

The Hirwaun Power
(Gas Fired Power Station) Order
201[X]

~~DRAFT DEVELOPMENT CONSENT ORDER~~

3.1 Draft Development Consent Order

~~The Infrastructure Planning~~
~~(Applications: Prescribed Forms and~~
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INTRODUCTION

This document is submitted in relation to an application for a Development Consent Order by Hirwaun Power Limited to the Secretary of State under the Planning Act 2008.

The application is for the Hirwaun Power (Gas Fired Power Station) Order, to grant development consent for the construction, operation and maintenance of:

(a) a new thermal generating station on land at the Hirwaun Industrial Estate, near Aberdare, South Wales;

(b) a new gas pipeline; and

(c) a new electrical connection.

This document is the draft Development Consent Order (or draft DCO), and comprises part of the application documents and is provided as required under Regulation 5(2)(b) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.

Hirwaun Power Limited has also submitted an Explanatory Memorandum (Document Reference 3.2), which explains the terms of the draft DCO.

STATUTORY ~~INSTRUMENTS~~ INSTRUMENTS

~~201X~~ 201[X] No. [X]

INFRASTRUCTURE PLANNING

**The Hirwaun Power (Gas Fired Power Station) Order
201[X]**

Made - - - - - [***] 201[X]
Laid before Parliament [***] 201[X]
Coming into force - - - [***] 201[X]

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An application has been made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 and Part 5 of the 2008 Act for an Order under sections 37, 114, 115, 117(4), and 120, 122 and 123 of the 2008 Act.

The application was examined by the Examining authority appointed by the Secretary of State pursuant to Chapter 4 of Part 6 of the 2008 Act.

The Secretary of State, in accordance with section ~~105(2)~~104(2) of the 2008 Act, has had regard to the local impact report submitted by [~~insert details~~XXX] and those matters which the Secretary of State thinks are both important and relevant to his decision.

The Secretary of State, having considered the representations made and not withdrawn and the application with the documents that accompanied the application, has determined to make an Order giving effect to the proposals comprised in the application.

The Secretary of State's determination was published on [~~XXX~~]. [

Accordingly, the Secretary of State, in exercise of the powers conferred by sections 103, 114, 115, 117(2), 120, 122 and 123 of the 2008 Act, makes the following Order-

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Hirwaun Power (Gas Fired Power Station) Order 201[X] and shall come into force on [X] 201[X].

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961;

“the 1965 Act” means the Compulsory Purchase Act 1965;

“the 1980 Act” means the Highways Act 1980;

“the 1990 Act” means the Town and Country Planning Act 1990;

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

“the 2008 Act” means the Planning Act 2008;

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

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

"authorised development" means the development described in 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 authorised project" means the authorised development and the ancillary works authorised by this Order;]~~

“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;

“commissioning” means the process of assuring that all systems and components of the authorised development are installed, tested, and operable in accordance with the design and operational requirements of the undertaker;

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

“date of final commissioning” means the date on which the authorised development commences operation by generating power on a commercial basis;


“electronic transmission” means a communication transmitted –

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

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

~~“environmental impact assessment” means the assessment of the environmental impact of the authorised development, the findings of which are recorded in the environmental statement;~~

“the environmental statement” means the environmental statement submitted under regulation 5(2)(a) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 and certified as such by the Secretary of State for the purposes of this Order;

“footpath and footway” have the same meaning  in the 1980 Act;

"gas turbine generator" means either one or two gas turbines which drive a single electricity generator for the purposes of generating electricity;

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

“the land plan(s)” means the plan(s) [numbered \[XXXX\]](#) certified as the land plan(s) by the Secretary of State for the purposes of this Order;

“the landscaping plans” means the plans [numbered \[XXXX\]](#) certified as the landscaping plans by the Secretary of State for the purposes of this Order;

"limits of deviation" means ~~either, in respect of numbered works 1, 2, 4 and 6, the outer limits of each numbered area or the limits of deviation the corresponding numbered area shown on the works plan and, in respect of numbered works 3 and 5, the limits to~~ either side of ~~a the corresponding numbered~~ line ~~or all as~~ shown on the works plan;

“maintain” includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve and "maintenance" ~~is and~~ "maintaining" are to be construed accordingly;

~~"numbered area" means a numbered area shown on the works plan;~~

~~"numbered work" means each numbered work comprised in the authorised development and to be located within the corresponding numbered area shown on the works plan;~~


“National Grid” means National Grid plc (Company No. 04031152) whose registered office is at 1-3 Strand, London, WC2N 5EH;

“Order land” means the land shown on the land plan(s) which is within the limits of land to be acquired or used permanently or temporarily and described in the book of reference;

"the Order limits" means the limits shown on the works plan 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;

"Hirwaun Power Limited" means ~~{DETAILS}~~ [Hirwaun Power Limited \(Company No. 8190283\) whose registered office is at 33 Cavendish Square, London W1G 0PW;](#)

“relevant planning authority” means the ~~applicable local planning authority~~ [County Borough Council](#) for the area in which  and to which the provisions of this Order apply is situated;

"requirements" means those matters set out in Schedule 2 to this Order;

~~{~~"rights of way and~~}~~ access plans" means the plans [numbered \[XXXX\]](#) certified as the~~{~~ rights of way and~~}~~ access plans by the Secretary of State for the purposes of this Order;

"Secretary of State" means the Secretary of State for Energy and Climate Change;

“the sections” means the sections shown on the plan [numbered \[XXXX\]](#) certified as the section drawings plan by the Secretary of State for the purposes of this Order;

“statutory undertaker” means any person falling within section 127(8) of the 2008 Act;

“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 any footpath and “street” includes any part of a street;

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

[“the street plan\(s\)” means the plan\(s\) numbered \[XXXX\] certified as the works plan\(s\) by the Secretary of State for the purposes of this Order.](#) 

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

“undertaker” means Hirwaun Power Limited or the person who has the benefit of this Order in accordance with articles [\[6\]](#) and [\[7\]](#);

~~“undertaking” means, in relation to any provision of this Order, the generation of electricity by the undertaker as authorised from time to time;~~

“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; and

“the works plan(s)” means the plan(s) [numbered \[XXXX\]](#) certified as the works plan(s) by the Secretary of State for the purposes of 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 and distances between points on a work comprised in the authorised development shall be taken to be measured along that work.

(4) All areas described in square metres in the book of reference are approximate.

(5) References in this Order to numbered works are references to the works [comprising the authorised development as numbered in Schedule 1 and shown on the works plan and a reference to numbered work 2 means numbered works 2A – 2G \(inclusive\) and a reference to numbered work 4 means numbered works 4A and 4B \(inclusive\).](#)

(6) References in this Order to points identified by letters or numbers shall be construed as references to points so lettered or numbered on the [\[insert the applicable plans\]](#).

(7) The expression “includes” shall be construed without limitation.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

3.—(1) Subject to the provisions of this Order and to the requirements, the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Subject to paragraph (3), the numbered works shall be constructed in the ~~lines or in the~~ corresponding [numbered lines or](#) numbered areas shown on the works ~~plan[s]~~ [plans subject to the limits of deviation](#) and, subject to the provision of the requirements, in accordance with the drawings specified in the requirements.

(3) In constructing ~~or maintaining~~ each numbered work, the undertaker may deviate from the ~~lines or corresponding numbered line shown on the works plan or within the corresponding~~ numbered areas shown on the works plan ~~within up to~~ the Order limits of deviation.

~~(4) For the purposes of the authorised development, development consent granted by this Order shall include and permit the alteration, removal, clearance, decommissioning and demolition of any buildings or other structures within the Order limits to the extent that they relate to are required by or are incidental to the carrying out of the authorised development.~~

Maintenance of authorised development

4.—(1) Except to the extent that this Order or an agreement made under this Order provides otherwise and subject to the provisions of this Order and to the requirements, the undertaker is authorised to and may at any time maintain the authorised development.

~~(2) Maintenance shall include, so far as is necessary or expedient for the purposes of, or purposes ancillary to, the construction or operation of the authorised development, carrying out works to alter the position of apparatus below ground level or within the limits of deviation, including mains, sewers, drains and cables including below ground structures associated with that apparatus within the Order limits.~~

~~(2)~~(3) This article only authorises the carrying out of maintenance works within the Order limits.

Operation of generating station

5.- (1) The undertaker is authorised to operate and use the generating station comprised in the authorised development.

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence or any obligation under any legislation that may be required to authorise the operation of a generating station.

Benefit of the Order

6.—(1) Subject to article 6(2) and article 7 (consent to transfer benefit of the Order), the provisions of this Order shall have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to numbered work [4A and 4B] for which consent is granted by this Order for the benefit of the undertaker and [National Grid].

