

SIZEWELL C PROJECT ("the Proposed Development")

WRITTEN SUMMARY OF THE NDA AND MAGNOX'S ORAL SUBMISSIONS AT THE COMPULSORY ACQUISITION HEARING

WEDNESDAY 18 AUGUST 2021 – PART 2

1. BACKGROUND

- 1.1 The Compulsory Acquisition Hearing ("**CAH**") Part 2 was held on 18 August 2021.
- 1.2 The CAH followed the agenda published by the Examining Authority ("**ExA**") on 10 August 2021. The Nuclear Decommissioning Authority ("**NDA**") and Magnox Limited's ("**Magnox**") oral submissions commenced at item 9 of the Agenda and therefore this submission does not cover the remaining items addressed at the CAH.
- 1.3 In Section 3 of this Summary, the NDA/Magnox sets out the latest position following the close of the CAH.

2. AGENDA ITEM 9 - ORAL REPRESENTATIONS FROM NDA AND MAGNOX

- 2.1 The oral representation made by Richard Griffiths, a partner at Pinsent Masons LLP, was on behalf of NDA and Magnox jointly. NDA and Magnox maintain their objections to the compulsory acquisition of their interests.

Background

- 2.2 The NDA is a statutory corporation established by the Energy Act 2004¹. The NDA is responsible for ensuring that the UK's legacy nuclear sites are decommissioned and cleaned-up safely, securely, cost-effectively and in a manner that protects people and the environment.
- 2.3 The NDA's principal function, as established by Designating Directions made by the Secretary of State pursuant to section 3 of the Energy Act 2004, is to secure the decommissioning and cleaning-up of those nuclear sites and installations for which it has designated responsibility.
- 2.4 On 3 December 2004, the Secretary of State for Trade and Industry made the Sizewell A Directions. The Sizewell A Directions give the NDA statutory responsibility for the decommissioning and cleaning-up of the Sizewell A Nuclear Site, the geographical extent of which is defined in Schedule 1 and Annex A to the Sizewell A Directions. The Sizewell A Directions came into force on 1 April 2005 and are appended to the NDA's and Magnox's written

¹ The NDA's sponsoring Government Department is HM Department for Business, Energy and Industrial Strategy

representations (Examination Library Reference REP2-410).

- 2.5 Decommissioning activities at the Sizewell A Nuclear Site are carried out on behalf of the NDA by the site tenant, Magnox Limited, being a wholly owned subsidiary of the NDA, in accordance with detailed lease and contractual arrangements with the NDA. Magnox is also the holder of the Nuclear Site Licence for the Sizewell A Nuclear Site, granted pursuant to the Nuclear Installations Act 1965 (“**NIA 1965**”) and regulated by the Office for Nuclear Regulation (“**ONR**”).

Unresolved Issues for NDA and Magnox

- 2.6 Whilst the NDA and Magnox are currently actively engaged (and have been throughout) in discussions with the Applicant, there remain areas of disagreement between the parties which means that the NDA and Magnox must maintain their objection to the granting of the Development Consent Order (“**DCO**”) in its current form.

- 2.7 The three principal areas are:

2.7.1 Plots within the Nuclear Site Licence Boundary;

2.7.2 Other plots for which NDA/Magnox are Category 1 persons; and

2.7.3 Acquisition of Rights.

Plots within the Nuclear Site Licence Boundary

- 2.8 The first area relates to plots MDS/05/06 and MDS/05/07, the freehold of which is owned by the NDA, with Magnox as the Lessee.
- 2.9 Both these plots are located within the boundary of the area defined by the Secretary of State as the “principal nuclear site” under the Sizewell A Directions. These plots are also located within the boundary of the Nuclear Site Licence held by Magnox.
- 2.10 As the NDA and Magnox have repeatedly stated in their written representations and to the Applicant, these plots should both be removed from the Book of Reference and therefore from Article 26 (Compulsory Acquisition of Land) and Article 30 (Compulsory Acquisition of rights and imposition of restrictive covenants).
- 2.11 Whilst the NDA and Magnox note the restrictions that the Applicant has inserted at Article 26(2)(a) and is proposing in the Protective Provisions that we are negotiating with the Applicant, we consider that these restrictions only serve to demonstrate why the ExA cannot recommend, and why the Secretary of State cannot approve, the inclusion of plots MDS/05/06 and MDS/05/07 in the remit of the compulsory acquisition articles. This is because, in our view, the inclusion of plots that form part of the Sizewell A “principal nuclear site” under the Sizewell A Nuclear Site Directions, and which are

within the boundary of the Nuclear Site Licence area, is wholly inconsistent with the functions and responsibilities that are given to the NDA through the Sizewell A Directions, and also with the purpose of the strict regulatory regime established by the NIA 1965. For example:

