
NORTH LONDON WASTE AUTHORITY
NORTH LONDON HEAT AND POWER
PROJECT

EXPLANATORY MEMORANDUM

The Planning Act 2008 The Infrastructure
Planning (Applications: Prescribed
Forms and Procedure) Regulations 2009
Regulation 5 (2) (c)

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1 Introduction

1.1 This memorandum accompanies an application for development consent (the "**Application**") by the North London Waste Authority.

1.2 This memorandum explains:

1.2.1 the purpose and effect of each article of, and schedule to, the North London Heat and Power Generating Station Order 201[] (the "**Order**") (as required by Regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 and in accordance with guidance issued by the Department of Communities and Local Government (**DCLG**) on the pre-application process¹ and PINS Advice Note 15 (Drafting Development Consent Orders, October 2014); and

1.2.2 the purpose and effect of any departures from the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (the "**Model Provisions**"). Reference to the Model Provisions is recommended by The Planning Inspectorate ("**PINS**") in Advice Note 13² ("**Advice Note 13**").

1.3 Advice Note 13 states on page 4 that:

1.3.1 "Model Provisions"

(a) *Model provisions were set out in the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (SI 2009/2265). They included provisions which could be common to all NSIPs, others which relate to particular infrastructure development types, in particular railways and harbours, and model provisions in respect of requirements. The Localism Act 2011 removed the requirement for the decision-maker to have regard to the prescribed model provisions in deciding an application for development consent.*

(b) *Model provisions were intended as a guide for developers in drafting orders, rather than a rigid structure, but aided consistency, and*

¹ 'The Planning Act 2008 – Guidance on the pre-application process', Department of Communities and Local Government, August 2014.

² The Planning Inspectorate, Preparation of a draft order granting development consent and explanatory memorandum, April 2012 (version 2).

assisted developers to draft a comprehensive set of lawful provisions.

1.3.2 Other provisions

(a) *Provisions used in ‘predecessor’ regimes such as for Transport and Works Act Orders or Harbour Empowerment Orders may be helpful in the drafting of a DCO. Developers should though satisfy themselves that the inclusion of particular wording is appropriate and relevant in all the circumstances of a given project. The relevant precedent and the rationale for including the particular wording of a provision will need to be set out and justified in the explanatory memorandum.”*

1.4 Although Advice Note 13 is not formal guidance to which regard must be had under section 50 Planning Act 2008 ("**PA 2008**"), and the requirement for the decision-maker to have regard to the Model Provisions in deciding an application for development consent was removed by the Localism Act 2011, the Model Provisions are intended as a guide for applicants in drafting an order for development consent and should be treated as such.

1.5 The Order is therefore based on the Model Provisions but where necessary in order to meet the specific circumstances of the Project (as defined below), the Order departs from those provisions and draws from and reflects the drafting used in other Development Consent Orders made by the Secretary of State.

2 The purpose of the Order

2.1 The North London Waste Authority (referred to in the Order and this memorandum as "**the undertaker**") has made the Application to the Secretary of State (under section 37 PA 2008) for the North London Heat and Power Project (the "**Project**") relating to the construction, operation and maintenance of an electricity and heat generating station of around 70 megawatts (MWe) (the "**electricity and heat generating station**") at the Edmonton EcoPark in Edmonton, North London (the "**Application**").

- 2.2 The proposed electricity and heat generating station will replace the existing energy from waste facility at the Edmonton EcoPark. Fuller details of the Application and the works authorised by it are set out below and in the Statement of Reasons which accompanies the Application.
- 2.3 The Project is a nationally significant infrastructure project for the purposes of section 14(1)(a) and section 15 of Part 3 PA 2008. This is because the Project involves the construction of a generating station located wholly in England that will have a capacity of more than 50 megawatts. As the Project is a nationally significant infrastructure project, the Application must seek development consent to construct the Project in accordance with the requirements PA 2008.
- 2.4 The Order seeks authority for the construction and operation of an electricity and heat generating station using residual waste as a fuel and capable of electrical output of around 70MWe (gross) of electricity. The principal development consists of the following development located in Works Zone 1 on Drawing C_0002 and within the building envelopes shown on Drawing C_0003 (in the Book of Plans (AD02.01)):
- 2.4.1 a main building housing:
- (a) a tipping hall;
 - (b) waste bunker and waste handling equipment;
 - (c) two process lines (with each line having a capacity of 350,000 tonnes of waste per annum), consisting of a moving grate, furnace, boiler and a flue gas treatment plant;
 - (d) facilities for the recovery of incinerator bottom ash and air pollution control residue;
 - (e) steam turbine(s) for electricity generation including equipment for heat off-take;
 - (f) control room containing the operational and environmental control and monitoring systems, and offices.