Consent to transfer benefit of the Order

7.—(1) The undertaker may—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order (including any of the numbered works) 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 between the undertaker and the lessee any or all of the benefit of the provisions of this Order (including any of the numbered works) and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), shall 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 paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by Hirwaun Power Limited.

(4) The consent of the Secretary of State is required for the exercise of the powers of paragraph (1) except where—

(a) the transferee or lessee is a statutory undertaker;

OR

(b) the time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—

(i) no such claims have been made;

(ii) any such claim that has been made ~~and~~ has been compromised or withdrawn;

(iii) compensation has been paid in final settlement of any such claim;

(iv) payment of compensation into court in lieu of settlement of any such claim has taken place; or

(v) it has been determined by a tribunal or court of competent jurisdiction in respect of any claim that no compensation shall be payable.

PART 3 STREETS

Power to alter layout, etc., of streets

8.—(1) The undertaker may for the purposes of the authorised development alter the layout of or carry out any works in the street specified in column (1) of Schedule 3 (streets subject to alteration of layout) in the manner specified in relation to that street in column (2).

(2) Regardless of the specific powers conferred by paragraph (1) but subject to paragraph (3), the undertaker may, for the purposes of constructing and maintaining the authorised development, alter the layout of any street within the Order limits and, without limitation on the scope of this paragraph, the undertaker may—

(a) alter the level or increase the width of any kerb, footway, cycle track or verge;

(b) make and maintain passing place.

(3) The undertaker must restore any street that has been temporarily altered under this article to the reasonable satisfaction of the street authority.

(4) The powers conferred by paragraph (2) shall not be exercised without the consent of the street authority.

(5) If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of a period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

(6) Paragraphs (3), (4) and (5) shall not apply where the undertaker is the street authority for a street in which the works are being carried out.

Street works

Street works


~~8.~~9.(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 3 (streets subject to street works) as is within the Order 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 the street;
- (d) maintain apparatus in 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 section 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) Where the undertaker is not the street authority, the provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

Construction and maintenance of new or altered streets

~~9.~~10.(1) ~~These~~ Subject to paragraph  those parts of the means of access specified in ~~Part 1 of Schedule 6~~ to be constructed under this Order shall be completed to the reasonable satisfaction of the highway authority and shall be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the highway authority.

(2) ~~These~~ Each means of access specified in ~~Parts 2 and 3 of Schedule 6~~ to be constructed under this Order and which are not intended to a public highway shall be completed to the reasonable satisfaction of the street authority and shall be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(3) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(4) For the purposes of a defence under paragraph ~~(3)~~ (2), the court shall in particular have regard to the following matters—

- (a) the character of the street including the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and

- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed;

but for the purposes of such a defence it is not relevant that the undertaker had arranged for a competent person to carry out or supervise the maintenance of that part of the street to which the action relates unless it is also proved that the undertaker had given that person proper instructions with regard to the maintenance of the street and that those instructions had been carried out.

[Extinguishment of public rights of way]

11. —(1) [Subject to paragraph (2),] [T]he undertaker may in connection with the carrying out of the authorised development stop up—

- (a) the section of the public right of way (being a [insert one of: footpath/bridleway/byway open to all traffic/restricted byway]) shown marked in [red] between the points [A] and [B] on the rights of way and access plan; [and]
- (b) the section of the public right of way (being a [insert one of: footpath/bridleway/byway open to all traffic/restricted byway]) shown marked in [red] between the points [C] and [D] on the rights of way and access plan; [and]

and with effect from the date that [each of those sections] [the aforementioned section] of the public rights of way [are] [is] physically stopped up by the undertaker in connection with the carrying out of the authorised development, the public rights of way over [each of those sections] [the aforementioned section] will be extinguished.

(2) [If the undertaker stops up the public rights of way described in paragraph (1), it will construct alternative replacement sections of public rights of way—

- (a) between the points [E] and [F] on the rights of way and access plan in replacement of the public rights of way described in paragraph (1)(a); and
- (b) between the points [G] and [H] on the rights of way and access plan in replacement of the public rights of way described in paragraph (1)(b); and

and with effect from the date of opening of each replacement section of public rights of way to the public following completion of the works relating thereto, public rights of way of that same type, namely [] over the replacement section described in paragraph (2)(a) and [] over the replacement section described in paragraph (2)(b) will be deemed to be created.]

10. ~~[intentionally blank]~~

Temporary prohibition or restriction of use of streets

11. ~~(12.)~~—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily ~~stop up,~~ alter, divert, prohibit the use of or restrict the use of any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without prejudice on the scope of paragraph (1), the undertaker may use any street where the use has been prohibited or restricted under the powers conferred by this article and within the Order limits as a temporary working site.

(3) The undertaker shall provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary ~~stopping up,~~ alteration, diversion, prohibition or restriction of a street under this article if there would otherwise be no such access.

(4) Without prejudice to the generality of paragraph (1), the undertaker may temporarily ~~stop up~~, alter, divert, prohibit the use of or restrict the use of the streets specified in columns (1) and (2) of Schedule 5 (temporary prohibition or restriction of the use of streets) to the extent specified in column (3) of that Schedule.

(5) The undertaker shall not temporarily ~~stop up~~, alter, divert, prohibit the use of or restrict the use of—

- (a) any street specified in paragraph (4) without first consulting the street authority; and
- (b) any other street without the consent of the street authority which may attach reasonable conditions to any consent.

(6) Any person who suffers loss by the 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.

(7) If a street authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (5)(b) that street authority shall be deemed to have granted consent.

Access to works

~~12~~13. The undertaker may, for the purposes of the authorised development—

- (a) form and lay out means of access, or improve existing means of access, in the location specified in ~~columns (1), (2) and (3)~~ Part 2 of Schedule 6 (access to works); and
- (b) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised ~~project~~development.

Agreements with street authorities

~~13.~~ ~~(14.)~~ (1) A street authority and the undertaker may enter into agreements with respect to—

- (a) the construction of any new street including any structure carrying the street;
- (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (c) the maintenance of the structure of any bridge or tunnel carrying a street;
- (d) any stopping up, alteration, diversion, prohibition or restriction (in respect of all cases either temporary or permanent) of a street authorised by this Order; or
- (e) the carrying out in the street of any of the works referred to in article ~~9~~(10) (construction and maintenance of new, ~~or~~ altered ~~for diverted~~ streets).

(2) Such an agreement may, without prejudice to the generality 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.~~ ~~15.~~ (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 Order limits, make openings into, and connections with, the 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 (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 approval shall not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) Except as authorised under this Order, the undertaker shall not, in carrying out or maintaining works, 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) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to Natural Resources Wales, a harbour authority within the meaning of section 57 of the Harbours Act 1964 (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 Water Resources Act 1991 have the same meaning as in that Act.

~~15. [intentionally blank]~~

Authority to survey and investigate the land

16.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality 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 prejudice to the generality 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.

(2) No land may be entered or equipment placed or left on or removed from the land under 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 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 highway authority; or
- (b) in a private street without the consent of the street authority,

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.

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

17.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate it, or as is incidental to it, and may use any land so acquired for the purposes authorised by this Order ~~or for any other purposes in connection with or ancillary to the authorised development.~~

(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 Order land, 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, trusts and incidents to which it was previously subject.

~~(3) 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.~~

~~(4)(3) This article is subject to article 20 (compulsory 23 (acquisition of rights) [and article 26 (temporary use of land for carrying out the authorised development)].subsoil).~~

[Compulsory acquisition of land – incorporation of the mineral code

[Part(s)] 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981(minerals) are incorporated in this Order subject to the modifications that—

(a) paragraph 8(3) is not incorporated;

(b) for “the acquiring authority” substitute “the undertaker”;

(c) [insert additional modifications].

Statutory authority to override easements and other rights

18.—(1) The carrying out or use of the authorised development ~~authorised by this Order~~ and the doing of anything else authorised by this Order is authorised for the purpose specified in section ~~158(2)~~158(1) of the 2008 Act (nuisance: statutory authority), ~~+~~ 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 user of land arising by virtue of contract.

(2) The undertaker shall pay compensation to any person whose land is injuriously affected by—

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

authorised by virtue of this Order and the operation of section 158 of the 2008 Act.

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.

(4) Subsection (2) of section 10 of the 1965 Act applies to paragraph (2) by virtue of section 152(5) of the 2008 Act (compensation in case where no right to claim in nuisance).

(5) Any rule or principle applied to the construction of section 10 of the 1965 Act shall be applied to the construction of paragraph (2) (with any necessary modifications).

Time limit for exercise of authority to acquire land compulsorily

19.—(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 declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 22 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 27 (temporary use of land for carrying out the authorised development) shall cease at the end of the period referred to in paragraph (1), save 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 rights etc.