- 2.11.1 As land which is licensed, these two plots form part of Magnox's overall safety case for the Sizewell A Nuclear Site, which is required as part of its licence arrangements for the purposes of demonstrating to the ONR that it is competent to hold a Nuclear Site Licence and to maintain effective safety and security at the site. It would therefore, in our opinion be wrong for the provisions of this DCO to be seen to be applying pressure on the NDA and Magnox to agree to a transfer of these plots, or to the removal of any rights or imposition of any restrictions over these plots, by virtue of their inclusion in the Book of Reference and by reference to not unreasonably withholding agreement, which is currently the requirement in the draft Protective Provisions being discussed. To do so would, in our view, be wholly inconsistent with the complex regulatory regime that the Nuclear Site Licence establishes in respect of these plots.
- 2.11.2 The NIA 1965, in Section 4, provides for the ONR to grant a Nuclear Site Licence with conditions. Under Licence Condition 3 of Magnox's Nuclear Site Licence, there is a requirement for approved arrangements to be in place with the ONR that categorises land dealings – the basic point being, that the ONR needs to be satisfied that Magnox has at all times the necessary legal and practical arrangements in place to carry out, and comply with, its responsibilities under the Nuclear Site Licence and to maintain and operate the site in a safe and secure manner, in compliance with all licence conditions. Any land dealings over plots MDS/05/06 and MDS/05/07, from transfer of freehold to over-riding of easements to imposition of restrictive covenants, have the potential to result in Magnox not being able to carry out, and comply with, its responsibilities under the Nuclear Site Licence. This would clearly also have implications for the NDA's ability to discharge its statutory duties via its arrangements with Magnox. Accordingly, no land dealings involving the transfer of land plots that are within the boundary of the licensed site – whether voluntary or compulsory – can be done without discussions with a third party, the ONR.
- 2.11.3 These discussions with the ONR would be, for example, to request that the plots in question should be removed from the Nuclear Site Licence area. However, to do that Magnox would need to demonstrate to the ONR that it has fulfilled its duties over the plots in question and no longer requires them to fulfil its duties on the remainder of the Nuclear Site Licence area. It would, of course, also need to show to the ONR that it had demonstrated the strict requirements in the NIA 1965 relating to de-licensing of land. If the land was to be de-licensed and transferred, the NDA would also need to request that the Secretary of State amends the Sizewell A Nuclear Site Directions to remove the plots from the designated area of the "principal nuclear site".
- 2.11.4 Plots MDS/05/06 and MDS/05/07 are required by Magnox for the safe and secure decommissioning of Sizewell A. When these plots can be released from their role, and from the Nuclear Site Licence Boundary and the Designating Directions, can only be determined by the NDA and Magnox, in conjunction with the ONR and the Secretary of State - it cannot be forced through or pressurised through a DCO. Rather, it should be done through voluntary means and discussions between parties due to the statutory responsibilities of safe and secure decommissioning of the site.
- 2.11.5 NDA and Magnox are currently in voluntary discussions with EDF as the operator of Sizewell B Nuclear Site, rather than the Applicant, in relation to the transfer of plots MDS/05/06 and MDS/05/07. In this context, NDA and Magnox are not wholly clear why these plots are included

within the Applicant's proposals for compulsory acquisition when these plots are, in fact, to be transferred to and utilised by the operator of Sizewell B Nuclear Site, as opposed to the Applicant.

2.11.6 In any event, whether the land is required by the Applicant or the operator of Sizewell B Nuclear Site, the overwhelmingly clear preference of both the NDA and Magnox in this context is nevertheless to pursue this transaction on a voluntary basis, without undue pressure from compulsory acquisition provisions in the DCO, so that the NDA and Magnox can put in place all necessary contractual arrangements with the Applicant to ensure that:

- (a) the relevant regulatory approvals are sought and obtained in an appropriate manner and at the appropriate time;
- (b) the Secretary of State is given adequate time to properly consider the possible modification of the NDA's statutory functions and responsibilities at the Sizewell A Nuclear Site; and
- (c) all parties are clear on their respective environmental liabilities and obligations in respect of the plots.

