charges as are typically charged by the owner of the relevant waterway.

(2) In so far as any specified work or the acquisition of rights under and/or over or use of the Canal & River Trust property is or may be subject to the code of practice, the Canal & River Trust must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from that code; and
- (b) use its reasonable endeavours to avoid any conflict arising between the application of that code and the proper implementation of the authorised development pursuant to this Order.

4.—(1) The undertaker will not exercise the powers conferred by article 18 (Compulsory acquisition of rights) or the powers conferred by section 11 (3) of the 1965 Act against the Canal & River Trust in respect of any Canal & River Trust property

(2) The undertaker may only exercise the powers conferred by articles 19 (Power to override easements and other rights) and 20 (Private Rights of Way) in respect of the 1940 Conveyance rights subject to it complying with the provisions of paragraphs 4 (3) and 4 (4) of his Part of this Schedule;

(3) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any of the Canal & River Trust property, unless preventing such access is with the consent of the Canal & River Trust.

(4) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, as applied by article 27 (Statutory Undertakers) to this Order, in relation to any right of access

of the Canal & River Trust to Canal & River Trust property, but such right of access may be diverted with the consent of the Canal & River Trust.

5.—(1) The undertaker must before commencing construction of any specified work or carrying out any works on Canal & River Trust property whatsoever supply to the Canal & River Trust proper and sufficient plans of that work for the reasonable approval (having regard to the undertaker's timetable for the construction of the authorised development) of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration in accordance with article 35 (Arbitration).

(2) If by the end of the period of 28 days beginning with the date on which such plans have been supplied to the Canal & River Trust the engineer has not intimated his disapproval of those plans and the grounds of his disapproval, the undertaker may serve upon the engineer written notice requiring the engineer to intimate his approval or disapproval within a period of 14 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the 14 days the engineer has not intimated his approval or disapproval, he will be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph 5 (2) the Canal & River Trust gives notice to the undertaker that the Canal & River Trust desires itself to construct any part of a specified work which in the opinion of the engineer may or will affect the stability of the Canal & River Trust property or the safe operation of any waterway, then if the undertaker requires such part of such specified work to be constructed the Canal & River Trust shall construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision of the undertaker.

(4) When signifying his approval of the plans, the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of the waterway and/or the continued safe and efficient use of the waterway or any of the Canal & River Trust property and such protective works (which for the avoidance of doubt may include requirements to fence any proposed works in order to separate the same from the waterways, ponds or watercourses situated on the Canal & River Trust property either on a permanent or temporary basis) as may be reasonably necessary for those purposes will be constructed by the undertaker, as agreed between the parties or settled by arbitration in accordance with article 35 (Arbitration) and such protective works will be carried out at the expense of the undertaker with all reasonable dispatch and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to his reasonable satisfaction.

6.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 5 (3) must, when commenced, be constructed—

- (a) with all reasonable dispatch (having regard to the undertaker's timetable for construction of the authorised development) in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage or disturbance as is possible to the waterway;
- (d) in such a manner to ensure that no materials are discharged or deposited into any stream, watercourse, waterway, pond or any other water feature on or forming part of the Canal & River Trust property; and
- (e) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of the waterway.

(2) If any damage to the waterway is caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must make good such damage and must pay to the

Canal & River Trust all reasonable and proper expenses that the Canal & River Trust may incur or may be put and reasonable and proper compensation for any loss which it may sustain by reason of such damage, interference or obstruction.

(3) Nothing in this Schedule will impose any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligent act or default of the Canal & River Trust or its servants, contractors or agents or any liability on the Canal & River Trust with respect of any damage, costs, expenses or loss attributable to the negligent act or default of the undertaker or its servants, contractors or agents.

7. The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as he may reasonably require with regard to a specified work or the method of constructing it.

8. The Canal & River Trust must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by the Canal & River Trust under this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

9. The undertaker will repay to Canal & River Trust all reasonable and proper fees, costs, charges and expenses reasonably incurred by Canal & River Trust in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by him of the construction of a specified work.

10. If at any time during or after the completion of a specified work, the Canal & River Trust gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of the waterway, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect the operation of the waterway.

11.—(1) The undertaker will pay to Canal & River Trust all reasonable and proper costs, charges, damages and expenses not otherwise provided for in this Schedule which may be reasonably incurred by Canal & River Trust—

- (a) by reason of the existence, construction or maintenance of a specified work; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work,

and the undertaker must indemnify and keep indemnified the Canal & River Trust from and against all reasonable and proper claims and demands arising out of or in connection with a specified work or any such act or omission. The fact that any act or thing may have been done by the Canal & River Trust on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision will not (if it was done without negligence on the part of Canal & River Trust or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) The Canal & River Trust must give the undertaker reasonable notice of any such claim or demand and save as such conduct would be contrary to law no settlement or compromise of such a claim or demand must be made without the prior written consent of the undertaker, such consent not to be unreasonably withheld or delayed.

12. Canal & River Trust must, on receipt of a written request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Schedule and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Schedule.

13. In the assessment of any sums payable to the Canal & River Trust under this Schedule, there will not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by the Canal & River Trust if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Schedule or increasing the sums so payable.

14. The undertaker and Canal & River Trust may enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any Canal & River Trust property shown on the works and/or land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such Canal & River Trust property; and
- (c) any rights and obligations (whether or not statutory) of the Canal & River Trust relating to any of the Canal and River Trust property or any lands, works or other property referred to in this paragraph.

15. This part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the statutory undertaker are regulated by the provisions of Part 3 of the 1991 Act.

16. The undertaker will repay to the Canal & River Trust all reasonable fees, costs, charges and expenses reasonably incurred by the Canal & River Trust—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5 (3) or in constructing any protective works under the provisions of paragraph 5 (4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by him of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any persons whom it must be reasonably necessary to appoint for inspecting, signaling, watching and lighting Canal & River Trust property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or incident arising from the construction or failure of a specified work;
- (d) in respect of any additional temporary lighting of Canal & River Trust property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

17.—(1) If any permanent or temporary alterations or additions to Canal & River Trust property are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of Canal & River Trust property or the continued safe operation of the waterway, such alterations and additions may be carried out by the Canal & River Trust and if the Canal & River Trust gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which shall be specified in the notice), the undertaker shall pay to the Canal & River Trust the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by the Canal & River Trust in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, the Canal & River Trust gives notice to the undertaker that the Canal & River Trust desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of Canal & River Trust property or the safe operation of any waterway then, if the undertaker decides that part of the specified work is to be constructed, the Canal & River Trust shall assume construction of that part of the specified work and the undertaker shall, notwithstanding any such approval of a specified work under paragraph 5 (3), pay to the Canal & River Trust all reasonable expenses to

which the Canal & River Trust may be put and compensation for any loss which it may suffer by reason of the execution by the Canal & River Trust of that specified work.

(3) The engineer shall, in respect of the capitalised sums referred to in this paragraph and paragraph 11, provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing Canal & River Trust property is reduced in consequence of any such alterations or additions, a capitalised sum representing such saving shall be set off against any sum payable by the undertaker to the Canal & River Trust under this paragraph.

PART 5

FOR THE PROTECTION OF NATIONAL GRID GAS PLC AND NATIONAL GRID ELECTRICITY TRANSMISSION PLC

Application

1. For the protection of the statutory undertakers referred to in this part of this Schedule the following provisions, unless otherwise agreed in writing between the undertaker and the statutory undertaker concerned, must have effect.