~~20.~~—(1) ~~Subject to paragraph (2), [the The~~ undertaker may acquire compulsorily ~~such rights over the Order land as may be required for any purpose for which that land may be acquired under article 17 (compulsory acquisition of land) by creating them as well as by acquiring rights already in existence],~~ the existing rights and create and acquire compulsorily the new rights described in the book of reference and shown on the land plan.

~~(2) In the case of the Order land specified in column (1) of Schedule 7 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements or new rights in the land, as may be required for the purpose specified in relation to that land in column (2) of that Schedule.~~

~~(2)~~(3) As from the date on which a compulsory acquisition notice is served or the date on which any new right is vested in the undertaker, whichever is the later, the land over which any new right is acquired shall be discharged from all rights, trusts and incidents to which it was

previously subject so far as their continuance would be inconsistent with the exercise of that new right.

(4) Subject to section 8 of the 1965 Act, as substituted by ~~paragraph [X] of Schedule 8 article 24 (modification of compensation and compulsory purchase enactments for creation of new rights)~~ acquisition of part of certain properties, where the undertaker acquires a right over land under paragraph ~~(1) or paragraph 21~~, the undertaker shall not be required to acquire a greater interest in that land.

(4) Schedule 8 shall have 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.

(5) In any case where the acquisition of new rights under paragraph (1) is required for the purposes of diverting, replacing or protecting the apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question

(6) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (6) shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

Private rights of way

21.—(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 earliest.

(2) Subject to the provisions of this article, all private rights of way over land subject to the compulsory acquisition of rights under this Order shall be extinguished in so far as their continuance would be inconsistent with the exercise of the right—

- (a) as from the date of acquisition of the right 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) in pursuance of the right,

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights of way over land ~~owned by which, being within the under~~ Order limits, is required for the purposes of this Order shall be extinguished on commencement of any activity authorised by this Order which interferes with or breaches such rights.

(4) 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.

(5) 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.

(6) 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 29 (statutory undertakers) applies.

(7) Paragraphs (1) to (3) shall have effect subject to—

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land or the acquisition of rights over 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,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.

(8) If any such agreement as is referred to in paragraph (7)(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 the agreement.

~~(9) Reference in this article to private rights over land includes reference to any trusts or incidents to which the land is subject.~~

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

22.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981 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 subsection (1) there shall be substituted—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order, the acquiring authority shall include the particulars specified in subsection (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 subsection (2), for ““(1)(b)”” there shall be substituted ““(1)”” and after ““given”” there shall be inserted ““and published””.

(5) In that section, for subsections (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 subsection (1), after ““publication”” there shall be inserted ““in a local newspaper circulating in the area in which the land is situated””; and
- (b) subsection (2) shall be omitted.

(7) In section 7 (constructive notice to treat), in subsection (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 under this Order.

Acquisition of subsoil ~~or airspace only~~

23.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of ~~or~~ or such rights in the airspace over the land referred to in paragraph (1) of article 17 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

(3) Paragraph (2) shall not prevent article 24 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Acquisition of part of certain properties

24.—(1) This article shall apply instead of section 8(1) of the 1965 Act (other provisions as to divided land) (as applied by section 125 of the 2008 Act) where—

- (a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner shall be required to sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner shall be required to sell only the land subject to the notice to treat shall, unless the undertaker agrees to take the land subject to the counter-notice, be referred to the tribunal.

(5) If on such a reference the tribunal determines that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner shall be required to sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determines that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat shall be deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determines that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land subject to the counter-notice, or if the tribunal determines that—

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
- (b) the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.

(9) Where, by reason of a determination by the tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, shall pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker shall pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

Rights under or over streets

25.—(1) The undertaker may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the Order 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 in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss by the exercise of that power, 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

26.—(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 ~~9-8~~ (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and
- (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; and
- (d) construct any works specified in relation to that land in column (3) of Schedule ~~9-8~~, or any other mitigation works.

(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 owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of ~~completion of the part final commissioning~~ of the authorised development ~~specified in relation to that land in column (4) of Schedule 9-;~~

(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 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) 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—

- (a) acquiring new rights over any part of that land under article ~~f22~~20 (compulsory acquisition of rights); or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article ~~f25~~23 (acquisition of subsoil or airspace only).

(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 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 ~~98~~.

Temporary use of land for maintaining authorised development

27.—(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 Order 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.

(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 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) 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 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~~commissioned.

~~28. [intentionally blank]~~

Statutory undertakers

~~29. [Subject 28.]~~[Subject to the provisions of Schedule 10 (Protective Provisions),] the undertaker may—

- (a) acquire compulsorily the land belonging to statutory undertakers shown on the land plan(s) within the limits of the land to be acquired and described in the book of reference;
- (b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers shown on the land plan and described in the book of reference; and
- (c) ~~acquire compulsorily the new rights over land belonging to statutory undertakers shown on the land plan and described in the book of reference.~~

Apparatus and rights of statutory undertakers in stopped-up streets

~~30. (1)~~(1) Where a street is ~~stopped-up temporarily altered or diverted or its use is temporarily prohibited or restricted~~ under article ~~10 (construction and maintenance of new or altered streets) or article 11~~ (temporary ~~stopping-up prohibition or restriction of use~~ of streets) any statutory utility whose apparatus is under, in, on, along or across the street shall have the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is ~~stopped-up temporarily altered or diverted or its use is temporarily prohibited or restricted~~ under article ~~10 (construction and maintenance of new or altered streets) or under article 11~~ any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker shall—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or

- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the undertaker shall pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

- (a) the execution of the relocation works required in consequence of the ~~stopping-up-of the-street~~temporary alteration or diversion or temporary prohibition or restriction of use; and
- (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(4) If in the course of the execution of relocation works under paragraph (2)—

- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; 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 the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation work 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 paragraph, would be payable to the statutory utility by virtue of paragraph (3) shall be reduced by the amount of that excess.

(5) For the purposes of paragraph (4) -

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall 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 shall be treated as if it also had been agreed or had been so determined.

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)-) shall, 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 utility 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.

(7) Paragraphs (3) to (6) shall not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works shall be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and
- (b) the allowable costs shall be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article –

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“relocation works” means work executed, or apparatus provided, under paragraph (2);
and

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) of the Communications Act 2003.

Recovery of costs of new connections

~~31.~~ ~~(1)~~ ~~30.~~ (1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 29 (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 29 (Statutory undertakers) any person who is—

- (a) the owner or occupier of premises the drains of which communicated with the 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) This article shall not have effect in relation to apparatus to which article [32] (apparatus and rights of statutory undertakers in stopped up streets) or part 3 of the 1991 Act applies.]~~

(4) In this paragraph –

“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.

PART 6 OPERATIONS

Felling or lopping of trees

~~32.~~ ~~(1)~~ ~~31.~~ (1) The undertaker may fell or lop any tree or shrub near within or overhanging any part of the authorised development, or cut back its roots, and may enter onto any land to carry out such felling or lopping, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to other persons using the 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.

PART 7

MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

~~33.~~ ~~(1)~~ This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants shall prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law shall apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Operational land for purposes of the 1990 Act

~~34~~~~33~~. Development consent granted by this Order insofar as it relates to ~~Works No. numbered~~ works 2 and 4 described in Schedule 1 shall be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (~~eases~~ Cases in which land is to be treated as not being operational land ~~for the purposes of that Act~~).

Defence to proceedings in respect of statutory nuisance

~~35.~~ ~~(1)~~ Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990 (summary proceedings by persons aggrieved by statutory nuisances) 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—

- (a) the defendant shows that the nuisance—

- (i) 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 sites), or a consent given under section 61 (prior consent for work on construction sites) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974; or
 - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use 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.

Protective Provisions

~~36~~35. Schedule ~~10~~9 (protective provisions) has effect.

Certification of plans etc

~~37.~~~~36.~~(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;
- (b) the land plan(s);
- (c) the works plan(s);
- (d) ~~the rights plans;~~of way and access plan(s);
- (e) the streets plans; and
- ~~(f)~~ (g) the sections; ~~(g)~~ [other plans TBC]

(X) any other plans or documents referred to in this Order,

for certification that they are true copies of the documents referred to in this Order.