2.12 Given the restrictions imposed on Magnox through the NIA 1965 and through the Nuclear Site Licence conditions as explained, and the framework of NDA responsibilities that is in place, the Applicant has added in wording to the draft Protective Provisions that further restricts the Applicant from exercising the compulsory acquisition powers over these plots unless the Designating Directions have been modified or revoked and the Nuclear Site Licence has been surrendered or revoked by the ONR. However, whilst this wording in the protective provisions is welcomed, the NDA and Magnox consider that such drafting simply demonstrates the complexities associated with including plots MDS/05/06 and MDS/05/07 in the DCO, and further highlights that they should not be included at all.

2.13 Indeed, what is the compelling case in the public interest in compulsorily acquiring plots MDS/05/06 and MDS/05/07 or compulsorily acquiring rights over, or imposing restrictions over, plots MDS/05/06 and MDS/05/07 when the use of the powers are restricted by reference to actions of third parties? Furthermore, it would seem that the beneficiary of the plots is the operator of Sizewell B Nuclear Site rather than the Applicant. The inclusion of plots MDS/05/06 and MDS/05/07 within Article 26 and Article 30 unfairly and unreasonably places the onus on the NDA and Magnox, when it should be the Applicant respecting the fact that these plots are strictly controlled by the nuclear licensing regime which has at its heart the need to ensure that the Sizewell A Nuclear Site remains safe and secure at all times. The nuclear licensing regime should override the Applicant's desire to compulsorily acquire these plots. The public interest test is not met in respect of compulsorily acquiring them; rather the public interest is in the timely, safe and secure decommissioning of Sizewell A.

2.14 We consider that the only reason why the Applicant has inserted this restrictive drafting is because it is trying to prevent the triggering of Section 151 of the Planning Act 2008, which specifies that a DCO may not include a provision the effect of which is to exclude or modify the application of any provision of the NIA 1965. However, we consider that irrespective of Article 26 and the draft Protective Provisions, which are of course not yet agreed, Section 151 is engaged for the reasons set out in this submission. Furthermore, we consider it a dangerous precedent for a DCO to include the compulsory acquisition of nuclear site licensed land, regardless of any attempted restrictions.

- 2.15 In summary, NDA and Magnox do not consider that a compelling case in the public interest has been demonstrated by the Applicant regarding plots MDS/05/06 and MDS/05/07 given:
- 2.15.1 the complex negotiations that are required to take place to identify when the plots are no longer required by NDA and Magnox, to enable them to fulfil their statutory responsibilities, where such timing depends wholly on the delivery of their decommissioning programme; and
 - 2.15.2 the need to demonstrate to the satisfaction of the ONR and the Secretary of State that the plots can be removed from the Nuclear Site Licence Boundary and the Designating Directions respectively, without an impact on safety.
- 2.16 For these reasons, the NDA and Magnox object to the inclusion of plots MDS/05/06 and MDS/05/07 within the Book of Reference and ask for them to be removed on the basis that the compelling case in the public interest is not demonstrated and met and there is no certainty that Section 151 is not engaged.
- 2.17 The ExA asked for confirmation of timings of the decommissioning obligations and how long it is anticipated for plots MDS/05/06 and MDS/05/07 to be required by the NDA and Magnox. Mr Wrayford, the Lead Commercial Manager at Magnox, confirmed that the decommissioning is timetabled for approximately 50 to 80 years. The area is likely to be used for waste handling, plant lay down areas and contract cabin offices, but the strategy is still evolving. Mr Wrayford explained that there is a window of opportunity with Sizewell B Nuclear Site to sell the land to facilitate the current developments, as it is possible to transfer to an existing licensee as the liabilities can transfer across to reuse the land, achieving the purposes of the Energy Act 2004. Should the deal not come to fruition in the short term, Magnox will revert to using the site for its own purposes for decommissioning operations, as the site is constrained.
- 2.18 In response to the Applicant, Mr Griffiths stated that it is clear that the only reason plots MDS/05/06 and MDS/05/07 are in the Application is to cleanse the title and that this is not a compelling case in the public interest for plots that have been part of a long established generating station operation and which are governed by the nuclear site licence regime and for which NDA and Magnox have statutory responsibilities which must be demonstrated to the Secretary of State and the ONR. The compelling case in the public interest is not for compulsory acquisition, but to enable these plots to be transferred at the right time to enable the safe and secure decommissioning of the site.