Interpretation

2. In this part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of the statutory undertaker adequate to enable the statutory undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means any apparatus within the Works limits as follows—

- (a) electric lines or electrical plant (as defined in section 64 of the Electricity Act 1989), belonging to or maintained by National Grid Electricity; and
- (b) any gas mains, pipes or other apparatus belonging to or maintained by National Grid Gas for the purposes of gas supply,

and in each case includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” shall not have the meaning set out in article 2 (Interpretation) but instead shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of the statutory undertaker: construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid Electricity” means National Grid Electricity Transmission Plc (Company registration number 02366977) or any successor company performing the same functions;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed; and

“statutory undertaker” means National Grid Gas as a gas transporter within the meaning of Part 1 of the Gas Act 1986 and National Grid Electricity as any licence holder within the meaning of Part 1 of the Electricity Act 1989.

3. Except for paragraphs 7 (Retained apparatus: protection of National Grid Gas), 8 (Retained apparatus: protection of National Grid Electricity), 9 (Expenses) and 10 (Indemnity), this part of

this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the statutory undertaker are regulated by the provisions of Part 3 of the 1991 Act.

Acquisition of land / apparatus / overriding of easements

4. Regardless of any provision in this Order or anything shown in the book of reference and on the land plans, the undertaker must not acquire any apparatus or override any easement or other interest of the statutory undertaker otherwise than by agreement.

Removal of apparatus

5.—(1) If, in the exercise of the agreement reached in accordance with paragraph 4 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this part of this Schedule and any right of a statutory undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the statutory undertaker in question in accordance with sub-paragraphs (2) to (8) inclusive.

(2) If, for the purpose of executing any works in, on, over or under any land purchased, held, appropriated or used under this Order and/or in, on, over or under any land within the Works limits, the undertaker requires the removal of any apparatus placed in that land, it must give to the statutory undertaker in question 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any powers conferred by this Order the statutory undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the statutory undertaker to their reasonable satisfaction (taking into account paragraph 8 (1) below) the necessary facilities and rights for

- (a) the construction of alternative apparatus in other land of the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the statutory undertaker in question must, on receipt of a written notice to that effect from the undertaker, take all reasonable steps to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the statutory undertaker in question and the undertaker (both parties acting reasonably).

(5) The statutory undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 35 (Arbitration), and after the grant to the statutory undertaker of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this part of this Schedule.

Facilities and Rights for alternative apparatus

6.—(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to the statutory undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the undertaker and the statutory undertaker in question (both parties acting reasonably) and shall be no less favourable on the whole to the statutory undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless agreed by the statutory undertaker.

(2) If the facilities and rights to be afforded by the undertaker and agreed with the statutory undertaker under paragraph 6 (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to the statutory undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and such terms and conditions shall be referred to arbitration and the arbitrator must make such provision for the payment of compensation by the undertaker to that statutory undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of National Grid Gas

7.—(1) Not less than 56 days before commencing the execution of any works authorised by this Order that are near to or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 5 (2) or otherwise, the undertaker must submit to the statutory undertaker in question a plan.

(2) In relation to works which will or may (i) be situated on, over, under or within 15 metres measured in any direction of any apparatus, (ii) be within 150 metres measured in any direction of any apparatus in the case of demolition works, (iii) (wherever situated) impose any load directly upon any apparatus or (iv) involve embankment works within 15 metres of any apparatus, the plan to be submitted to the statutory undertaker under sub-paragraph (1) shall be detailed including a method statement and describing—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation and positioning of plant;
- (d) the position of all apparatus; and
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus.

(3) The undertaker must not commence the construction or renewal of any works to which sub-paragraph (2) applies until the statutory undertaker has given written approval of the plan so submitted.

(4) Any approval of the statutory undertaker required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7); and
- (b) shall not be unreasonably withheld or delayed.

(5) In relation to a work to which sub-paragraph (2) applies, the statutory undertaker may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under sub-paragraph (1) must be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as amended from time to time by agreement between the undertaker and the statutory undertaker and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) or (7) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the statutory undertaker must be entitled to watch and inspect the execution of those works.

(7) Where the statutory undertaker requires any protective works to be carried out either by itself or by the undertaker (whether of a temporary or permanent nature) it shall (except in an emergency) give the undertaker notice of such requirement within 56 days after the submission by the undertaker of the plan referred to in sub-paragraph (1). Such protective works must be carried out with all reasonable dispatch with all reasonable endeavours being used to complete them within three (3) months of the expiration of the said period of 56 days and to the statutory

undertaker's reasonable satisfaction prior to the carrying out of any works referred to in sub-paragraph (1).

(8) If a statutory undertaker in accordance with sub-paragraph (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 shall apply as if the removal of the apparatus had been required by the undertaker under sub-paragraph 7 (2).

(9) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(10) The undertaker shall not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to the statutory undertaker in question notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraph (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works within the scope of this paragraph, the undertaker shall comply with National Grid Gas' policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, high pressure gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(~G)47 Avoiding danger from underground services".

Retained apparatus: protection of National Grid Electricity

8.—(1) Not less than 56 days before commencing the execution of any works authorised by this Order that are near to or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 7 (2) or otherwise, the undertaker must submit to the statutory undertaker in question a plan.

(2) In relation to works which will or may (i) be situated on, over, under or within 8.1 metres measured in any direction of any apparatus, or (ii) involve embankment works within 8.1 metres of any apparatus, the plan to be submitted to the statutory undertaker under sub-paragraph (1) shall be detailed including a method statement and describing—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation and positioning of plant;
- (d) the position of all apparatus; and
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus.

(3) The undertaker must not commence the construction or renewal of any works to which sub-paragraph (2) applies until the statutory undertaker has given written approval of the plan so submitted.

(4) Any approval of the statutory undertaker required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7); and
- (b) shall not be unreasonably withheld or delayed.

(5) In relation to a work to which sub-paragraph (2) applies, the statutory undertaker may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under sub-paragraph (1) must be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as amended from time to time by agreement between the undertaker and the statutory undertaker and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) or (7) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the statutory undertaker shall be entitled to watch and inspect the execution of those works.

(7) Where the statutory undertaker requires any protective works to be carried out either by itself or by the undertaker (whether of a temporary or permanent nature) it shall (except in an emergency) give the undertaker notice of such requirement within 56 days after the submission by the undertaker of the plan referred to in sub-paragraph (1). Such protective works must be carried out with all reasonable dispatch with all reasonable endeavours being used to complete them within 3 months of the expiration of the said period of 56 days and to the statutory undertaker's reasonable satisfaction prior to the carrying out of any works referred to in sub-paragraph (1).

(8) If a statutory undertaker in accordance with sub paragraph (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 7 (2).

(9) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(10) The undertaker shall not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to the statutory undertaker in question notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraph (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works within the scope of this paragraph, the undertaker shall comply with National Grid Electricity's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a statutory undertaker on demand all reasonable charges, costs and expenses properly incurred by that statutory undertaker in, or in connection with, the inspection, removal, alteration, relaying, replacing or protection of any apparatus or the construction of any alternative apparatus which may be required in consequence of the execution of any such works as are referred to in this part of this Schedule including without limitation—

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation, in the event that the statutory undertaker elects to use compulsory purchase powers to acquire any necessary rights under paragraph 4 (3), all costs incurred as a result of such action;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and

- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There shall be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule which is re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 35 (Arbitration) to be necessary, then, if such placing involves cost in the construction of works under this part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the statutory undertaker in question by virtue of paragraph 9 (1) is to be reduced by the amount of that excess save where the undertaker and the statutory undertaker agree (both acting reasonably) it is not possible to obtain the existing type of apparatus, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker.