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

Service of notices

~~38.~~~~(37.)~~(1) A notice or other document required or authorised to be served for the purposes 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 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 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 that body corporate, the registered or principal office of that body, and,
- (b) in any other case, the last known address of that person at that time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having an interest in, or 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 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 the 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 purposes 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 document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) 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 seven days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

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

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


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

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

- ~~(10) In this article "electronic transmission" means a communication transmitted—~~
- ~~(a) by means of electronic communications network; or~~
 - ~~(b) by other means but while in electronic form.~~

Procedure in relation to certain approvals etc

~~39.~~ ~~(138.)~~ (1) Where an application is made to or request is made of the relevant ~~planning authority, a highway authority, a traffic authority, a street authority, railway undertaker, tramway undertaker, navigation authority~~ or the owner of a watercourse, sewer or drain ~~for any consent, agreement or approval required or contemplated by any of the provisions of the Order or any requirement, such consent, agreement or approval shall, if given, be given in writing and shall not be unreasonably withheld~~ or delayed.

(2) Save for applications made pursuant to Schedule  if, within 28 days after the application or request has been submitted to ~~a railway undertaker, a tramway undertaker, an authority or an owner as referred to in paragraph (1) of this article,~~ it has not notified the undertaker of its disapproval and the grounds of disapproval, it shall be deemed to have approved the application or request.

(3) Schedule ~~11~~ 10 shall have effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to requirements.

Arbitration

~~40~~ 39. Any difference under any provision of this Order, unless otherwise provided for, is to 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.

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

[Name]

[Designation]

[] ~~2011~~ 2011 ~~X~~

Department for Energy and Climate Change

SCHEDULE 1

AUTHORISED development [still to be finalised]

Articles [3]

In the ~~District of Rhonda~~ County Borough of Rhondda Cynon Taf —

A nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act comprising:

Work No. 1 development comprising the demolition of all existing buildings and structures, including foundations, hardstanding and services.

Work No. 2A development comprising—

- a. up to 5 Gas Turbine Generators with a combined nominal gross electrical output of ~~up to 50~~ - 299 MWe; and
- b. up to 5 exhaust gas emission flue stacks.

Work No. 2B development comprising—

- a. an administration building and office;
- b. workshop;
- c. store;
- d. control building;
- e. telemetry apparatus;
- f. blackstart generator;
- ~~g. a fire water tank and demineralised water storage tank;~~
- g. ~~h.~~ a natural gas receiving station and gas treatment compound containing:
 - i. a pipeline inspection gauge (PIG) receiving facility;
 - ii. isolation ~~valve; and~~ valves, metering, heating, filtering, compression, pressure regulation equipment;
 - iii. electricity supply kiosk; and
 - iv. ~~iii.~~ control and instrumentation kiosk.

Work No. 2C development comprising a switchyard / banking compound containing up to eight transformers, switchgear building and other plant required to manage the transmission of electricity.

Work No. 2D development comprising a construction and maintenance compound.

Work No. 2E development comprising—

- a. security infrastructure, including cameras, perimeter fencing and a gatehouse;
- b. site lighting infrastructure, including perimeter lighting columns;
- c. internal roadways, car parking, pedestrian network, cycle parking ~~f~~ and hardstanding for planned maintenance ~~car parking~~ and water treatment trailer;
- d. [site drainage- attenuation pond and waste management infrastructure and other services];
- e. landscaping [and, if required, a raw / fire water tank and demineralised water storage tank;
- ~~f. e.~~ landscaping including tree planting, fencing and other boundary treatments and ecological mitigation]; ~~(including bat mitigation structures);~~
- g. ~~—~~ [tree and hedge removal]; and
- h. ~~g.~~ high voltage and low voltage cabling, equipment and controls.

Work No. 2F development comprising alteration of site vehicular accesses.

[Work No. 2G development comprising the maintenance, repair, strengthening, alteration, replacement or re-laying in a new location of the existing culvert [forming that part of ordinary watercourse [name] within the Order limits]].

Work No. 3 development comprising—

- a. a new underground gas pipeline connection and telemetry cabling, approximately **[XXXX]** in length connecting the natural gas receiving station in Work No. 2B to Work No. 4A;
- b. pipeline field marker posts and cathodic protection test/ transformer rectifier unit;
- c. below ground drainage works;
- d. ~~h~~tree and hedge removal; and
- e. ~~f~~landscaping ~~e~~—~~f~~including fencing and other boundary treatments and, if required, ecological mitigation ~~f~~for bats.

Work No. 4A development comprising—

- a. an above ground minimum offtake connection compound containing:
 - i. ~~iv~~ a minimum offtake connection comprising ~~a~~remotely operable ~~valve~~valves, control and instrumentation ~~kiosk~~kiosks and electrical supply ~~kiosk~~kiosks;
 - ii. ~~v~~ a pipeline inspection gauge (PIG) facility, comprising a PIG launching facility, emergency control ~~valve~~valves, isolation ~~valve and~~valves, control and instrumentation ~~kiosk~~kiosks and electricity supply ~~kiosk~~kiosks;
- b. security infrastructure, lighting, including cameras and perimeter fencing;
- c. [site drainage and waste management infrastructure and other services];
- d. below ground sacrificial anode pit;
- e. ~~f~~landscaping ~~d~~—~~f~~and ~~including tree planting~~, if required, ~~ecological mitigation~~; ~~f~~and ~~fencing and other boundary treatments~~; and
- f. other ancillary equipment.

Work No. 4B development comprising new site vehicular access from the A4061 including permanent road surface, gates and fencing.

Work No. 5 development comprising an underground **[400kV]** electrical cable circuit and associated telemetry and electrical protection auxiliary cabling., approximately [~~XXXX~~] in length including joint bays and telemetry cabling.

Work No. 6 development comprising [roundabout improvements].

and in connection with such works and ~~to~~ to the extent that they do not otherwise form part of any such work ~~construction laydown areas and~~ such further development within the Order limits as may comprise of:

- (a) construction laydown areas, working sites, storage areas, temporary top soil storage areas;
- (b) works to alter the position of apparatus below ground level including mains, sewers, drains and cables and also including below ground structures associated with that apparatus
- (c) street works, including breaking up or opening a street, or any sewer, drain or tunnel under it; tunnelling or boring under a street; works to place or maintain apparatus and/or utilities in a street; works to alter the position of apparatus in a street, including mains, sewers, drains and cables also including below ground structures associated with that apparatus;
- (d) works for the benefit or protection of land affected by the authorised development;
- (e) footpaths, cycle tracks, shafts, foundations, retaining walls, drainage, fencing and culverts;

- (f) any temporary structures including temporary fencing and lighting ~~required for the construction of the above works within the Order limits.~~
- (g) the alteration, removal, clearance, decommissioning and demolition of any buildings or other structures;
- and such other works or operations as may be necessary or expedient for the purposes of or in connection with the construction and operation and maintenance of the above works but only within the Order limits and insofar as unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

SCHEDULE 2

REQUIREMENTS [to be finalised in light of final ES and mitigation schedule]

Articles ~~[3 and 38]~~

Interpretation

1. In this Part of Schedule 2—

(1) the following expressions shall have the following meanings:

"Design Principles Statement" means the design principles statement with reference number [XXXX] submitted with the application and certified as the design principles statement by the Secretary of State for the purposes of this Order;

["Flood Risk Assessment" means....]

"Lighting Strategy" means the lighting strategy with reference number [XXXX] submitted with the application and certified as the lighting strategy by the Secretary of State for the purposes of this Order;

(2)

~~"commissioning" means the date on which the authorised development commences operation by generating power on a commercial basis;~~

~~"the relevant planning authority" means [RCT].~~

~~(2) [intentionally blank]~~

Time limits

2. The authorised development must be commenced within ~~8~~5 years of the date of this Order.

Stages of authorised development

3. Each numbered work shall constitute a separate stage of the authorised development and references in these requirements to a numbered stage are references to the stage of the authorised development comprising the corresponding numbered work ~~[where a reference to stage 2 means Works No. numbered works 2A - 2F and a reference to stage 4 means Works No. numbered works 4A and 4B.]~~

Detailed Design

4.—(1) The authorised development must be carried out in accordance with the approved plans, inclusive of any limits of deviation, bearing the references listed below and any other plans, drawings, documents, details, schemes, statements or strategies which ~~have been~~are approved by the relevant planning authority pursuant to any requirement (as the same may be amended by approval of the relevant planning authority pursuant to requirement 19(1)):

Works Plan	[Reference]
{Construction Works Plan}	
{Rights of Way} and Access Plan	
{Elevation Plans} street plan	
Landscaping Plan Lighting Strategy	
Site Drainage Layout Design Principles Statement	
{others}	

(2) The authorised development must be carried out in accordance the parameters specified below (as the same may be amended by approval of the relevant planning authority pursuant to requirement 19(1)):