Other plots for which NDA/Magnox are Category 1 persons

- 2.19 The second area relates to plots MDS/04/09, MDS/04/10, MDS/05/02, MDS/05/03, MDS/05/04, MDS/05/08, MDS/05/09, MDS/05/013 and MDS/06/01. These plots are outside the “principal nuclear site” under the Sizewell A Nuclear Site Directions and outside the Magnox Nuclear Site Licence area. The NDA is a Category 1 person in respect of all of these plots, whilst Magnox is a Category 1 person in respect of plot MDS/05/02 only.
- 2.20 The NDA and Magnox are content for these plots to remain within the Book of Reference and subject to Article 26(1), but only on the basis that Article 26(2)(a) remains within the DCO and Protective Provisions for the benefit of the NDA and Magnox are incorporated into the DCO in a satisfactory form. This restriction and the protection from the Protective Provisions are necessary as some of these plots, whilst outside of the designated area

and the Nuclear Site Licence area, are still important to enable the fulfilment of the NDA's and Magnox's duties – principally those of Magnox under the licensing arrangements. For example, Magnox needs to ensure, particularly in respect of those plots that abut the Nuclear Site Licence area, that it still retains the necessary rights of access and egress to and from the licensed site at all times. Indeed, demonstrating and controlling access and egress to the Nuclear Site Licence area is a fundamental component of the Nuclear Site Licence arrangements, and therefore it is important that the DCO has on its face the restriction of Article 26(2)(a), which is then supplemented by the Protective Provisions to ensure this condition of the Nuclear Site Licence can be met at all times.

Acquisition of Rights

- 2.21 The third area relates to the Applicant's ability under Article 26(1) and Article 30 to extinguish or over-ride rights of the NDA and Magnox. At present, the draft DCO, Revision 7, provides no protection to the NDA and Magnox and as a result the NDA and Magnox object to the draft DCO in its current form.
- 2.22 Article 26(2)(b) restricts the use of Article 26(1) and Article 30 to extinguish or over-ride rights over land identified in Schedule 15 but only in respect of those rights "which relate to the operation of Sizewell B power station". This does not protect the NDA and Magnox.
- 2.23 The Statement of Common Ground submitted by the Applicant at Deadline 5 (Examination Library Reference REP5-100) refers to an "Article 26(2)(c)" which is designed to "preclude the Applicant from compulsorily acquiring any rights held by NDA/Magnox in the plots listed." The addition of this Article is welcome and is required given the need for the NDA and Magnox to ensure that they demonstrate to the ONR that they can fulfil their respective duties. However, the Article has not appeared in the revisions to the DCO and so we reserve our position until we have seen the proposed wording submitted to and accepted into the Examination.
- 2.24 In addition to the new Article 26(2)(c), the NDA and Magnox require the additional protections being discussed in the Protective Provisions.
- 2.25 Whilst it would appear that the Applicant is willing to restrict itself in respect of its use of Article 26(1) and Article 30 to extinguish or over-ride rights over land identified in Schedule 15, we have not seen the drafting and so our objection remains.

Protective Provisions

- 2.26 The latest draft of the Protective Provisions was received the morning of Part 2 of the CAH and are still under negotiation. The NDA, Magnox and Applicant see no reason why these will not ultimately be agreed by the end of the Examination. However, there will remain an "in principle" objection to the inclusion of plots MDS/05/06 and MDS/05/07 within the compulsory acquisition powers.