(4) For the purposes of paragraph 9 (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this paragraph 9 (5) would be payable to a statutory undertaker in respect of works by virtue of paragraph 9 (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the statutory undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

10.—(1) Subject to paragraphs 10 (2) and 10 (3), if by reason, or in consequence, of the construction of any such works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of the statutory undertaker, or there is any interruption in any service provided, or in the supply of any goods, by the statutory undertaker, or the statutory undertaker becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay on demand the proper and reasonable cost reasonably and properly incurred by the statutory undertaker in making good such damage or restoring the supply; and

- (b) indemnify that statutory undertaker for any other expenses, loss, demands, proceedings, damages, claims penalty or costs incurred by or recovered from the statutory undertaker,

by reason or in consequence of any such damage or interruption or the statutory undertaker becoming liable to any third party as aforesaid.

(2) The fact that any act or thing may have been done by a statutory undertaker on behalf of the undertaker or in accordance with a plan approved by a statutory undertaker or in accordance with any requirement of a statutory undertaker or its supervision shall not (subject to paragraph 10 (3)) excuse the undertaker from liability under the provisions of paragraph 10 (1).

(3) The liability of the undertaker under the provisions of this paragraph 10 as to indemnity against claims and liabilities and the making good of or paying compensation for loss, damage or injury shall not extend to nor include respectively claims and liabilities and loss damage and injury caused by reason of the negligence, trespass or default of any person or persons directly or indirectly employed by the statutory undertaker in connection with the carrying out of any works carried out by or on behalf of the statutory undertaker.

(4) Nothing in paragraph 10 (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the neglect or default of a statutory undertaker, its officers, servants, contractors or agents.

(5) The statutory undertaker must give the undertaker reasonable notice (being not less than 28 days) of any such claim or demand and no settlement or compromise may be made without the consent of the undertaker (not to be unreasonably withheld or delayed) which, if it reasonably withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Ground subsidence monitoring scheme in respect of statutory undertaker's apparatus

11.—(1) No works within 15 metres of any apparatus or alternative apparatus which are capable of interfering with or risking damage to statutory undertakers' apparatus shall commence until a scheme for monitoring ground subsidence (referred to in this paragraph as the "monitoring scheme") has been submitted to and approved by the relevant statutory undertaker, such approval not to be unreasonably withheld or delayed.

(2) The monitoring scheme shall set out—

- (a) the apparatus which is to be subject to such monitoring;
- (b) the extent of land to be monitored;
- (c) the manner in which ground levels are to be monitored;
- (d) the timescales of any monitoring activities; and
- (e) the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for the statutory undertaker's approval a ground subsidence mitigation scheme in respect of such subsidence in accordance with sub-paragraph (3).

(3) The monitoring scheme required by sub-paragraphs (1) and (2) must be submitted within 56 days prior to the commencement of any works referred to in paragraphs 7 (1) and/or 8 (1). Any requirements of the statutory undertaker must be notified to the undertaker within 28 days of receipt of the monitoring scheme. Thereafter the monitoring scheme must be implemented as approved, unless otherwise agreed in writing with the statutory undertaker.

(4) As soon as reasonably practicable after any ground subsidence identified by the monitoring activities set out in the monitoring scheme has exceeded the level described in sub-paragraph (2) (e), a scheme setting out necessary mitigation measures (if any) for such ground subsidence (referred to in this paragraph as a "mitigation scheme") shall be submitted to the statutory undertaker for approval, such approval not to be unreasonably withheld or delayed; and any mitigation scheme must be implemented as approved, unless otherwise agreed in writing with the statutory undertaker save that the statutory undertaker retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 9.

(5) If the monitoring scheme or mitigation scheme would conflict with any aspect of any ground subsidence monitoring scheme or ground subsidence mitigation scheme approved by the relevant planning authority pursuant to Part 2 of Schedule 1 (Requirements) the undertaker may submit a

revised monitoring scheme or mitigation scheme to the statutory undertaker for its approval, such approval not to be unreasonably withheld or delayed; and the revised monitoring scheme or mitigation scheme must be implemented as approved, unless otherwise agreed in writing with the statutory undertaker.

Enactments and agreements

12. Nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and the statutory undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

13. Where in consequence of the proposed construction of any of the authorised development, the undertaker or the statutory undertaker requires the removal of apparatus under paragraph 4 (2) or a statutory undertaker makes requirements for modifications to the undertaker's works or for the protection or alteration of apparatus under paragraphs 6 (5) and (7) and/or 7 (5) and (7), the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development with the need to ensure the safe and efficient operation of the statutory undertaker's undertaking and the statutory undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

Access

14. If in consequence of the agreement reached in accordance with paragraph 5 or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable the statutory undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

15. Subject to paragraph 16, save for differences or disputes arising under paragraphs 5 (1), 5 (2), 6 (1) and 9, any difference or dispute arising between the undertaker and a statutory undertaker under this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and that statutory undertaker, be determined by arbitration in accordance with article 35 (arbitration).

16. For all disputes arising in relation to the protective provisions in this Part of this Schedule, the reference in article 35 to the Secretary of State shall be construed as a reference to the President of the Institution of Civil Engineers.

EXPLANATORY NOTE

(This note is not part of the order)

This Order authorises the undertaker to construct a cross-country pipeline of up to 800 mm in diameter (to be known as the Willington C Gas Pipeline) for the conveyance of gas and covering a distance of approximately 27 km starting from the National Transmission System at Yoxall in the district of East Staffordshire and ending at the proposed Willington C Power Station to be constructed at Willington in South Derbyshire, and to carry out all associated works.

The Order permits the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land temporarily for this purpose. The Order also makes provision in connection with the maintenance of the pipeline. A copy of the plans, book of reference and other documents referred to in this Order and certified in accordance with article 34 of this Order may be inspected free of charge during working hours at the offices of [details to be added].