Building Structure	or	Maximum height (metres <u>above existing site level of approximately 210m AOD)</u>)	Minimum height (metres AOD <u>above existing site level of approximately 210m AOD)</u>)	Maximum length (metres)	Minimum length (metres)	Maximum width (metres)	Minimum width (metres)
Each industrial gas turbine generator (where one or two gas turbine generators are constructed)		[19]	-	{35} <u>30</u>	-	{11} <u>30</u>	-
Each aeroderivative gas turbine generator (where three, four or five gas turbine generators are constructed)		[10]	-	{31} <u>30</u>	-	{15} <u>23</u>	-
Each main stack		{35} <u>35</u> metres	{25} <u>30</u> metres	-	-	-	-
{other elements of the authorised development} <u>Gate House</u>		{X} <u>4.5</u> metres		<u>9.0</u>		<u>8.0</u>	
<u>Black Start Diesel Generator</u>		<u>5.0</u>		<u>13.0</u>		<u>5.0</u>	
<u>Control Room/Office/Workshop</u>		<u>6.0</u>		<u>29.0</u>		<u>23.0</u>	
<u>GIS Building</u>		<u>11.3</u>		<u>21.0</u>		<u>15.0</u>	
<u>Demin Water Tank</u>		<u>16.0</u>		<u>23.0</u>		<u>23.0</u>	
<u>Raw/Fire Water Tank</u>		<u>18.0</u>		<u>15.0</u>		<u>15.0</u>	
<u>PTF</u>							
<u>MOC</u>							
<u>Bat mitigation structure</u>		<u>6.0</u>		<u>10.0</u>		<u>5.0</u>	

(3) To the extent that design principles for any numbered work are set out in the Design Principles Statement, that numbered work shall be designed substantially in accordance with the relevant design principle set out therein.

~~(4)(3)~~ Stage 2 of the authorised development may not commence until, for that stage, details of the layout, scale and external appearance of the corresponding numbered work have been submitted to and approved by the relevant planning authority. ~~The authorised development must be carried out in accordance with the approved details (as the same may be amended by approval of the relevant planning authority pursuant to requirement 19(1)).~~


Provision of landscaping

5. Each of stages 2, ~~4-3~~ and ~~6-4~~ of the authorised development shall not commence until a written ~~Landscaping Plan~~ landscaping plan for that stage has been submitted to and approved by the relevant planning authority. The ~~Landscaping Plan~~ landscaping plan must include details of all proposed hard and soft landscaping works, ~~as specified such plan is to be substantially in accordance with the mitigation proposals set out in [section (X) figure 11.5]~~ of the environmental statement], ~~including—and include—~~

- (a) location, number, species, size and planting density of any proposed planting including details of any proposed tree ~~planning planting~~ and the proposed times of such planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) proposed finished ground levels;
- (d) hard surfacing materials;
- (e) vehicular and pedestrian access, parking and circulation areas;
- (f) minor structures, such as furniture, refuse or other storage units, ~~and signs and lighting;~~

~~(g) proposed new functional services above and below ground, including drainage, power and communications cables and pipelines, manholes and supports;~~

~~(h)(g)~~ details of existing trees to be retained, with measures for their protection during the construction period;

~~(h)~~ measures for the management of the ecological  sources that will remain within the Order Land on completion of the authorised development;

~~(i)~~ implementation timetables for all landscaping works; and

~~(j)(i)~~ landscaping maintenance throughout the operational life of the authorised development.

(2) All landscaping works must be carried out in accordance with the ~~Landscaping Plan~~ landscaping plan approved under this requirement 5 and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

(3) The landscaping works must be carried out in accordance with implementation timetables approved ~~under requirement 5(i) in the landscaping plan.~~

(4) Any tree or shrub planted as part of an 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 by the relevant planning authority.

Highway accesses

6.—(1) Each of stages 2, ~~3~~ and 4 of the authorised development shall not commence until for that stage, written details of the siting, design and layout (to the extent not provided as part of, or differing from, the details contained in the Schedule 1, the Works Plans or the rights of way and access plan) 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 has been submitted to and approved by the relevant planning authority (in consultation with the highway authority).

(2) The highway accesses must be constructed in accordance with the approved details.

[Public rights of way

7.—(1) No stage of the authorised development shall commence that would affect *[insert details of relevant right of way]* until a written implementation plan and specification for the making up of an alternative right of way has, after consultation with the relevant planning authority and highway authority, been submitted to and approved by the relevant planning authority.

(2) The alternative *[insert details of relevant right of way]* shall be implemented in accordance with the approved plan and specification.]

Fencing and other means of enclosure

8.—(1) ~~Stages~~ Each of stages 2 and 4 ~~4A~~ of the authorised development shall not commence until written details of all proposed permanent and temporary fences, walls or other means of enclosure for that stage have been submitted to and approved by the relevant planning authority.

(2) Any construction sites must remain securely fenced at all times during construction of the authorised development.

(3) Any temporary fencing must be removed within three months of the completion of the authorised development.

(4) ~~Prior to the commissioning of each of stages 1, 2 and 4 of the authorised development written details of all proposed permanent fences, walls or other means of enclosure for that stage shall be submitted to and approved by the relevant planning authority.~~ The details approved pursuant to this requirement shall ~~thereafter~~ be implemented.

Surface and foul water drainage

9.—(1) Each of stages 2 and 4 of the authorised development shall not commence until, for that stage, written details of the surface and foul water drainage ~~strategy plan~~ (including means of pollution control) have, after consultation with the relevant sewerage and drainage authority, been submitted to and approved by the relevant planning authority, such strategy to be in substantial accordance with the principles set out in ~~{~~ ~~—————~~ ~~}~~ Section 5.2 the Flood Risk Assessment.

(2) The surface and foul water drainage ~~strategy plan~~ must be implemented in accordance with the approved details.

Contaminated land and groundwater

~~15.—(11.—(1))~~ Stage ~~1-2~~ of the authorised development shall not commence until a written scheme applicable to that stage, to deal with the contamination of any land, including groundwater, ~~[in relation to Works No. 1 and 2]~~ which is likely to cause significant harm to persons or pollution of controlled waters or the environment has, after consultation with Natural Resources Wales been submitted to and approved by the relevant planning authority.

(2) The scheme shall include an investigation and assessment report, prepared by a specialist consultant approved by the relevant planning authority, to identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose, together with a management plan which sets out long-term measures with respect to any contaminants remaining on the site.

(3) Remediation must be carried out in accordance with the approved scheme.

[Ecological management plan

~~10.—(11.—(1))~~ Stages ~~Each of stages~~ 2 -5 of the authorised development shall not commence until a written ecological management plan covering that stage reflecting the survey results and

ecological mitigation and enhancement measures included in the environmental statement has been submitted to and approved by the relevant planning authority. The ecological management plan shall include the following—

(a) [insert details].

(2) The ecological management plan shall include an implementation timetable and must be carried out as approved.]

Archaeology

16.—(1) Each of Stages 1, 3 and 4 of the authorised development shall not commence until a written scheme for the investigation covering that stage of areas of archaeological potential as identified in section [XXX] of the environmental statement has been submitted to and approved by the relevant planning authority.

(2) The scheme shall identify areas where field work or a watching brief are required, and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(3) Any archaeological works or watching brief carried out under the scheme must be by a suitably qualified person or body approved by the relevant planning authority.

(4) Any archaeological works or watching brief must be carried out in accordance with the approved scheme.

Construction Environment Management Plan

~~11.—(12.—(1)~~ No stage of the authorised development shall commence until a ~~Construction Environment Management Plan~~ construction environment management plan covering that stage has been submitted to and approved by the relevant planning authority. The ~~Construction Environment Management Plan~~ construction environment management plan shall be substantially in accordance with the outline construction environmental management plan set out in [Appendix X] to the environmental statement and shall include the following during ~~demolition and~~ construction—

(a) complaints procedures;

(b) nuisance management including measures to avoid or minimise the impacts of construction works (covering dust, noise, and vibration ~~and lighting~~);

~~(c) lighting;~~

(d) waste management;

(e) surface and ground water ~~mitigation~~ protection measures;

~~(g) procedure in the event significant archaeological remains are encountered;~~

(h) landscape and visual impact mitigation (covering ~~retention of existing~~ protection of trees to be retained and minimising visual intrusion of construction works); ~~and~~

(i) security measures; ~~and~~

(j) demolition method statement.

(2) All construction works shall be undertaken in accordance with the approved ~~Construction Environment Management Plan~~ construction environment management plan unless otherwise agreed with the relevant planning authority.