3. UPDATE FOLLOWING PART 2 OF THE CAH

- 3.1 The NDA/Magnox understand that the Applicant is intending on submitting a revised version of the draft Development Consent Order at Deadline 7, 3 September 2021, that does not include Article 26(2)(a). The NDA/Magnox understand that this is on the basis that the NDA/Magnox will have the benefit of Protective Provisions that are currently being negotiated. The NDA/Magnox disagree with this approach and has expressed their concerns to the Applicant prior to Deadline 7.
- 3.2 Article 26(2)(a) in Revision 7 of the draft DCO provided clear protection on the face of the compulsory acquisition article regarding the Applicant's use of compulsory acquisition powers over all land in which the NDA/Magnox has an interest – the Article made it clear that the Applicant may only acquire those interests by agreement. Given the strict regulatory regime that the NDA/Magnox are subjected to, this protection on the face of the compulsory acquisition article is important and provides clarity for anyone reading the DCO, should it be granted, that there is protection afforded to the NDA/Magnox's interests. It must be remembered that the NDA/Magnox's interests are there in order to enable them to carry out their statutory duties to safely and securely clean up the nuclear site of Sizewell A for the protection of the public and the environment. The Protective Provisions then go into the detail as to how the Applicant and the NDA/Magnox are to work together where the Applicant seeks to reach agreement over the acquisition over the NDA/Magnox's interests, such detail is not appropriate in the Article.
- 3.3 Without prejudice to the NDA/Magnox's in principle objection in paragraphs 3.4 and 3.6 below, the NDA/Magnox's position is that:
- 3.3.1 Article 26(2)(a) that was included in Revision 7 of the draft DCO should be reinstated; and
- 3.3.2 Protective Provisions for the benefit of the NDA/Magnox - we append the current preferred draft to this Oral Summary to be included in the draft DCO.
- 3.4 As the NDA/Magnox stated at the CAH, the NDA/Magnox has an in principle objection to the compulsorily acquisition of any of their land and interests that fall (a) within the Nuclear Site Licence held by Magnox for the Sizewell A Nuclear Site and (b) the designated boundary of the Sizewell A Nuclear Site for which NDA has statutory responsibility for decommissioning and cleaning up pursuant to the Sizewell A Directions made by the Secretary of State on 3 December 2004. As at the date of this Statement of Common Ground, there are two plots that fall within this category, being plots MDS/05/06 and MDS/05/07.
- 3.5 NDA/Magnox's position, therefore, is that plots MDS/05/06 and MDS/05/07 should be removed from the Book of Reference – the reason for this is set out in our oral submissions at the CAH and summarised in writing in this note. Put simply, the Applicant has not demonstrated a compelling case in the public interest for the compulsory acquisition of plots MDS/05/06 and MDS/05/07; their case is simply that they wish to "clean title." This is not a compelling case and not evidence has been presented to the Examination to demonstrate what interests in these plots the Applicant is concerned about.
- 3.6 In the event that the Applicant does not remove plots MDS/05/06 and MDS/05/07 from the Book of Reference, the Applicant will request that the Secretary of State does not authorise the compulsory acquisition of these plots should the Secretary of State grant the DCO and that the Book of Referenced submitted to the Secretary of State for certification pursuant to the DCO should not, therefore, include the plots. The NDA/Magnox will

also confirm that should the Secretary of State agree to this position, that Article 26(2)(a) that was included in Revision 7 of the draft DCO together with the attached Protective Provisions remain relevant given the NDA/Magnox's other interests in the Order Land and should be included in the DCO.

- 3.7 In the event that the Secretary of State disagrees with the NDA/Magnox's position as set out in paragraphs 3.4 to 3.6, the NDA/Magnox's position will be as set out in paragraph 3.3 above.
- 3.8 Appendix 1 of this submission contains NDA and Magnox's preferred version of the draft Protective Provisions.

APPENDIX 1

NDA AND MAGNOX'S PREFERRED PROTECTIVE PROVISIONS

PART 1

PROTECTION FOR THE NUCLEAR DECOMMISSIONING AUTHORITY AND MAGNOX LIMITED

Application

1. The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and NDA and / or Magnox (as applicable).

Interpretation

2. In addition to article 2 (interpretation), the terms in this Part have the following meanings—

“access road” means the private access road connecting the Magnox Site and NDA Site to the adopted highway (sizewell gap road) shown on the Access Road Plan;

"Access Road Plan" means the document certified by the Secretary of State as such under article 80 and identified in Schedule 22 for the purposes of this Order;

“alternative installations” means appropriate alternative installations to the satisfaction of NDA and / or Magnox (as applicable) to enable NDA and / or Magnox (as applicable) to fulfil its obligations under the Designating Directions and NSL in a manner not less efficient than previously;

“authorised development” has the same meaning as in article 2(1) (interpretation) of this Order;

“Book of Reference” has the same meaning as in article 2(1) (interpretation) of this Order;

“days” means Monday to Friday excluding bank holidays and other public holidays;

“Designating Directions” mean the nuclear site directions in force in respect of any part of the NDA Site and made by the Secretary of State in exercise of the powers contained in sections 3, 4 and 16 of the Energy Act 2004;

“include” or “includes” is to be interpreted in accordance with article 2(9) (interpretation) of this Order;

“installation(s)” means any buildings, structures, cooling water infrastructure, services and any other uses and apparatus belonging to or maintained by or used by NDA or Magnox within the Site and / or the Rights Land as identified by NDA or Magnox (as applicable) in accordance with paragraph 15;

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

“Land Plans” has the same meaning as in article 2(1) (interpretation) of this Order;

“Magnox” means Magnox Limited (Company No.02264251) and includes its successors in title, agents, assigns, officers, servants contractors or agents;

"Magnox Rights Land" means that part of the Order Land in which Magnox has a legal or beneficial interest including any easement, liberty, privilege, right, advantage or restrictive covenant but excluding a freehold or leasehold interest;

“Magnox Site” means that part of the Order Land in which Magnox has a freehold or leasehold interest;

“NDA” means the Nuclear Decommissioning Authority, a non-departmental public body established by the Energy Act 2004, and any successor body with responsibility for carrying out the same or similar statutory functions;