APPENDIX B

EXAMINATION LIBRARY

The following is a list of documents that were submitted during the course of the examination. The documents are grouped together by document type. Each document has been given an identification number (e.g. APP-001), and all documents are available to view on the Planning Inspectorate's National Infrastructure Planning website at the Wellington C Gas Pipeline Project page

INDEX

<u>APPLICATION DOCUMENTS</u>
<u>Updated Draft Development Consent Orders</u>
<u>Updated Application Documents</u>
<u>PROJECT DOCUMENTS</u>
<u>Procedural Decisions</u>
<u>Certificates</u>
<u>REPRESENTATIONS</u>
<u>Adequacy of Consultation Responses</u>
<u>Relevant Representations</u>
<u>DOCUMENTS RECEIVED FOR DEADLINE I – 12 February 2014</u>
<u>Written Representations</u>
<u>Responses to Examining Authority's First Written Questions</u>
<u>Local Impact Reports</u>
<u>DOCUMENTS RECEIVED FOR DEADLINE II – 19 February 2014</u>
<u>Statements of Common Ground</u>
<u>DOCUMENTS RECEIVED FOR DEADLINE III – 5 March 2014</u>
<u>Comments</u>
<u>DOCUMENTS RECEIVED FOR DEADLINE IV – 16 April 2014</u>
<u>Documents submitted prior to the hearing</u>
<u>Post-hearing documents</u>
<u>Statements of Common Ground</u>
<u>DOCUMENTS RECEIVED FOR DEADLINE V – 12 May 2014</u>
<u>DOCUMENTS RECEIVED FOR DEADLINE VI – 20 May 2014</u>
<u>DOCUMENTS RECEIVED FOR DEADLINE VII – 12 June 2014</u>
<u>Comments on ExA's draft DCO</u>
<u>Other submissions</u>
<u>DOCUMENTS RECEIVED FOR DEADLINE VIII – 19 June 2014</u>
<u>DOCUMENTS RELATING TO HEARINGS AND SITE VISITS</u>
<u>Preliminary Meeting</u>
<u>Applicant's Notification of Hearings and Site Visits</u>
<u>Issue Specific Hearing – 11 March 2014</u>
<u>Compulsory Acquisition Hearing – 12-13 March 2014</u>
<u>Issue Specific Hearing – 9 April 2014</u>
<u>Issue Specific Hearing – 22 May 2014</u>
<u>Accompanied Site Visit – 29 April 2014</u>

Document Reference	Document Name
APPLICATION DOCUMENTS	
APP-001	<u>WCGP 001.0 Application Documents Contents Page</u>
APP-002	<u>WCGP 001.1 Document List</u>
APP-003	<u>WCGP 001.2 Application Form</u>
APP-004	<u>WCGP 004.1 DCO Statement of Reasons</u>
APP-005	<u>WCGP 006.0 Application Plans Contents Pages Vol. 1</u>
APP-006	<u>WCGP 006.0 Application Plans Contents Pages Vol. 2</u>
APP-007	<u>WCGP 006.1 Location Plan</u>
APP-008	<u>WCGP 007.1 Associated Development Report</u>
APP-009	<u>WCGP 008.1 Consultation Report</u>
APP-010	<u>WCGP 008.1.1 Consultation Report Appendices Part 1-2</u>
APP-011	<u>WCGP 008.1.2 Consultation Report Appendices Part 3-5</u>
APP-012	<u>WCGP 008.1.3 Consultation Report Appendices Part 6-7</u>
APP-013	<u>WCGP 009.1 Draft Development Consent Order</u>
APP-014	<u>WCGP 010.1 Explanatory Memorandum</u>
APP-015	<u>WCGP 011.1 Land plans</u>
APP-016	<u>WCGP 012.1 Works plans</u>
APP-017	<u>WCGP 013.1 Statement of Reasons</u>
APP-018	<u>WCGP 013.2 Funding Statement</u>
APP-019	<u>WCGP 013.3 Book of Reference</u>
APP-020	<u>WCGP 013.4 S36 Consent</u>
APP-021	<u>WCGP 014.1.0 ES Volume 1 Chapters Contents Page</u>
APP-022	<u>WCGP 014.1.1 ES Chapter 1 Introduction</u>
APP-023	<u>WCGP 014.1.2 ES Chapter 2 Project Description</u>
APP-024	<u>WCGP 014.1.3 ES Chapter 3 Construction Activities</u>
APP-025	<u>WCGP 014.1.4 ES Chapter 4 Pipeline Operations and End of Life</u>
APP-026	<u>WCGP 014.1.5 ES Chapter 5 Planning Policy</u>
APP-027	<u>WCGP 014.1.6 ES Chapter 6 Geology and Soil Resources</u>
APP-028	<u>WCGP 014.1.7 ES Chapter 7 Hydrology, Hydrogeology and Flood Risk Assessment</u>
APP-029	<u>WCGP 014.1.8 ES Chapter 8 Ecology</u>
APP-030	<u>WCGP 014.1.9 ES Chapter 9 Landscape and Visual Impact Assessment</u>
APP-031	<u>WCGP 014.1.10 ES Chapter 10 Noise and Vibration</u>
APP-032	<u>WCGP 014.1.11 ES Chapter 11 Transport</u>
APP-033	<u>WCGP 014.1.12 ES Chapter 12 Cultural Heritage</u>
APP-034	<u>WCGP 014.1.13 ES Chapter 13 Land Use and Amenity</u>
APP-035	<u>WCGP 014.1.14 Chapter 14 Other Environmental Impacts</u>
APP-036	<u>WCGP 014.2.0 ES Volume 2 Appendix Contents Page</u>
APP-037	<u>WCGP 014.2.0 ES Volume 2a Part 1 Appendix Contents Page</u>

APP-038	<u>WCGP 014.2.0 ES Volume 2b Part 2 Appendix Contents Page</u>
APP-039	<u>WCGP 014.2.0 ES Volume 2c Appendix Contents Page</u>
APP-040	<u>WCGP 014.2.0 ES Volume 2d Appendix Contents Page</u>
APP-041	<u>WCGP 014.2.0 ES Volume 2e Appendix Contents Page</u>
APP-042	<u>WCGP 014.2.1.1 Appendix 1.1 Environmental Appraisal Report</u>
APP-043	<u>WCGP 014.2.1.2 Appendix 1.2 Route Corridor Selection Report</u>
APP-044	<u>WCGP 014.2.1.3 Appendix 1.3 Final Route Selection Report</u>
APP-045	<u>WCGP 014.2.1.4 Appendix 1.4 Draft DCO Requirements</u>
APP-046	<u>WCGP 014.2.1.5 Appendix 1.5 Strategy Document - Schedule of Additional Consents & Licenses</u>
APP-047	<u>WCGP 014.2.1.6 Appendix 1.6 Phasing of Pipeline Construction within the Willington C Power Station Site</u>
APP-048	<u>WCGP 014.2.1.7 Appendix 1.7 Scoping Opinion</u>
APP-049	<u>WCGP 014.2.1.8 Appendix 1.8 Commitments Heads of Terms</u>
APP-050	<u>WCGP 014.2.1.9 Appendix 1.9 Glossary of Terms</u>
APP-051	<u>WCGP 014.2.2.1 Appendix 2.1 Limits of Deviation Rationale</u>
APP-052	<u>WCGP 014.2.3.1 Appendix 3.1 Feasibility and Options Report</u>
APP-053	<u>WCGP 014.2.3.2 Appendix 3.2 Pollution Prevention Guidelines</u>
APP-054	<u>WCGP 014.2.3.3 Appendix 3.3 Utility Plant Responses</u>
APP-055	<u>WCGP 014.2.3.4 Appendix 3.4 Generic HDD Methodology</u>
APP-056	<u>WCGP 014.2.5.1 Appendix 5.1 Planning Compliance</u>
APP-057	<u>WCGP 014.2.6.1 Appendix 6.1 Soil Survey Report</u>
APP-058	<u>WCGP 014.2.6.2 Appendix 6.2 Inception Phase Summary Ground Contamination and Geotechnical Assessment</u>
APP-059	<u>WCGP 014.2.6.3 Appendix 6.3 WCPS Remediation Options Appraisal</u>
APP-060	<u>WCGP 014.2.7.1 Appendix 7.1 Flood Risk Assessment</u>
APP-061	<u>WCGP 014.2.7.1.1 Appendix 7.1.1 Yoxall AGI Flood Risk Assessment</u>
APP-062	<u>WCGP 014.2.7.1.2 Appendix 7.1.2 Willington C Power Station Flood Risk Assessment</u>
APP-063	<u>WCGP 014.2.7.1.3 Appendix 7.1.3 River Dove Floodplain Modelling</u>
APP-064	<u>WCGP 014.2.7.1.4 Appendix 7.1.4 Strategy</u>