- 2.4.2 entry and exit ramps to the electricity and heat generating station;
 - 2.4.3 a stack containing flues for flue gas exhaust;
 - 2.4.4 cooling equipment; and
 - 2.4.5 an observation platform enclosure.
- 2.5 Section 115 PA 2008 enables development consent to be granted not only for a nationally significant infrastructure project, but also for “associated development”. In determining what comprises associated development, one must have regard to guidance on associated development issued by the Secretary of State for Communities and Local Government, which illustrates the type of development that may qualify and sets out the defining characteristics of associated development. A description of the associated development for the Project (within the meaning of section 115 PA 2008) and an explanation of the reasons for the associated development is set out in this memorandum.
- 2.6 The undertaker has categorised the decommissioning and demolition of the existing energy from waste facility as associated development. This is because there is no need to decommission and demolish the existing energy from waste facility in order to construct the proposed electricity and heat generating station. In principle, both the existing energy from waste facility and the proposed electricity and heat generating station could operate side by side. However, as it is not the intention of the undertaker to increase the capacity of the Edmonton EcoPark beyond that which is being applied for in the Application, and in line with principles of good site management and modernisation, the undertaker is making a direct statement that it will demolish the existing facility as associated development to the principal development, which is the energy recovery facility. Decommissioning has been included in Works number 7 because it may be necessary to undertake physical works to the existing energy from waste facility prior to its demolition to enable it to be decommissioned. The detail of the decommissioning methodology will be addressed as part of compliance with requirement 20

and the undertaker therefore requires a wide enough description in Works number 7 to ensure that the decommissioning is workable and safe.

3 Compulsory acquisition powers

3.1 The Order seeks powers of compulsory acquisition for land required by the Project, or to facilitate the Project, or for that which is incidental to the Project, under sections 122 and 123 PA 2008 and to acquire rights to enable the undertaker to construct and maintain the Project. It also seeks powers under sections 120(3) and (4) and Part 1 of Schedule 5, paragraph 2 PA 2008 to authorise the creation, suspension or extinguishment of, or interference with, interests in or rights over land (including rights of navigation over water), compulsorily or by agreement. A justification for these is set out in full in the Statement of Reasons (Application document number AD04.01) that accompanies the Application.

3.2 The Order also seeks to apply and modify statutory provisions in relation to the compulsory acquisition of land. For this reason, under sections 117 and 120(5) PA 2008 the Order must be made by Statutory Instrument and the Order is drafted in that form (and complies with current requirements for the formatting of Statutory Instruments).

4 Special Category Land

4.1 The Order provides for a power to compulsorily create a right of way over Lee Park Way and carry out landscaping and associated upgrade works in order to improve the condition of land within the Order limits. As explained in the Statement of Reasons, the undertaker has assumed that part of this land is "open space" (as referred to in section 132 PA 2008). However, as explained in the Statement of Reasons, the undertaker believes that it can rely on the exemption set out in section 132(3) PA 2008. The exemption provides that the special procedure required by section 132(2) PA 2008 does not need to be followed if the Secretary of State confirms that (when burdened with the new right to be acquired) the Order land will be no less advantageous than it was before to:

4.1.1 the persons in whom it is vested;

- 4.1.2 other persons entitled to rights of common or other rights; and
- 4.1.3 the public.
- 4.2 On the basis that the undertaker believes that the statutory exemption to the special procedure applies, it has not taken any steps to comply with the special procedure.
- 4.3 The preamble to the Order contains a statement that the Secretary of State is satisfied that the special category land (as identified in the Book of Reference (Application document AD04.03 and in the Statement of Reasons (Application document AD04.01), when burdened with rights acquired under the Order, will be no less advantageous than it was before to persons in whom it is vested, other persons, if any, entitled to rights of common or other rights, and the public, and that, accordingly, section 132(3) PA 2008 applies. This was the approach followed in the preamble of The Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 (SI 2015/318).