"NDA Rights Land" means that part of the Order Land in which NDA has a legal or beneficial interest including any easement, liberty, privilege, right, advantage or restrictive covenant but excluding a freehold or leasehold interest

“NDA Site” means that part of the Order Land in which NDA has a freehold or leasehold interest;

“NSL” means a nuclear site licence granted by the Office for Nuclear Regulation in exercise of powers contained in sections 1(1), 3 and 4 of the Nuclear Installations Act 1965;

“NSL Site” means those parts of the Site in respect of which an NSL is in force from time to time and means the nuclear site licence, as amended from time to time, for the Site granted by the Secretary of State in exercise of powers under sections 1(1), 3 and 4 of the Nuclear Installations Act 1965 on 28th November 1997 to Magnox;

“Order Land” has the same meaning as in article 2(1) (interpretation) of this Order;

“plans” includes sections, designs, design data, software, drawings, specifications, descriptions (including descriptions of methods of construction), method statements, soil reports, programmes, staging proposals and other supporting information that are reasonably necessary to properly and sufficiently describe the works to be executed;

“Rights Land” means the NDA Rights Land and the Magnox Rights Land;

“Site” means the NDA Site and the Magnox Site; and

“specified works” means so much of any of the authorised development as is situated upon, across, under, or over the Site and / the Rights Land or that are near to, or will or may in any way adversely affect the installations.

Acquisition of Land and Installations

3.—(1) Despite any provision of this Order or anything shown on the Land Plans or contained in the Book of Reference, the undertaker must not—

(a) exercise any power to acquire any part of the Site, or any right, interest, or installations in the Site, or override any easement or other interest in the Site or extinguish any right or suspend any right of NDA and / or Magnox (as applicable) in the Site or impose any restrictions in the Site otherwise than by agreement with NDA and / or Magnox (as applicable) and:

- (i) only once the Designating Directions in respect the relevant part of the NDA Site have been modified or revoked to the satisfaction of NDA by the Secretary of State in accordance with section 5 of the Energy Act 2004;
- (ii) subject to paragraph 3(3), only once the NSL in respect of the relevant part of the NSL Site has been surrendered by Magnox or revoked by the Office for Nuclear Regulation;
- (iii) where required by the NDA and / or Magnox, the undertaker has first provided an alternative installation pursuant to this Part; and /or
- (iv) where required by the NDA and / or Magnox, the undertaker has first provided an alternative, equivalent right, interest, easement or other interest pursuant to this Part

to ensure the continued decommissioning of the NSL Site and the continued compliance by the NDA and / or Magnox of their respective statutory requirements.

(b) exercise any power to temporarily use any Order Land located within the Site otherwise than by agreement with NDA and / or Magnox (as applicable).

(2) Despite any provision of this Order or anything shown on the Land Plans or contained in the Book of Reference, the undertaker must not exercise any power to acquire any installations in the Rights Land, or acquire any right or interest of NDA and / or Magnox (as applicable) in the Rights Land, or override any easement or other interest of NDA and / or Magnox (as applicable) in the Rights Land or extinguish any right or suspend any right of NDA and /or Magnox (as applicable) in the Rights Land otherwise than by agreement with NDA and / or Magnox (as applicable) and only:

- (a) where required by the NDA and / or Magnox, the undertaker has first provided an alternative installation pursuant to this Part; and /or
- (b) where required by the NDA and / or Magnox, the undertaker has first provided an alternative, equivalent right, interest, easement or other interest pursuant to this Part

to ensure the continued decommissioning of the NSL Site and the continued compliance by the NDA and / or Magnox of their respective statutory requirements.

(3) Where the undertaker and NDA and / or Magnox (as applicable) agree under this paragraph that any land interest in the NSL Site, or installations in the NSL Site, may be acquired by agreement at a time when the NSL remains in force, such acquisition may only take place after the consent of the Office for Nuclear Regulation has first been obtained by Magnox in accordance with the NSL.

Right of access

4.—(1) The undertaker must not stop up in whole or in part the access road or extinguish in whole or in part any right of NDA and / or Magnox (as applicable) along the access road unless and until:

- (a) an equivalent replacement access has been agreed by the undertaker and NDA and / or Magnox (as applicable) (such agreement not to be unreasonably withheld or delayed); and
- (b) such replacement access has been put in place to the reasonable satisfaction of NDA and / or Magnox (as applicable) and in accordance with all safety and emergency response requirements; and
- (c) the NDA and / or Magnox (as applicable) has/have been granted the same rights in respect of the replacement access as the NDA and / or Magnox (as applicable) enjoyed immediately before the stopping up or extinguishment of the access road.