	<u>Document - Watercourse and Floodplain Working Strategy</u>
APP-065	<u>WCGP 014.2.8.1 Appendix 8.1 Baseline Habitat Survey Report</u>
APP-066	<u>WCGP 014.2.8.2 Appendix 8.2 GCN Survey Report</u>
APP-067	<u>WCGP 014.2.8.3 Appendix 8.3 Breeding Bird Survey Report</u>
APP-068	<u>WCGP 014.2.8.4 Appendix 8.4 Bat and Tree Survey Report</u>
APP-069	<u>WCGP 014.2.8.6 Appendix 8.6 Riparian Mammal Survey Report</u>
APP-070	<u>WCGP 014.2.8.7 Appendix 8.7 White Clawed Crayfish Survey Report</u>
APP-071	<u>WCGP 014.2.8.8 Appendix 8.8 Hedgerow Survey Report</u>
APP-072	<u>WCGP 014.2.8.9 Appendix 8.9 Meeting Notes and Informal Scoping</u>
APP-073	<u>WCGP 014.2.8.10 Appendix 8.10 Hedgerow Management Strategy</u>
APP-074	<u>WCGP 014.2.8.11 Appendix 8.11 List of Species</u>
APP-075	<u>WCGP 014.2.8.12a Appendix 8.12a GCN Licensing Proposals</u>
APP-076	<u>WCGP 014.2.8.12b Appendix 8.12b GCN Licensing Proposals</u>
APP-077	<u>WCGP 014.2.8.12c Appendix 8.12c GCN Licensing Proposals</u>
APP-078	<u>WCGP 014.2.8.12d Appendix 8.12d Response by Natural England to GCN Licensing Proposals</u>
APP-079	<u>WCGP 014.2.8.13 Appendix 8.13 Statutory & Non-Statutory Sites Report</u>
APP-080	<u>WCGP 014.2.8.14 Appendix 8.14 EU Designated Sites Report</u>
APP-081	<u>WCGP 014.2.8.15 Appendix 8.15 Aquatic Invertebrate and River Report</u>
APP-082	<u>WCGP 014.2.8.16 Appendix 8.16 Natural England Consultation Responses</u>
APP-083	<u>WCGP 014.2.8.17 Appendix 8.17 Ecological Validation Survey May 2013</u>
APP-084	<u>WCGP 014.2.8.18 Appendix 8.18 WCPS Ecological Validation Survey May 2013</u>
APP-085	<u>WCGP 014.2.9.1 Appendix 9.1 LVIA Methodology and Terminology</u>
APP-086	<u>WCGP 014.2.9.2 Appendix 9.2 Landscape Character Baseline</u>
APP-087	<u>WCGP 014.2.9.3 Appendix 9.3 LVIA Meeting Notes</u>
APP-088	<u>WCGP 014.2.9.4 Appendix 9.4 Summer Photography Methodology</u>
APP-089	<u>WCGP 014.2.9.5 Appendix 9.5 Photomontage Methodology</u>
APP-090	<u>WCGP 014.2.9.6 Appendix 9.6 Yoxall AGI Planting Schedule and Notes</u>

APP-091	<u>WCGP 014.2.10.1 Appendix 10.1 Statutory Nuisance Report</u>
APP-092	<u>WCGP 014.2.11.1 Appendix 11.1 Transport Statement</u>
APP-093	<u>WCGP 014.2.11.1.1 Appendix 11.1.1 Access Report - Staffordshire</u>
APP-094	<u>WCGP 014.2.11.1.2 Appendix 11.1.2 Access Report - Derbyshire</u>
APP-095	<u>WCGP 014.2.11.1.3 Appendix 11.1.3 Yoxall AGI Access Design Methodology</u>
APP-096	<u>WCGP 014.2.12.1 Appendix 12.1 Recorded Heritage Assets</u>
APP-097	<u>WCGP 014.2.12.2 Appendix 12.2 Cultural Heritage Desk Based Assessment</u>
APP-098	<u>WCGP 014.2.12.3 Appendix 12.3 Cultural Heritage Walkover Survey</u>
APP-099	<u>WCGP 014.2.12.4 Appendix 12.4 LiDAR Analysis Report</u>
APP-100	<u>WCGP 014.2.12.5 Appendix 12.5 Written Scheme of Investigation</u>
APP-101	<u>WCGP 014.2.12.6 Appendix 12.6 Statutory and Non-Statutory Sites and Features</u>
APP-102	<u>WCGP 014.2.13.1 Appendix 13.1 Strategy Document - Public Rights of Way</u>
APP-103	<u>WCGP 014.3.0 ES Volume 3 Figures Contents Page</u>
APP-104	<u>WCGP 014.3.1 Chapter 1 Figures Introduction</u>
APP-105	<u>WCGP 014.3.2 Chapter 2 Figures Project Description</u>
APP-106	<u>WCGP 014.3.3 Chapter 3 Figures Construction</u>
APP-107	<u>WCGP 014.3.6 Chapter 6 Figures Geology</u>
APP-108	<u>WCGP 014.3.7 Chapter 7 Figures Hydrology</u>
APP-109	<u>WCGP 014.3.9 Chapter 9 Figures LVIA</u>
APP-110	<u>WCGP 014.3.10 Chapter 10 Figures Noise and Vibration</u>
APP-111	<u>WCGP 014.3.12 Chapter 12 Figures Cultural Heritage</u>
APP-112	<u>WCGP 014.3.13 Chapter 13 Figures Amenity</u>
APP-113	<u>WCGP 014.4.1 ES Non-Technical Summary</u>
APP-114	<u>WCGP 014.4.2 ES Summary of Issues</u>
APP-115	Reference not used
APP-116	<u>WCGP 022.1 Additional Information required under Regulation 6(4)</u>
APP-117	<u>WCGP 023.1 Plan showing Yoxall Above Ground Installation</u>
APP-118	<u>WCGP 023.2 Draft S106 Agreement</u>
APP-119	<u>WCGP 023.3 Draft Statements of Common Ground</u>
Updated Draft Development Consent Orders	
REP-078	<u>RWE npower - Draft Development Consent Order – Version 2 April 2014 (clean)</u>
REP-079	<u>RWE npower - Draft Development Consent Order – April 2014 (tracked change version)</u>