5 Order

- 5.1 The provisions of the Order are explained below.
- 5.2 *Article 1 (Citation and commencement)*
 - 5.2.1 This article provides for the commencement and citation of the Order. It also includes the date on which the Order comes into force, which may or may not be the date on which the Order is made.
- 5.3 *Article 2 (Interpretation)*
 - 5.3.1 This article substantively follows the article 1 of the Model Provisions and provides for the interpretation of the Order. Specific provisions relating to the North London Heat and Power Project have been included. Article 2 makes alterations to certain Model Provisions to accommodate the departures from the Model Provisions elsewhere in the Order. Of particular note are:
 - (a) consistent with nearly all development consent orders that relate to land in respect of which there is a single local planning authority (for example The Preesall Underground Gas Storage Facility Order 2015

(SI 2015/1561)), the model definition of the "relevant planning authority" has been amended so that it means the London Borough of Enfield. This is because the authorised development falls wholly within the jurisdiction of the London Borough of Enfield as local planning authority. The London Borough of Enfield will also monitor and discharge the requirements in Schedule 2 of the Order;

- (b) in common with many development consent orders (such as The Knottingley Power Plant Order 2015 (SI 2015/680), The North Killingholme (Generating Station) Order 2014 (SI 2014/2434) and The South Hook Combined Heat and Power Plant Order 2014 (SI 2014/2846)), a definition of "environmental statement" has been added;
- (c) the definition included in the Model Provisions of "maintain" has been modified to include powers relating to landscaping. This allows for greater clarity elsewhere in the Order in relation to the powers of the undertaker. The definition has also been modified to include wording that ensures that maintenance works carried out pursuant to this definition are not outside what has been assessed in the environmental statement;
- (d) a definition of "commence" has been added to make clear which operations the undertaker would be able to carry out on the land without these constituting commencement of the authorised development; such operations are not material in nature and comprise investigative, remedial and preparatory works which would be undertaken at a stage where the detailed design of the authorised development is unlikely to have been carried out to enable the pre-commencement requirements to be fulfilled. This is substantially the same as the approach in The Willington C Gas Pipeline Order 2014 (SI 2014/3328);
- (e) the definition in the Model Provisions of "undertaker" has been modified slightly to include North London Waste Authority, its

successor bodies, and those to whom powers are transferred pursuant to article 8;

- (f) definitions of “code of construction practice”, “commissioning”, “design code principles”, “environmental commitments and mitigation schedule” and “the tribunal” have also been inserted to provide for greater clarity elsewhere in the Order in relation to the requirements set out in Schedule 2; and
- (g) the definition of “statutory undertaker” has been amended to reflect the fact that sections 128(5) and 128(2) PA 2008 have been repealed.

5.4 *Article 3 (Development consent granted by the Order)*

5.4.1 This article grants development consent for the authorised development to be constructed, operated and maintained within the Order limits. The development consent for the authorised development is stated in Article 3 to be subject to the provisions of the Order (and that this includes the requirements set out in Schedule 2 and the protective provisions set out in Schedule 16).

5.4.2 This article substantially follows article 3 of the Model Provisions. In addition it makes specific reference to the operation and maintenance (as well as construction) of the authorised development described in Schedule 1.

5.4.3 The “authorised development” is defined in Article 2 of the Order as being:

- (a) the development and associated development described in Schedule 1; and
- (b) and any other works authorised by the Order that are not development within the meaning of section 32 PA 2008.

5.4.4 The authorised development is development within the meaning of sections 14(1)(a) and 15(2) PA 2008 (which define a nationally significant project as including the construction of an onshore generating station in England with a

capacity of more than 50 megawatts), and associated development under section 115 PA 2008.

5.4.5 Requirement 3 requires the authorised development to be carried out in accordance with the approved detailed design. The details submitted for approval pursuant to requirement 3 must be in accordance with the design code principles (the design code principles is a document to be certified by the Secretary of State pursuant to article 33).

5.4.6 Requirement 4 requires that authorised development must be carried out within the parameters set out in requirement 4.