(2) The undertaker must ensure that a full right of access for all emergency, operational and user purposes is maintained at all times by means of the access road or replacement access as set out in sub-paragraph (1).

Removal of Installations and Execution of Specified Works

5. If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any installation is located or placed, that installation must not be removed under this Part or under any other statutory power, and any right of NDA and / or Magnox (as applicable) to use, access, maintain, or renew installations on, in or over that land must not be extinguished until either alternative installations have been constructed in accordance with paragraph 6 of this Part and are in operation to the reasonable satisfaction of NDA and / or Magnox (as applicable) or NDA and / or Magnox (as applicable) provides its written consent (such agreement not to be unreasonably withheld or delayed) to removal without alternative installations being required, constructed or in operation.

6.—(1) Not less than 56 days before the intended removal of installations and construction of alternative installations or execution of specified works, the undertaker must supply to NDA and / or Magnox (as applicable) plans of the works to be executed for the reasonable approval of NDA and / or Magnox (as applicable) and the removal of installations, construction of alternative installations and / or the execution of specified works must not be commenced except in accordance with plans approved in writing by NDA and / or Magnox (as applicable) or settled by arbitration under article [82] of this Order.

(2) The approval of NDA and / or Magnox (as applicable) must not be unreasonably withheld or delayed and NDA and / or Magnox (as applicable) must indicate its approval or disapproval of the plans submitted under sub-paragraph (1) within—

- (a) a period of 56 days beginning with the day immediately following that on which the plans are received by NDA and / or Magnox (as applicable);
- (b) a period of 56 days beginning with the day immediately following that on which the further information has been supplied in full by the undertaker following a request from NDA and / or Magnox (as applicable) under paragraph 7; or
- (c) such longer period than 56 days in sub-paragraph (a) or (b) as may be agreed in writing by the undertaker and NDA and / or Magnox (as applicable) before the end of such 56 day period.

(3) Any approval of NDA and / or Magnox (as applicable) under this paragraph 6 may be provided subject to such requirements as NDA and / or Magnox (as applicable) considers reasonable.

(4) The removal of installations, construction of alternative installations or the execution of specified works must be executed only in accordance with the plans submitted and approved by NDA and / or Magnox (as applicable) under this paragraph 6 and in accordance with such reasonable requirements of NDA and / or Magnox (as applicable) and NDA and / or Magnox (as applicable) is entitled to watch and inspect the execution of those works, and the undertaker must supply NDA and / or Magnox (as applicable) with any additional information concerning such works as NDA or Magnox may reasonably require.

(5) Where NDA and / or Magnox (as applicable) requires any protective works under sub-paragraph (3) to be carried out either by itself or by the undertaker (whether of a permanent or temporary nature), the protective works must be carried out to NDA and / or Magnox's (as applicable) reasonable satisfaction prior to the carrying out of the specified works.

(6) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works, new plans instead of the plans previously submitted, and having done so the provisions of this paragraph apply again in respect of the new plans.

7.—(1) Following receipt of plans under paragraph 6 of this Part, NDA and / or Magnox (as applicable) may request such reasonable further information from the undertaker as is necessary to enable it to consider the plans.

(2) Any request under sub-paragraph (1) must be made within a period of 28 days beginning with the day immediately following that on which the plans are received by NDA and / or Magnox (as applicable).

Expenses

8. Subject to paragraph 9 of this Part, the undertaker must pay to NDA and / or Magnox (as applicable) the proper and reasonable expenses reasonably incurred by NDA and / or Magnox (as applicable) in, or in connection with, the inspection, alteration or protection of any installations and approvals, provided NDA and / or Magnox (as applicable) has obtained the undertaker's prior approval for any such expenditure (not to be unreasonably withheld or delayed).

9. NDA and / or Magnox (as applicable) is not required to seek the undertaker's prior approval pursuant to paragraph 8 and 11 of this Part for expenditure required in the case of an emergency but in that case NDA and / or Magnox (as applicable) must give to the undertaker notice of any such expenditure as soon as is reasonably practicable.