Construction traffic

~~12.—(13.—(1)~~ No stage of the authorised development shall commence until a ~~Construction Traffic Management Plan~~ construction traffic management plan has been submitted to and approved by the relevant planning authority in consultation with the Department for Transport of the Welsh Government. The ~~Construction Traffic Management Plan~~ construction traffic management plan shall include—

- (a) construction vehicle routing plans;
- (b) evidence of appropriate trial runs that demonstrate the suitability of the route from point of entry onto the trunk road network to the site for the proposed types of abnormal indivisible loads;
- (c) site access plans;
- (d) proposals for the management of junctions to and crossings of highways and other public rights of way;
- (e) proposals for the scheduling and timing of movements of delivery vehicles including details of abnormal indivisible loads;
- (f) details of escorts for abnormal indivisible loads;
- (g) proposals for temporary warning signs and banksman and escort details;
- (h) proposals for assessing the existing condition of affected highways;
- (i) details of any temporary or permanent improvements to highways; ~~and~~
- (j) proposals for the making good of any incidental damage to highways by construction traffic associated with the authorised ~~project-development~~ including street furniture, structures, drainage features, highway verge and carriageway surfaces; ~~and~~

(k) proposals for traffic management controls (such as temporary signals), diversion routes and signage required during any of the activities, operations or works set out in Schedules 4, 5 or 6.

(2) The ~~Construction Traffic Management Plan~~ construction traffic management plan shall be implemented as approved.

(3) During the operation or decommissioning of the generating station no abnormal indivisible loads shall be transported into or out of the site without the prior written approval of the relevant planning authority in consultation with the Department for Transport of the Welsh Government.

Construction hours

14.—(1) No construction work, or the delivery or removal of materials, shall take place outside the hours of—

(a) 0700 and 1900 hours on weekdays (excluding public holidays); and

(b) 0700 and 1300 hours on Saturdays and public holidays

(2) Sub-paragraph (1) shall not prevent outside such hours construction works, or the delivery or removal of materials, being carried out with the prior written approval of the relevant planning authority.

~~13.—(1) Construction work shall not take place other than between [0800 and 1800 hours on weekdays and 0800 and 1300 hours on Saturdays, excluding public holidays], except during [pre-commissioning] when 24 hour working will be required subject to compliance with requirement 14 or unless otherwise agreed by the relevant planning authority.~~

~~(2) Nothing in (3)~~ Nothing in sub-paragraph (1) precludes a start-up period from [0730 to 0800] 0630 to 0700 and a shut down period from [1800 to 1830] on weekdays (excluding public holidays) 1900 to 1930 on weekdays (excluding public holidays) and start-up period from 0630 to 0700 and a shut down period from 1300 to 1330 on a Saturday.

Control of noise during operational phase

~~14.—(15.—(1)~~ (1) Following the date of final commissioning of the authorised development site-attributable noise during the operational phase shall be limited to the ~~day-time and night-time~~ noise levels set out below:

~~Daytime (07:00 to 23:00): [XXX]~~

[XXX] [to include grid reference for site boundary measurement positions and reference to test methodology]

Night time (23:00 to 07:00): [XXX]

Control of artificial light emissions

~~15.~~ ~~(16.)~~ ~~(1)~~ Stages ~~Each of stages~~ 2 and 4 of the authorised development shall not commence until, after consultation with the relevant planning authority, a written scheme for the management and mitigation of artificial light emissions for that stage which is substantially in accordance with the Lighting Strategy has been submitted to and approved by the relevant planning authority.

(2) The approved scheme for the management and mitigation of artificial light emissions must be implemented before and maintained during the operation of the relevant stage of the authorised development.


European protected species

~~16.~~ ~~(1)~~ Stage ~~1~~ of the authorised development shall not commence until ~~[further supplemental survey work identified in the environmental statement for bats] has been carried out covering that stage to establish whether bats are present on any of the land affected, or likely to be affected, by that stage of the authorised development [or in any of the trees to be lopped or felled that stage of the authorised development].~~

~~(2)~~ Where a European protected species is shown to be present, ~~no authorised development of that stage shall be begun until, after consultation with Natural Resources Wales, a scheme of protection and mitigation measures has been submitted to and approved by the relevant planning authority; and the authorised development shall be carried out in accordance with the approved scheme.~~

~~(3)~~ "European protected species" has the same meaning as in regulations 38 and 42 of the Conservation (Natural Habitats, &c.) Regulations 1994.

Decommissioning Strategy

~~17.~~ ~~(18.)~~ ~~(1)~~ Un  otherwise agreed with the relevant planning authority, within twenty four months of the site ceasing to be used for the purposes of electricity generation (either actively generating electricity or being available to generate electricity on a standby basis), a scheme for the demolition and removal of numbered work ~~1~~2 shall be submitted to the relevant planning authority.

(2) The demolition and removal of numbered work ~~1~~2 shall be implemented in accordance with the approved scheme, ~~unless otherwise agreed in writing by the relevant planning authority.~~

Requirement for written approval

~~18.~~ Where under any of the above requirements require the approval or agreement of the relevant planning authority, that approval or agreement must be given in writing and must not be unreasonably withheld.

Amendments to approved details

19. ~~(1)~~ With respect to the approved plans specified in requirement 4(1), the parameters specified in requirement 4(2) and any other plans, details or schemes which require approval by the relevant planning authority pursuant to any other requirement (the "Approved Plans, Parameters, Details or Schemes"), the undertaker may submit to the relevant planning authority for approval any amendments to the Approved Plans, Parameters, Details or Schemes and following any such approval by the relevant planning authority the Approved Plans, Parameters, Details or Schemes shall be taken to include the amendments approved pursuant to this ~~requirement~~ ~~19~~ (1 sub-paragraph (1)).

(2) Approval under requirement ~~19~~ (1 sub-paragraph (1)) ~~above~~ for amendments to the parameters identified in requirement 4(2) ~~above~~ shall not be given except in relation to minor or immaterial changes unless it has been demonstrated to the satisfaction of the relevant planning authority that the subject-matter of the approval sought is unlikely to give rise to any materially

new or materially different environmental effects in comparison with the authorised development as approved.

SCHEDULE 3

STREETS SUBJECT TO STREET WORKS

Article **[8]**

STREETS SUBJECT TO PERMANENT AND TEMPORARY ALTERATION OF LAYOUT

PART 1 - PERMANENT ALTERATION OF LAYOUT

(1)	<u>(2)</u>	<u>(3)</u>
<i><u>Street subject to street works</u></i> <i><u>Street Plans Number</u></i>	<i><u>Street subject to alteration of layout</u></i>	<i><u>Description of alteration</u></i>
<u>Street Plans (Sheet [X] of [X])</u> <u>In the District of Rhondda</u> District of Rhondda Cynon Taf	<u>A4061</u>	<u>The lowering of the levels of the kerb between the points marked [X] and [X] on the street plan to provide a permanent access to numbered work 4</u>

PART 2 – TEMPORARY ALTERATION OF LAYOUT

<u>(1)</u>	<u>(2)</u>	<u>(3)</u>
<i><u>Street Plans Number</u></i>	<i><u>Street subject to alteration of layout</u></i>	<i><u>Description of alteration</u></i>
<u>Street Plans (Sheet [X] of [X])</u> <u>In the District of Rhondda</u> <u>Cynon Taf</u>	Junction between <u>the A4061</u> and main <u>Main Avenue</u>	<u>The lowering of the levels of the kerb between the points marked [X] and [X] on the street plans and [insert details] (works comprised in numbered work 6) to provide temporary access for abnormal loads during the construction period.</u>

SCHEDULE 4

STREETS SUBJECT TO STREET WORKS

Article 19

<u>(1)</u> <i>Street Plans Number</i>	<u>(2)</u> <i>Location</i>	<u>(3)</u> <i>Street subject to street works</i>
Street Plans (Sheet <u>XI</u> of <u>XI</u>) <u>Junction between A4061 and Main Avenue</u>	<u>In the District of Rhondda Cynon Taf</u>	<u>Junction between A4061 and Main Avenue (works comprised in numbered work 6 including the removal of street furniture from the roundabout- and its return following completion of numbered work 6)</u>
Work No.3 to cross Main Avenue		
Street Plans (Sheet <u>XI</u> of <u>XI</u>)A4061	<u>In the District of Rhondda Cynon Taf</u>	New A4061 (works for new access to be created from A4061 to Work No. 4 to numbered work 4A)
Work No.3 to cross Main Avenue Street Plans (Sheet <u>XI</u> of <u>XI</u>) <u>A4061</u>	<u>In the District of Rhondda Cynon Taf</u>	Work No. A4061 (works for numbered work 3 to cross and be installed in the A4061)
Work No.3 to cross Rhigos Road		
Street Plans (Sheet <u>XI</u> of <u>XI</u>) <u>Main Avenue</u>	<u>In the District of Rhondda Cynon Taf</u>	Work No. 5 to Main Avenue (works for numbered work 3 to cross and be installed in Main Avenue)
Street Plans (Sheet <u>XI</u> of <u>XI</u>) <u>Main Avenue</u>	<u>In the District of Rhondda Cynon Taf</u>	<u>Main Avenue (works for numbered work 5 to be installed within Main Avenue)</u>
Street Plans (Sheet <u>XI</u> of <u>XI</u>) <u>Rhigos Road</u>	<u>In the District of Rhondda Cynon Taf</u>	<u>Rhigos Road (works for numbered work 3 to cross and be installed in Rhigos Road)</u>
Street Plans (Sheet <u>XI</u> of <u>XI</u>) <u>Fourteenth Avenue</u>	<u>In the District of Rhondda Cynon Taf</u>	Work No. Fourteenth Avenue (works for numbered work 5 to be installed in 14th within Fourteenth Avenue)