5.5 *Article 4 (Limits of deviation)*

5.5.1 The Model Provisions do not contain an equivalent article to Article 4.

5.5.2 Article 4 provides that the authorised development must be constructed, operated and maintained in the lines or situations shown on the works plans. This is the same approach followed in The Knottingley Power Plant Order 2015 (SI 2015/680), The Preesall Underground Gas Storage Facility Order 2015 (SI 2015/1561) and The Willington C Gas Pipeline Order 2014 (SI 2014/3328).

5.5.3 In constructing, operating and maintaining the authorised development, Article 4 also provides that the undertaker may deviate:

- (a) laterally from the lines or situations shown on the works plans to the extent of the limits of deviation shown on the works plans which will allow for the specific location within the limits of deviation to be determined at detailed design stage; and
- (b) vertically from the levels shown for those works on the works plans to any such extent downwards as may be necessary, convenient or expedient.

5.5.4 The construction, operation and maintenance of the authorised development must also be carried out within the Order limits (as provided for in Article 3).

5.6 Article 5 (*Maintenance of authorised development*)

5.6.1 This article is substantially the same as article 3 of the Model Provisions. It makes provision for the maintenance of the authorised development.

5.6.2 The definition of “maintain” in the Order includes (to the extent assessed in the environmental statement) maintain, inspect, repair, landscape planting and re-planting, adjust, alter, remove, clear, refurbish, reconstruct, decommission, demolish, and replace and improve. The inclusion of the words “to the extent assessed in the environmental statement” is to prevent the undertaker's ability to repair, alter, replace and improve (inter alia) in a manner or to a degree which has not been assessed.

5.6.3 Due to the scope of the authorised development and the definition of “maintain” in the Order, article 3 of the Order adds to the provisions of article 3 of the Model Provisions to include: (i) altering the position of apparatus; (ii) the maintenance of Lee Park Way (including the bridge over the River Lee Navigation); and (iii) the maintenance of landscaping. These specific powers have been added because these parts of the Order land are outside the Edmonton EcoPark and the undertaker requires a power to maintain them for the lifetime of the authorised development. This is a slightly different approach to that used in the Model Provisions but provides for greater clarity of the undertaker's powers under the Order and reflects the particular circumstances of the authorised development. A similar approach was followed in the North Killingholme (Generating Station) Order 2014 (SI 2014/2434).

5.6.4 These additions are permitted under section 120(5)(c) PA 2008 because they are necessary and expedient to give full effect to the power to maintain the authorised development under this article.

5.6.5 The possible resurfacing of Ardra Road and works to create a temporary construction laydown area will not be subject to the powers of maintenance granted to the undertaker under article 5.

5.7 *Article 6 (Operation of the authorised development)*

5.7.1 This article specifically authorises the undertaker to operate the electricity and heat generating station forming part of the authorised development and to manage all other aspects of the authorised development (to the extent authorisation is needed for example, in relation to the resource recovery facility) and also any person who the undertaker grants a contract to operate the authorised development. This article is not taken from the Model Provisions but is inserted pursuant to section 140 PA 2008 to authorise the undertaker to operate the authorised development in accordance with the provisions of the Order.

5.8 *Article 7 (Benefit of Order)*

5.8.1 This article is substantively the same as article 4 of the Model Provisions and provides that the Order shall have effect for the benefit of the undertaker. This article is subject to article 8, which must be read alongside it.

5.9 *Article 8 (Consent to transfer benefit of Order)*

5.9.1 This article is substantively the same as article 5 of the Model Provisions and enables agreements between the undertaker and other persons for the transfer or grant of any or all of the benefit of the provisions of the Order and such related statutory rights as agreed between the undertaker and the other person.

5.9.2 In most situations, the benefit of the provisions of the Order cannot be transferred to a third party without the consent of the Secretary of State. However the Order provides that the consent of the Secretary of State to any transfer or lease will not be required if the transferee or lessee is wholly owned by, or controlled by, the undertaker. The Secretary of State's consent to the transfer of any of the powers in the Order to such an entity should not be necessary, because the undertaker would have de facto control over such entity.

5.9.3 The exercise by a person of benefits or rights conferred by the Order as a result of this article will be subject to the same restrictions, liabilities and

obligations as would apply if the undertaker exercised its powers under the Order.

5.9.4 The wording of this article reflects the approach taken in The Wellington C Gas Pipeline Order 2014 (SI 2014/3328) and the South Hook Combined Heat and Power Plant Order 2014 (SI 2014/2846).