10. In paragraphs 9 and 11 of this Part "emergency" means works whose execution at the time when they are executed are required in order to put an end to or to prevent the occurrence of circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

Indemnity

11.—(1) Subject to sub-paragraph (3), if by reason, or in consequence, of the construction, use, existence, operation or failure of any specified works or in consequence of the construction, use, existence, operation, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in any consequence of any act or default of the undertaker (or any person employed or authorised by the undertaker) in the course of carrying out such works, any damage is caused to any installations or property of NDA and / or Magnox (as applicable), or to operations, or there is any interruption in any service provided to NDA and / or Magnox (as applicable) or by NDA and / or Magnox (as applicable), or in the supply of any goods to NDA and / or Magnox (as applicable) or by NDA and / or Magnox (as applicable) or NDA and / or Magnox (as applicable) becomes liable to pay any amount to any third party, the undertaker must—

- (a) subject to paragraph 9, bear and pay on demand the proper and reasonable costs reasonably and properly incurred by NDA and / or Magnox (as applicable) in making good such damage or restoring operations, services or supply provided NDA and / or Magnox (as applicable)

applicable) has obtained the undertaker's prior approval for any such costs incurred (not to be unreasonably withheld or delayed).; and

(b) indemnify NDA and / or Magnox (as applicable) for any other expenses, loss (whether direct or indirect and including losses of an economic nature), demands, proceedings, damages, claims penalty or costs incurred by or recovered from NDA and / or Magnox (as applicable) by reason or in consequence of any such damage or interruption or NDA and / or Magnox (as applicable) becoming so liable to any third party as aforesaid other than arising from any default of NDA and / or Magnox (as applicable).

(2) The fact that any act or thing may have been done by either NDA or Magnox on behalf of the undertaker or in accordance with a plan approved by NDA and / or Magnox (as applicable) or in accordance with any requirement of NDA and / or Magnox (as applicable) or its supervision does not (subject to sub-paragraph (3)) excuse the undertaker from liability under sub-paragraph (1) unless NDA and / or Magnox (as applicable) fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan or as otherwise agreed between the undertaker and NDA and / or Magnox (as applicable) in writing.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any loss, damage, injury or interruption to the extent that it is attributable to the neglect or default of either NDA or Magnox, its officers, servants, contractors or agents.

(4) NDA and / or Magnox (as applicable) must give the undertaker reasonable written notice (being not less than 28 days) of any claim or demand and, subject to paragraph 5, NDA and / or Magnox (as applicable) may decide whether or not to pass conduct of any proceedings necessary to rest the claim or demand to the undertaker.

(5) Where NDA and / or Magnox (as applicable) decides—

(a) to retain conduct of any proceedings necessary to rest the claim or demand, NDA and / or Magnox (as applicable) must consult with the undertaker and have due regard to the undertakers' representations as to how the proceedings are to be conducted and no settlement, admission of liability or compromise may be made without the consent of the undertaker (not to be unreasonably withheld or delayed);

(b) to pass conduct of any proceedings necessary to rest the claim or demand to the undertaker, the undertaker must consult with NDA and / or Magnox (as applicable) and have due regard to NDA and / or Magnox's representations (as applicable) as to how the proceedings are to be conducted and no settlement, admission of liability or compromise may be made without the consent of NDA and / or Magnox (as applicable) (not to be unreasonably withheld or delayed).

(6) Neither NDA, Magnox nor the undertaker may make any public statement relating to any claim or demand or any settlement or compromise that may be made in respect of any claim or demand without the consent of NDA, Magnox or the undertaker (as applicable).

(7) NDA and / or Magnox (as applicable) must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(8) NDA and / or Magnox (as applicable) must use its reasonable endeavours to mitigate and to minimise any costs, expenses, losses, demands, and penalties to which the indemnity under this paragraph applies where it is within NDA and / or Magnox (as applicable)'s reasonable ability and control to do so and, if reasonably requested to do so by the undertaker, NDA and / or Magnox (as applicable) must provide an explanation of how the claim has been minimised, where relevant.

Enactments and agreements

12. Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and either NDA or Magnox (as applicable) in respect of any installations located at or providing access into the Site or Rights Land on the date on which this Order is made.

Co-operation

13. The undertaker must not exercise any power under this Order which would interfere with the ability for NDA and Magnox to facilitate the decommissioning and delicensing of the NSL Site, and fulfilment of any statutory requirements, unless otherwise agreed in writing between the NDA and / or Magnox (as applicable) and the undertaker.

Arbitration

14. Any dispute arising between the undertaker and NDA and / or Magnox (as applicable) under this Part of this Schedule must be referred to and settled by arbitration under article 82 (arbitration) unless otherwise agreed in writing between the undertaker and NDA and / or Magnox (as applicable).

Installation(s) plan

15. For the purpose of identifying the installations to which the provisions of this Part shall have effect, NDA and / or Magnox (as applicable) must supply plans identifying the location of any buildings, structures, cooling water infrastructure, services, pipelines and any other uses and apparatus belonging to or maintained by or used by NDA or Magnox, such plans to be updated and notified to the undertaker from time to time.