SSCHEDULE 5
TEMPORARY PROHIBITION OR RESTRICTION OF THE USE OF
STREETS

Article **[12]**

<u>(1)</u> <u>Street Plans</u>	(1) Area	(2) Temporary prohibition or restriction of use of streets	3 (Extent of temporary prohibition or restriction of use of streets
	Main Avenue	Single lane closure required for crossing of street by Work No. 3	
District of Rhonda Cynon Taf Street Plans (Sheet [X] of [X])	A4061 <u>In the the District of Rhondda Cynon Taf</u>	Short term closure Single lane closure for creation of accesses (Work No. [4B]) Roundabout junction between A4061 and Main Avenue	<u>Prohibition/Restriction:</u> <u>From the points marked [X] to [X], being approximately [X] metres.</u> <u>Purpose of the Prohibition/Restriction:</u> <u>[insert details]</u>
<u>Street Plans (Sheet [X] of [X])</u> Single lane closure required for crossing of street by Work No. 3	<u>In the the District of Rhondda Cynon Taf</u>	A4061	Single lane closure required for crossing of street by Work No. 3 <u>Prohibition/Restriction:</u> <u>From the points marked [X] to [X], being approximately [X] metres.</u> <u>Purpose of the Prohibition/Restriction:</u> <u>[insert details - to cover both the access to numbered work 4 and work number 3 crossing and being installed in the road]</u>
<u>Street Plans (Sheet [X] of [X])</u>	<u>In the the District of Rhondda Cynon Taf</u>	<u>Main Avenue</u>	<u>Prohibition/Restriction:</u> <u>From the points marked [X] to [X], being approximately [X] metres.</u> <u>Purpose of the Prohibition/Restriction:</u> <u>[insert details – to cover numbered work 3 crossing and being</u>

			<u>installed in the road</u>
<u>Street Plans</u> (Sheet <u>[X]</u> of <u>[X]</u>)	<u>In the the District of Rhondda Cynon Taf</u>	<u>Main Avenue</u>	<u>Prohibition/Restriction:</u> From the points marked <u>[X]</u> to <u>[X]</u> , being approximately <u>[X]</u> metres. <u>Purpose of the Prohibition/Restriction:</u> <u>[insert details - to cover numbered work 5 being installed in the road]</u>
<u>Street Plans</u> (Sheet <u>[X]</u> of <u>[X]</u>)	<u>In the the District of Rhondda Cynon Taf</u>	Rhigos Road	Single lane closure required for crossing of street by Work No. 3 <u>Prohibition/Restriction:</u> From the points marked <u>[X]</u> to <u>[X]</u> , being approximately <u>[X]</u> metres. <u>Purpose of the Prohibition/Restriction:</u> <u>[insert details - to cover numbered work 3 crossing and being installed in the road]</u>
	Main Avenue	Temporary closure for creation of Work No. 5	
<u>Street Plans</u> (Sheet <u>[X]</u> of <u>[X]</u>)	<u>In the the District of Rhondda Cynon Taf</u>	Fourteenth Avenue	Temporary closure for creation of Work No. 5 <u>Prohibition/Restriction:</u> From the points marked <u>[X]</u> to <u>[X]</u> , being approximately <u>[X]</u> metres. <u>Purpose of the Prohibition/Restriction:</u> <u>[insert details - to cover numbered work 5 being installed in the road]</u>

SCHEDULE 6

ACCESS TO AND FROM WORKS

Article ~~[-10]~~

PART 1 ~~PUBLIC~~ – THOSE PARTS OF ACCESSES TO BE MAINTAINED AT THE PUBLIC EXPENSE

<u>(1)</u> <i>Street Plans Number</i>	<u>(2)</u> <i>Location</i>	<u>(3)</u> <i>Description of relevant part of access</i>
Street Plans (Sheet [X] of [X]) [insert names of roads where the accesses are located]	In the District of Rhondda Cynon Taf	That part of the access at [insert location] and shown on the street plan with [X] , comprising [insert those parts to be maintained at the public expense]
Street Plans (Sheet [X] of [X]) [insert names of roads where the accesses are located]	In the District of Rhondda Cynon Taf	That part of the access at [insert location] and shown on the street plan with [X] , comprising [insert those parts to be maintained at the public expense]
Street Plans (Sheet [X] of [X]) [insert names of roads where the accesses are located]	In the District of Rhondda Cynon Taf	That part of the access at [insert location] and shown on the street plan with [X] , comprising [insert those parts to be maintained at the public expense]
Street Plans (Sheet [X] of [X]) A4061	In the District of Rhondda Cynon Taf	That part of the access on the A4061 providing access to numbered work 4A and shown on the street plan with [X] , comprising [insert those parts to be maintained at the public expense]

PART 2 – ACCESS TO AND FROM WORKS

<u>(1)</u> <i>Area Street Plans Number</i>	<u>(2)</u> <i>Location</i>	(2) <u>(3)</u> <i>Description of access</i>
Street Plans (Sheet [X] of [X]) District of Rhonda Cynon Taf [insert names of roads where the accesses are located]	Existing accesses (Work No. 2F) to be retained and improved for access to Work No. 2A, 2B 2C and 2D. In the District of Rhondda Cynon Taf	Improve the existing access at [insert details] (work numbered 2F) and shown on the street plan with [X] for access to numbered works 2A, 2B, 2C, 2D and 2G.

<p><u>Street Plans (Sheet [X] of [X])</u> <u>[insert names of roads where the accesses are located]</u></p>	<p><u>In the District of Rhondda Cynon Taf</u></p>	<p><u>Improve the existing access at [insert details] (work numbered 2F) and shown on the street plan with [X] for access to numbered works 2A, 2B, 2C, 2D and 2G.</u></p>
<p><u>Street Plans (Sheet [X] of [X])</u> <u>[insert names of roads where the accesses are located]</u></p>	<p><u>In the District of Rhondda Cynon Taf</u></p>	<p><u>Improve the existing access at [insert details] (work numbered 2F) and shown on the street plan with [X] for access to numbered works 2A, 2B, 2C, 2D and 2G.</u></p>
<p><u>Street Plans (Sheet [X] of [X])</u> <u>A4061</u></p>	<p><u>In the District of Rhondda Cynon Taf</u></p>	<p>New access <u>New permanent access (numbered work 4B) and shown on the street plan with [X] to be created from the A4061 to Work No. 5a and 5b4A.</u></p>

PART 2

PRIVATE ACCESS TO AND FROM WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Description of access</i>

PART 3

CONTRACTOR'S ACCESS TO AND FROM WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Description of access</i>

SCHEDULE 778

~~LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED~~

~~Article []~~

<i>(1)</i> <i>Number of land shown on Land Plan</i>	<i>(2)</i> <i>Purpose for which Rights over the land may be acquired</i>

SCHEDULE 8

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

Article [21]

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land shall 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 prejudice to the generality of paragraph 1, the Land Compensation Act 1973 shall have effect subject to the modifications set out in sub-paragraph (2) and (3).

(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 shall be substituted the words “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for the words “acquired or taken from him” there shall be substituted the words “over which the right is exercisable or the restrictive covenant enforceable”.

(3) In section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5—

- (a) for the word “part” in paragraph (a) and (b) there shall be substituted the words “a right over or restrictive covenant affecting land consisting”;
- (b) for the word “severance” there shall be substituted the words “right or restrictive covenant over or affecting the whole of the park or garden”;
- (c) for the words “part proposed” there shall be substituted the words “right or restrictive covenant proposed”; and
- (d) for the words “part is” there shall be substituted the words “right or restrictive covenant is”.

Application of the 1965 Act

3.—(1) The 1965 Act shall have 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, or to the imposition under this Order of a restrictive covenant, 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 prejudice to the generality of sub-paragraph (1), Part 1 of the 1965 Act shall apply 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. For section 7 of the 1965 Act (measure of compensation) there shall be substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard shall be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

5. For section 8 of the 1965 Act (provisions as to divided land) there shall be substituted the following section—

“8.—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right or the imposition of the restrictive covenant would apart from this section fall to be determined by the Upper Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that land and—
 - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased or the restrictive covenant imposed without material detriment to that land; or
 - (ii) where the land consists of such a park or garden, that the right cannot be purchased or the restrictive covenant imposed without seriously affecting the amenity or convenience of the house to which that land belongs,

~~The~~ The Hirwaun Power (Gas Fired Power Station) Order 201[X] (“the Order”) shall, in relation to that person, cease to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice shall be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a

park or garden, the house to which it belongs, and the notice shall be deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section shall be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”.