5.10 *Article 9 (Defence to proceedings in respect of statutory nuisance)*

5.10.1 This is substantively the same as article 7 of the Model Provisions and provides that no individual may bring statutory nuisance proceedings under the Environmental Protection Act 1990 in respect of noise, if the noise is created in the course of constructing, maintaining or using the authorised development and for which notice has been given under section 60 or consent obtained under section 61 or 65 of the Control of Pollution Act 1974 or which cannot reasonably be avoided.

5.10.2 Reference to operational noise controls set out within any environmental permit granted for the operation of the authorised development has been added so that it will also be a defence if operational noise is in compliance with limits set out in an environmental permit.

5.11 *Article 10 (Street works)*

5.11.1 This article is substantively the same as article 8 of the Model Provisions and confers authority on the undertaker to execute works under the streets specified in Schedule 4 of the Order (Streets subject to street works) within the Order limits and for the purposes of the authorised development. The authority given by this right is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the New Roads and Street Works Act 1991 (**1991 Act**).

5.12 *Article 11 (Alteration of street layout)*

5.12.1 This article allows for the layout of existing streets specified in schedule 5 of the Order to be altered. There is no equivalent article in the Model Provision. Article 11 of the Order is based on article 11(1) of The Thames Water Utilities

Limited (Thames Tideway Tunnel) Order 2014 (SI 2014/2384), which in turn is based on article 6 of Schedule 2 of the Transport and Works Act Model Provisions.

5.13 *Article 12 (Public rights of way)*

5.13.1 Article 12 follows the principle of article 10 of the Model Provisions and grants the undertaker powers to extinguish or suspend public rights of way in order to allow the construction and operation of the authorised development. These affected public rights of way are shown on Plans C_0012, C_0013 and C_0014 and are set out in Schedule 6 to the Order.

5.13.2 The wording of article 12 of the Order is based on the Rampion Offshore Wind Farm Order 2014 (SI 2014/1873) (in relation to articles 17(1) and 17(2) of that order) and the Knottingley Power Plant Order 2015 (SI 2015/680) (in relation to articles 12(2) and 12(3) of that order).

5.13.3 Article 12(1) of the Order provides the power to suspend the footpaths and cycle ways set out in Schedule 6 for the duration of the construction of the authorised development.

5.13.4 Articles 12(2) and 12(3) of the Order provide that where a public right of way is to be suspended, alternative routes specified in Schedule 6 of the Order must be provided first and for the duration of the construction of the authorised development. The wording of articles 12(1) to 12(3) follows the approach in article 17 of the Rampion Offshore Wind Farm Order 2014 (SI 2014/1873).

5.13.5 Articles 12(4) and 12(5) of the Order deal with extinguishing public rights of way. These rights of way are set out in Schedule 7 of the Order and are shown on plan number C_0014. The permanent extinguishment of such public rights of way will take effect from the commencement of the authorised development of the authorised development. Under article 12(5) of the Order, the public rights of way set out in Schedule 7 of the Order to be permanently extinguished cannot be so extinguished until the alternative rights of way (also set out in Schedule 7 of the Order) have been provided by the undertaker (this follows the general approach in the Model Provisions and

also reflects the approach and wording in the Knottingley Power Plant Order 2015 (SI 2015/680)).

5.14 *Article 13 (Temporary stopping up of streets)*

5.14.1 This article is substantively the same as article 11 of the Model Provisions.

5.14.2 Article 13(1) grants a general power to temporarily stop up, prevent all persons from passing along, or alter or divert any street (or part of it) within the Order limits for a reasonable time, for the purposes of carrying out the authorised development.

5.14.3 Article 13(2) requires the undertaker to provide reasonable access to pedestrians going to and from premises abutting a street affected by article 13.

5.14.4 Article 13(3) of the Order provides that without prejudice to the general power under article 13(1), the streets set out in Schedule 8 of the Order can be temporarily stopped, altered or diverted.

5.14.5 Under article 13(4) of the Order, the undertaker cannot temporarily stop up, alter or divert any street set out in Schedule 8 without first consulting the street authority on any other street within the Order limits without the consent of the street authority who may also attach reasonable conditions to any consent. A street authority in relation to a street is defined by Part 3 of the 1991 Act as:

“(a) if the street is a maintainable highway, the highway authority; and

(b) if the street is not a maintainable highway, the street managers.”