REP-080	<u>RWE npower - Schedule of Changes to draft Development Consent Order – April 2014</u>
REP-088	<u>RWE npower - Draft Development Consent Order – Version 3, May 2014 (clean)</u>
REP-089	<u>RWE npower - Draft Development Consent Order – Version 3, May 2014 (tracked change version)</u>
REP-090	<u>RWE npower - Schedule of Changes to draft Development Consent Order (Version 3, May 2014)</u>
REP-105	<u>RWE npower – Examining Authority's draft DCO dated 4 June 2014 (on SI Template)</u>
Updated Application Documents	
APP-120	<u>WCGP 014.2.7.1.3v2 Appendix 7.1.3 River Dove Floodplain Modelling</u>
REP-091	<u>RWE npower - Book of Reference – Version 2, May 2014</u>
REP-092	<u>RWE npower - Land Plans – Version 2, May 2014</u>
REP-093	<u>RWE npower - Works Plans – Version 2, May 2014</u>
REP-094	<u>RWE npower - Yoxall AGI Plan – Version B, February 2014</u>
REP-113	<u>RWE npower – Book of Reference, Version 3 (June 2014)</u>
REP-114	<u>RWE npower – Land Plans, Version 3 (June 2014)</u>
REP-115	<u>RWE npower – Works Plans, Version 3 (June 2014)</u>
REP-116	<u>RWE npower – Yoxall AGI Plan, Version C (June 2014)</u>
PROJECT DOCUMENTS	
Procedural Decisions	
PD-001	<u>Notification of Decision to Accept Application</u>
PD-002	<u>s55 Checklist</u>
PD-003	<u>Rule 6 and 4 Letter</u>
PD-004	<u>Meeting Note of introductory meeting with RWE npower - 7 November 2013</u>
PD-005	<u>Rule 8 Letter</u>
PD-006	<u>Examining Authority's first written questions</u>
PD-007	<u>Rule 13 Notification of Hearings letter</u>
PD-008	<u>Procedural decision made by the Examining Authority regarding the notification of hearing dates by the applicant</u>
PD-009	<u>Rule 16 Notification of Site Inspection letter</u>
PD-010	<u>Rule 8(3) Timetable variation – cancellation of 30 April and 1 May hearings</u>
PD-011	<u>Examining Authority's second written questions</u>
PD-012	<u>Procedural letter – Issue of ExA's second written questions</u>
PD-013	<u>Examining Authority's draft Development Consent Order</u>
PD-014	<u>Procedural letter – Issue of ExA's draft DCO</u>
PD-015	<u>S99 – Notification of Completion of ExA Examination</u>
Certificates	
CERT-001	<u>Certificate of Compliance Covering Letter</u>

CERT-002	<u>Certificate of Compliance with Regulation 13</u>
CERT-003	<u>Certificate of Compliance with Section 56 of the Planning Act 2008</u>
CERT-004	<u>Certificate of Compliance with Section 59 of the Planning Act 2008</u>
CERT-005	<u>S56 Letter - Example Generic S42 Letter</u>
CERT-006	<u>S56 Letter - Example of Bespoke Letter</u>
REPRESENTATIONS	
Adequacy of Consultation	
REP-001	<u>Birmingham City Council</u>
REP-002	<u>Nottingham County Council</u>
REP-003	<u>Lichfield District Council</u>
REP-004	<u>Leicestershire County Council</u>
REP-005	<u>Tameside Metropolitan Borough Council</u>
REP-006	<u>Sheffield City Council</u>
REP-007	<u>Staffordshire County Council</u>
REP-008	<u>East Staffordshire Borough Council</u>
REP-009	<u>Kirklees Council</u>
REP-010	<u>South Derbyshire District Council</u>
REP-011	<u>Cheshire East Council</u>
REP-012	<u>Derbyshire County Council</u>
REP-013	<u>Amber Valley Borough Council</u>
Relevant Representations	
REP-014	<u>Civil Aviation Authority</u>
REP-015	<u>South Derbyshire District Council</u>
REP-016	<u>National Grid Electricity Transmission Plc and National Grid Gas Plc</u>
REP-017	<u>South Staffordshire Water Plc</u>
REP-018	<u>The National Forest Company</u>
REP-019	<u>Geoffrey Smedley</u>
REP-020	<u>Network Rail Infrastructure Limited</u>
REP-021	<u>Public Health England</u>
REP-022	<u>Severn Trent Water Limited</u>
REP-023	<u>English Heritage</u>
REP-024	<u>Natural England</u>
REP-025	<u>Canal & River Trust</u>
DOCUMENTS RECEIVED FOR DEADLINE I – 12 February 2014	
Written Representations	
REP-026	<u>Network Rail Infrastructure Limited</u>
REP-027	<u>Ofwat</u>
REP-028	<u>Peveril Homes Limited</u>
REP-029	<u>RWE npower - European Sites Screening Matrix</u>
REP-030	<u>RWE npower - Schedule of Mitigation</u>
REP-031	<u>RWE npower - Private Agreement Schedule</u>
REP-032	<u>RWE npower - Schedule of Statutory Undertakers</u>
REP-033	<u>RWE npower - Statement of Reasons Appendix</u>
REP-034	<u>RWE npower - Responses to Relevant Representations</u>
REP-035	<u>Severn Trent Water Limited</u>

REP-036	<u>Staffordshire County Council - Written Representation</u>
REP-037	<u>The National Forest Company</u>
REP-038	<u>Vodafone (late submission)</u>
Responses to Examining Authority's First Written Questions	
REP-039	<u>National Grid Gas and National Grid Electricity Transmission</u>
REP-040	<u>RWE npower - Responses to First Written Questions</u>
REP-041	<u>RWE npower - Appendices 1-6</u>
REP-042	<u>RWE npower - Appendices 7-23</u>
REP-043	<u>South Staffordshire Water</u>
Local Impact Reports	
REP-044	<u>East Staffordshire Borough Council</u>
REP-045	<u>Lichfield District Council</u>
REP-046	<u>South Derbyshire District Council</u>
REP-047	<u>Staffordshire County Council</u>
DOCUMENTS RECEIVED FOR DEADLINE II – 19 February 2014	
Statements of Common Ground	
REP-048	<u>RWE npower - Statement of Common Ground with Derbyshire County Council</u>
REP-049	<u>RWE npower - Statement of Common Ground with East Staffordshire Borough Council</u>
REP-050	<u>RWE npower - Statement of Common Ground with English Heritage</u>
REP-051	<u>RWE npower - Statement of Common Ground with National Grid (NGG & NGET)</u>
REP-052	<u>RWE npower - Statement of Common Ground with Natural England</u>
REP-053	<u>RWE npower - Statement of Common Ground with Network Rail</u>
REP-054	<u>RWE npower - Statement of Common Ground with Severn Trent Water (unsigned)</u>
REP-055	<u>RWE npower - Statement of Common Ground with South Derbyshire District Council</u>
REP-056	<u>RWE npower - Statement of Common Ground with South Staffordshire Water plc</u>
REP-057	<u>RWE npower - Statement of Common Ground with Staffordshire County Council</u>
REP-058	<u>RWE npower - Statement of Common Ground with the Environment Agency</u>
REP-059	<u>RWE npower - Statement of Common Ground with the Highways Agency</u>
DOCUMENTS RECEIVED FOR DEADLINE III – 5 March 2014	
Comments	
REP-060	<u>RWE npower – Comments on Written Representations</u>
REP-061	<u>RWE npower – Comments on Local Impact Reports</u>
REP-062	<u>RWE npower – Comments on responses to ExAs first</u>