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

shall be so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

7. Section 11 of the 1965 Act (powers of entry) shall be so modified 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 or enforcing that restrictive covenant (which shall be deemed for this purpose to have been created on that 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 shall be modified correspondingly.

8. Section 20 of the 1965 Act (protection for interests of tenants at will, etc.) shall apply with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

9. Section 22 of the 1965 Act (protection of acquiring authority’s possession where by inadvertence an estate, right or interest has not been got in) shall be so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 98

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

Article [26]

(1) <i>Location</i>	(2) <i>Number of land shown on land plan</i>	(3) <i>Purpose for which temporary possession may be taken</i>	(4) <i>Relevant part of the authorised development</i>
[Road name or number]	[REDACTED]	[Reason, e.g. "Contractor's temporary working area for topsoil storage"]	[Area, e.g. "All works"]
	4_MS		Part of numbered works 2D and 2G
	5_MS		Part of numbered works 2D and 2G
	6_MS		Part of numbered works 2D and 2G
	1a_GR		Part of numbered works 2G and 3
	1b_GR		Part of numbered works 2G, and 3
	2a_GR		Part of numbered works 2D, 2G and 3
	2b_GR		Part of numbered works 2D, 2G and 3
	2c_GR		Part of numbered works 2D, 2G and 3
	3a_GR		Part of numbered works 2D, 2G and 3
	4a_GR		Part of numbered works 2D, 2G and 3
	5a_GR		Part of numbered works 2D and 3
	6a_GR		Part of numbered works 3 and 2G
	6b_GR		Part of numbered works 3 and 2G
	7a_GR		Part of numbered works 3 and 2G
	7b_GR		Part of numbered works 3 and 2G
	8a_GR		Part of numbered works 3 and 2G
	9a_GR		Part of numbered works 3 and 2G
	9b_GR		Part of numbered works 3 and 2G
	9c_GR		Part of numbered works 3 and 2G
	10a_GR		Part of numbered work 3
	10b_GR		Part of numbered work 3
	11a_GR		Part of numbered

<i>(1) Location</i>	<i>(2) Number of land shown on land plan</i>	<i>(3) Purpose for which temporary possession may be taken</i>	<i>(4) Relevant part of the authorised development</i>
			works 3 and 4B
	11b GR		Part of numbered works 3 and 4B
	12a GR		Part of numbered works 3 and 4B
	12b GR		Part of numbered works 3 and 4B
	13a GR		Part of numbered works 3 and 4A
	14a GR		Part of numbered works 3 and 4A

SSCHEDULE ~~10~~9

PROTECTIVE PROVISIONS

Article **[]**

**PART 1
FOR THE PROTECTION OF...**

**PART 2
FOR THE PROTECTION OF...**

**PART 3
FOR THE PROTECTION OF...**

SCHEDULE ~~11~~10

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Article ~~[38]~~

Applications made under requirements

1. (1). Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement ([including agreement or approval in respect of part of a requirement](#)) included in this Order the relevant planning authority shall give notice to the undertaker of their decision on the application within a period of [eight (8) weeks] beginning with:

- (a) the day immediately following that on which the application is received by the authority;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 2; or
- (c) such longer period as may be agreed by the undertaker and the relevant planning authority in writing.

(2) Subject to sub-paragraph (3), in the event that the relevant planning authority does not determine an application within the period set out in sub-paragraph (1), the relevant planning authority shall be taken to have granted the application (without any condition or qualification) at the end of that period.

(3) Where:

- (a) an application has been made to the relevant planning authority for any consent, agreement or approval ~~requirement required~~ [required](#) by a requirement included in this Order; and
- (b) the relevant planning authority does not determine such application within the period set out in sub-paragraph (1); and
- (c) such application is accompanied by a report that considers it likely that the subject matter of such application will give rise to any materially new or materially different environmental effects in comparison with the authorised development as approved.

then the application shall be taken to have been refused by the relevant planning authority at the end of that period.

Further information

2. In relation to any application to which this Schedule applies, the relevant planning authority shall have the right to request such further information from the undertaker as is necessary to enable it to consider the application. In the event that it considers such further information to be necessary it shall, within seven (7) business days of receipt of the application, notify the undertaker in writing specifying the further information required. In the event that the relevant planning authority does not give such notification within this [~~fourteen (14)~~[twenty one \(21\)](#) day] period it shall be deemed to have sufficient information to consider the application and shall not thereafter be entitled to request further information without the prior agreement of the undertaker.

Fees

~~3. (1) Where an application is made to the relevant planning authority for written consent, agreement or approval in respect of a requirement, the fee contained in regulation 11D(1)(b) of the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989 (as may be amended or replaced from time to time) shall apply and shall be paid to that authority for each application.~~

~~(2) Any fee paid under this Schedule shall be refunded to the undertaker within eight (8) weeks of:~~

- ~~(a) the application being rejected as invalidly made; or~~
- ~~(b) the relevant planning authority failing to determine the application within five (5) weeks from the date on which it is received unless:
 - ~~(i) within that period the undertaker agrees, in writing, that the fee shall be retained by the relevant planning authority and credited in respect of a future application; or~~
 - ~~(ii) a longer period of time for determining the application has been agreed pursuant to sub-paragraph 1.(1)(c) of this Schedule.~~~~

Appeals

4. (1) The undertaker may appeal in the event that:

- (a) the relevant planning authority refuses (including a deemed refusal pursuant to paragraph 1(3)) an application for any consent, agreement or approval required by a requirement included in this Order or grants it subject to conditions;
- (b) on receipt of a request for further information pursuant to paragraph 2 the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or
- (c) on receipt of any further information requested, the relevant planning authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process shall be as follows:

- (a) The undertaker shall submit the appeal documentation to the Secretary of State and shall on the same day provide copies of the appeal documentation to the relevant planning authority and the requirement consultee;
- (b) The Secretary of State shall appoint a person within ~~ten-twenty (1020)~~ business days of receiving the appeal documentation and shall forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for his attention should be sent;
- (c) The relevant planning authority and the requirement consultee shall submit written representations to the appointed person in respect of the appeal within ~~ten-twenty (1020)~~ business days of the start date and shall ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (d) The appeal parties shall make any counter-submissions to the appointed person within ~~ten-twenty (1020)~~ business days of receipt of written representations pursuant to sub-paragraph (c) above; and
- (e) The appointed person shall make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within ~~fifteen (15)~~ thirty (30) business days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (d).

The appointment of the person pursuant to paragraph sub-paragraph (b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(3) In the event that the appointed person considers that further information is necessary to enable him to consider the appeal he shall, within five (5) business days of his appointment, notify the appeal parties in writing specifying the further information required.

(4) Any further information required pursuant to sub-paragraph (3) shall be provided by the undertaker to the appointed person, the relevant planning authority and the requirement consultee on the date specified by the appointed person (the “specified date”), and the appointed person shall notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal shall require submission of written representations to the appointed person within ten (10) business days of the specified date but shall otherwise be in accordance with the process and time limits set out in sub-paragraph (2)(c)-(e).

(5) On an appeal under this paragraph, the appointed person may-

- (a) allow or dismiss the appeal, or
- (b) reverse or vary any part of the decision of the relevant planning authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to him in the first instance.

(6) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits.

(7) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to him that there is sufficient material to enable a decision to be made on the merits of the case.

(8) The decision of the appointed person on an appeal shall be final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(9) If an approval is given by the appointed person pursuant to this Schedule, it shall be deemed to be an approval for the purpose of Schedule 1 of this Order as if it had been given by the relevant planning authority. The relevant planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) shall not be taken to affect or invalidate the effect of the appointed person’s determination.

(10) The appointed person may or may not be a member of the Planning Inspectorate but shall be a qualified town planner of at least ten (10) years’ experience.

(11) Save where a direction is given pursuant to sub-paragraph 12 requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person shall be met by the undertaker.

(12) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it shall be made, the appointed person shall have regard to Welsh Government Circular NAFWC 07/2003 Planning (and analogous) Appeals and Call-in Procedures or any circular or guidance which may from time to time replace it.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Hirwaun Power Limited (referred to in this Order as the undertaker) to construct, operate and maintain a gas fired electricity generating station. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose. The Order also makes provision in connection with the maintenance of the new section of highway.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article [] of this Order (certification of plans, etc.) may be inspected free of charge during working hours at [].