	<u>round of written questions</u>
REP-063	<u>RWE npower – Position Statement River on Dove Floodplain Modelling (Document WCGP 014.2.7.1.3 – ES Appendix 7.1.3)</u>
DOCUMENTS RECEIVED FOR DEADLINE IV – 16 April 2014	
Documents submitted prior to the hearing	
REP-064	<u>Network Rail Infrastructure Limited – Withdrawal of representations relating to compulsory acquisition</u>
REP-065	<u>Severn Trent Water Limited – Withdrawal of previous representations</u>
REP-066	<u>RWE npower - River Dove Floodplain Modelling Addendum (submitted for the issue specific hearing on 9 April 2014)</u>
REP-067	<u>RWE npower - Speaking Note for the issue specific hearing on 9 April 2014</u>
REP-068	<u>RWE npower - Flood presentation figures for the issue specific hearing on 9 April 2014</u>
REP-069	<u>South Staffordshire Water plc - Email withdrawing previous representations submitted on 10 October 2013</u>
Post-hearing documents	
REP-070	<u>RWE npower - Deadline 4 Covering Letter</u>
REP-071	<u>RWE npower - Deadline 4 Contents Page</u>
REP-072	<u>RWE npower - Updated outline of compulsory acquisition strategy presented during the compulsory acquisition hearing</u>
REP-073	<u>RWE npower - Schedule of correspondence with the landowner of plots 134 and 134B, Mr Sahota</u>
REP-074	<u>RWE npower - Copy of the deed of unilateral undertaking to Derbyshire County Council and Staffordshire County Council</u>
REP-075	<u>RWE npower - Updated presentation, questions and answers for River Dove Floodplain Modelling Addendum</u>
REP-076	<u>RWE npower - River Dove Floodplain Modelling Addendum – Deadline 4 updated submission</u>
REP-077	<u>RWE npower - Addendum to the Statement of Common Ground with the Environment Agency</u>
REP-078	<u>RWE npower - Draft Development Consent Order – Version 2 April 2014 (clean)</u>
REP-079	<u>RWE npower - Draft Development Consent Order – April 2014 (tracked change version)</u>
REP-080	<u>RWE npower - Schedule of Changes to draft Development Consent Order – April 2014</u>
REP-081	<u>Crown Estate - Letter regarding Land at Bell House, Anslow (late submission)</u>
Statements of Common Ground	
REP-082	<u>RWE npower - Statement of Common Ground with Canal and River Trust</u>
REP-083	<u>RWE npower - Statement of Common Ground with Severn Trent Water</u>

DOCUMENTS RECEIVED FOR DEADLINE V – 12 May 2014	
REP-084	<u>BSkyB Telecommunications Services Ltd</u>
REP-085	<u>GTC Pipelines</u>
REP-086	<u>RWE npower - Deadline 5 Cover Letter</u>
REP-087	<u>RWE npower - Response to second round of written questions</u>
REP-088	<u>RWE npower - Draft Development Consent Order – Version 3, May 2014 (clean)</u>
REP-089	<u>RWE npower - Draft Development Consent Order – Version 3, May 2014 (tracked change version)</u>
REP-090	<u>RWE npower - Schedule of Changes to draft Development Consent Order (Version 3, May 2014)</u>
REP-091	<u>RWE npower - Book of Reference – Version 2, May 2014</u>
REP-092	<u>RWE npower - Land Plans – Version 2, May 2014</u>
REP-093	<u>RWE npower - Works Plans – Version 2, May 2014</u>
REP-094	<u>RWE npower - Yoxall AGI Plan – Version B, February 2014</u>
REP-095	<u>RWE npower - Schedule of Changes to the Land Plans, Works Plans and AGI Plan (Version 2, May 2014)</u>
REP-096	<u>RWE npower - Schedule of Changes to Book of Reference (Version 2, May 2014)</u>
REP-097	<u>RWE npower - Supplement to the Statement of Common Ground with Staffordshire County Council</u>
DOCUMENTS RECEIVED FOR DEADLINE VI – 20 May 2014	
REP-098	<u>National Grid Gas plc and National Grid Electricity Transmission plc – Letter withdrawing previous representations</u>
DOCUMENTS RECEIVED FOR DEADLINE VII – 12 June 2014	
Comments on ExA's draft DCO	
REP-099	<u>South Derbyshire District Council</u>
REP-100	<u>English Heritage</u>
REP-101	<u>Staffordshire County Council</u>
REP-102	<u>Derbyshire County Council</u>
REP-103	<u>RWE npower – Comments on ExA's draft DCO</u>
Other submissions	
REP-104	<u>RWE npower - Summary of Oral Submissions made at Issue Specific Hearing 22 May</u>
REP-105	<u>RWE npower – Examining Authority's draft DCO dated 4 June 2014 (on SI Template)</u>
REP-106	<u>RWE npower – Schedule of Validation Errors found within final draft DCO</u>
REP-107	<u>RWE npower – Schedule of Statutory Undertakers (Clean version)</u>
REP-108	<u>RWE npower – Schedule of Statutory Undertakers (Tracked version)</u>
REP-109	<u>RWE npower – Statement of Reasons Appendix 13.1 (Clean version)</u>
REP-110	<u>RWE npower – Statement of Reasons Appendix 13.1</u>

	<u>(Tracked version)</u>
REP-111	<u>RWE npower – Private Agreement Schedule (Clean version)</u>
REP-112	<u>RWE npower – Private Agreement Schedule (Tracked version)</u>
REP-113	<u>RWE npower – Book of Reference, Version 3 (June 2014)</u>
REP-114	<u>RWE npower – Land Plans, Version 3 (June 2014)</u>
REP-115	<u>RWE npower – Works Plans, Version 3 (June 2014)</u>
REP-116	<u>RWE npower – Yoxall AGI Plan, Version C (June 2014)</u>
REP-117	<u>Derby Aero Club</u>
REP-118	<u>RWE npower – Schedule of Changes to the Book of Reference (Version 2, June 2014)</u>
REP-119	<u>RWE npower – Schedule of Changes to Land Plans, Works Plans and Yoxall AGI Plan (Version 2, June 2014)</u>
DOCUMENTS RECEIVED FOR DEADLINE VIII – 19 June 2014	
REP-120	<u>RWE npower – Deadline 8 Covering Letter</u>
REP-121	<u>RWE npower – Schedule of Changes to Land Plans, Works Plans and the Yoxall AGI Plan (Version 3, June 2014)</u>
REP-122	<u>RWE npower – Schedule of Correspondence with the landowner of plots S209B and S216 – Mr Jones</u>
DOCUMENTS RELATING TO HEARINGS AND SITE VISITS	
Preliminary Meeting	
HE-01	<u>RWE npower - Response to Rule 6 letter</u>
HE-02	<u>Preliminary Meeting Audio 10 January 2014</u>
HE-03	<u>Preliminary Meeting Note</u>
Applicant's Notification of Hearings and Site Visits	
HE-04	<u>RWE npower - Rule 13 Notice of hearings</u>
HE-05	<u>RWE npower - Copy of Rule 13 Notice as appeared in Burton Mail on Wednesday 26 February 2014</u>
Issue Specific Hearing – 11 March 2014	
HE-06	<u>Issue Specific Hearing 11 March 2014 - Agenda</u>
HE-07	<u>Audio Issue Specific Hearing 11 March 2014</u>
Compulsory Acquisition Hearing – 12-13 March 2014	
HE-08	<u>Compulsory Acquisition Hearing 12 March 2014 - Agenda</u>
HE-09	<u>Audio Compulsory Acquisition Hearing 12 March 2014</u>
Issue Specific Hearing – 9 April 2014	
HE-10	<u>Issue Specific Hearing 9 April 2014 - Agenda</u>
HE-11	<u>Audio Issue Specific Hearing 9 April 2014</u>
Issue Specific Hearing – 22 May 2014	
HE-12	<u>Issue Specific Hearing 22 May 2014 - Agenda</u>
HE-13	<u>Schedule to Agenda for ISH 22 May 2014</u>
HE-14	<u>Audio Issue Specific Hearing 22 May 2014</u>
Accompanied Site Visit – 29 April 2014	
HE-15	<u>Accompanied Site Visit Itinerary</u>

HE-16

Accompanied Site Visit Route Map

APPENDIX C

EVENT IN THE EXAMINATION

The list below contains the main events which occurred, and procedural taken, during the examination.

Friday 10 January 2014	Preliminary Meeting
Monday 20 January 2014	Issue by ExA of: <ul style="list-style-type: none">▪ Examination timetable▪ ExA's first round of written questions▪ Request for Statements of Common Ground (SoCG)▪ Request for draft matrices summarising the effects on European sites▪ Request for mitigation and statutory undertaker schedules▪ Request for updated Statement of Reasons▪ Request for a private agreement schedule.
Wednesday 12 February 2014	Deadline 1 Deadline for receipt by the ExA of: <ul style="list-style-type: none">▪ Comments on relevant representations (RRs)▪ Summaries for all RRs exceeding 1500 words▪ Written representations (WRs) by all interested parties. All parties should submit their full written case and supporting evidence at this stage, as any representations to be heard at a hearing should be based on a relevant or written representations▪ Summaries of all WRs exceeding 1500 words▪ Local Impact Reports (LIRs) from any local authorities▪ Responses to ExA's first round of written questions▪ Notification of wish to speak at a compulsory acquisition hearing▪ Notification of wish to make oral representations at the first issue specific hearing on the draft

	<ul style="list-style-type: none"> ▪ Development Consent Order (DCO) ▪ Notification of wish to make oral representations at any other issue specific hearing ▪ Notification of wish to speak at an open floor hearing ▪ Representations relating to locations to view at the site or in the surrounding area which are considered to be relevant for the ExA during the accompanied site visit to better understand representations made or to see land and interests where there is no other opportunity to gain public access. The ExA has already undertaken an unaccompanied site visits to look at the site from public vantage points along the pipeline route. ▪ The applicant's draft matrices summarising the effects on European sites as requested ▪ Mitigation and statutory undertaker schedules as requested ▪ Updated Statement of Reasons Appendix ▪ Private agreement schedule as requested
Friday 14 February 2014	<p>Issue by ExA of:</p> <ul style="list-style-type: none"> ▪ Notification of the date, time and place for any issue specific hearings, open floor hearings and compulsory acquisition hearings
Wednesday 19 February 2014	<p>Deadline 2</p> <ul style="list-style-type: none"> ▪ Statements of Common Ground (SoCGs) as requested
Wednesday 5 March 2014	<p>Deadline 3</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> ▪ Comments on WRs ▪ Responses to comments on RRs ▪ Comments on LIRs ▪ Comments on responses to ExA's first round of written questions ▪ Comments on applicants draft matrices summarising the effects on European

	<ul style="list-style-type: none"> sites ▪ Comments on the mitigation and statutory undertaker schedules ▪ Comments on the updated Statement of Reasons Appendix ▪ Comments on the private agreement schedule
Tuesday 11 March 2014	Issue specific hearings relating to the draft Development Consent Order (DCO)
Wednesday 12 March 2014	Compulsory acquisition hearing
Monday 7 April 2014	Issue by ExA of details of date, time and place of ExA's inspection of a sites to which the application/specific matters relate in the company of Interested Parties
Wednesday 9 April 2014	Issue specific hearing relating to flood risk assessment in the floodplain of the River Dove and the area of Egginton
Wednesday 16 April 2014	<p>Deadline 4</p> <p>Deadline for receipt by the ExA of post hearing documents including any written summary of an oral case put at any hearing and any documents/amendments requested by the ExA</p>
Thursday 24 April 2014	Issue by ExA of any second round of written questions requests for any updated SoCGs
Tuesday 29 April 2014	Accompanied site visit
Monday 12 May 2014	<p>Deadline 5</p> <p>Deadline for receipt by the ExA of:</p> <p>Post-hearing documents including any written summary of an oral case put at any Hearing and any documents/amendments requested by the ExA</p> <p>Responses to ExA's second round of written questions</p>

	<p>Updated SoCGs as requested</p> <p>Applicant's revised draft DCO and Book of Reference taking into account of issues raised in all hearings and WRs to date</p>
Tuesday 20 May 2014	<p>Deadline 6</p> <p>Deadline for receipt by the ExA of comments on responses to ExA's second round of written questions.</p>
Thursday 22 May 2014	<p>Issue specific hearings relating to the draft DCO</p>
Wednesday 4 June 2014	<p>Issue by ExA of final draft DCO</p>
Thursday 12 June 2014	<p>Deadline 7</p> <p>Deadline for receipt by the ExA of:</p> <p>Post-hearing documents including any written summary of an oral case put at any hearing and any documents/amendments requested by the ExA</p> <p>Comments on final draft DCO</p> <p>Comments on SoCGs received at deadline 5</p>
Thursday 19 June 2014	<p>Deadline 8</p> <p>Deadline for receipt by the ExA of responses to comments on ExA's revised final draft DCO</p>
Wednesday 2 July 2014	<p>Close of Examination</p>

APPENDIX D

LIST OF ABBREVIATIONS

AGI	Above Ground Installation
AQMA	Air Quality Management Area
BAP	Biodiversity Action Plan
BAS	Biological Alert Sites
BS	British Standard
BT	British Telecommunications
CA	Conservation Area
CRT	Canal and River Trust
DCC	Derbyshire County Council
DCLG	Department for Communities and Local Government
DCO	Development Consent Order
Defra	Department for Environment, Food and Rural Affairs
EA	Environment Agency
EAQ's	Examining Authority Questions
EH	English Heritage
EIA	Environmental Impact Assessment
EPR	Examination Procedure Rules
EPS	European Protected Species
ES	Environmental Statement
ESLP	East Staffordshire Local Plan
ExA	Examining Authority
FRA	Flood Risk Assessment
HA	Highways Agency

HDD	Horizontal Directional Drilling
HRA	Human Rights Act
HSE	Health and Safety Executive
LiDAR	Light Detection and Ranging
LIR	Local Impact Report
LVIA	Landscape and Visual Impact Assessment
LWS	Local Wildlife Site
NE	Natural England
NFC	National Forest Company
NG	National Grid Gas
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NPS EN-1	Overarching National Policy Statement for Energy
NPS EN-4	National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines
NRIL	Network Rail Infrastructure Ltd
NSIP	Nationally Significant Infrastructure Project
NTS	National Gas Transmission System
PA	Planning Act
PRoW	Public Right of Way
RIES	Report on the Implications for European Sites
RR	Relevant Representation
SAC	Special Area of Conservation
SCC	Staffordshire County Council
SDDC	South Derbyshire District Council
SDLP	South Derbyshire Local Plan

SoCG	Statement of Common Ground
SoS	Secretary of State
SPA	Special Protection Area
SSSI	Site of Special Scientific Interest
TA	Transport Assessment
WR	Written Representation
WSI	Written scheme for investigation areas of archaeological interest