5.14.6 Part 3 of the 1991 Act defines “street manager” as the authority, body or person liable to the public to maintain or repair the street or, if there is none, any authority, body or person having the management or control of the street.

5.14.7 Under article 13(5) of the Order, those who suffer a loss as a result of the exercise of the powers contained in article 13 of the Order shall be entitled to compensation.

5.14.8 Article 13(6) of the Order provides for deemed consent in the absence of a decision by the relevant street authority within 28 days. This has been inserted in order to avoid unnecessary delays to the authorised development and is based on a similar provision in The Clocaenog Forest Wind Farm Order 2014 (SI 2015/2441).

5.15 *Article 14 (Access to works)*

5.15.1 This article is substantively the same as article 12 of the Model Provisions. It authorises the creation of new, and alteration of existing, accesses to and from public highways and private roads at the locations shown on the works plans. It also authorises the forming and laying out of such other access points as are approved by the relevant planning authority in consultation with the highway authority. The same approach was used in the The Knottingley Power Plant Order 2015 (SI 2015/680).

5.16 *Article 15 (Agreements with street authorities)*

5.16.1 This article authorises street authorities and the undertaker to enter into agreements relating to the carrying out of works on streets affected by the authorised development. Article 15 is substantively the same as article 13 of the Model Provisions, adapted only to omit the reference to the construction of new streets and maintenance of tunnels which are not required for the purposes of the authorised development.

5.17 *Article 16 (Discharge of water)*

5.17.1 This article is substantively the same as article 14 of the Model Provisions and enables the undertaker to discharge water into any watercourse, public sewer or drain in connection with the construction and maintenance of the authorised development, with the approval of the authority or entity to which the watercourse, public sewer or drain belongs (such approval not to be unreasonably withheld) and subject to certain other conditions.

5.17.2 Article 14(7) of the Model Provisions has been modified to refer to the environmental permitting regime introduced by the Environmental Permitting (England and Wales) Regulations 2010.

5.17.3 Article 16(8) has also been inserted to take into consideration matters arising under section 150 PA 2008. Under section 120(5)(a) PA 2008 a development consent order may “*apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the Order*”. Section 150 limits the power conferred by section 120(5)(a) which would otherwise enable provisions to be included in the Order the effect of which is to override the requirement for consent which may be required under another enactment. The Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010 identify a number of consents and authorisations which are prescribed for the purposes of section 150 PA 2008 in respect of England and Wales. These include consents under the Land Drainage Act 1991 and the Water Resources Act 1991. The undertaker understands that separate consent applications will be required in respect of any matters authorised by article 16 that are within the control of the Environment Agency. Accordingly article 16(8) has been inserted into the Order to exclude from the scope of the article any consents that need to be obtained from the Environment Agency. This reflects the approach that was taken in The Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 (SI 2015/318).

5.18 *Article 17 (Protective works to buildings)*

5.18.1 This article is the same as article 15 of the Model Provisions. It authorises the undertaker to carry out protective works to any building within the Order limits as defined in that article where it is necessary or expedient in advance of, during or up to five years after, the carrying out of any part of the authorised development in the vicinity of the building. The undertaker may enter the building and land in its curtilage for the purposes of deciding how to exercise its powers. The undertaker may also enter the building, land within its curtilage or adjacent land to carry out protective works. The undertaker must (except in an emergency) give not less than 14 days' notice to owners and occupiers of its intention to exercise the powers. The article provides that the owner of a building may question whether the works are necessary. Provision is made for the payment of compensation in relation to loss or

damage caused by the undertaker in carrying out the protective works and where, within 5 years, the protective works appear to have been inadequate.

5.19 *Article 18 (Authority to survey and investigate)*

5.19.1 This article is the same as article 16 of the Model Provisions and confers on the undertaker a power to enter land for the purposes of: surveying or investigating the land; making trial holes; carrying out ecological or archaeological investigations; and placing and leaving apparatus on the land, all subject to giving the owner of the land at least 14 days' notice. Provision is made for the payment of compensation.

5.20 *Article 19 (Compulsory acquisition of land)*

5.20.1 This article is substantively the same as article 18 of the Model Provisions and similar to wording in The North Killingholme (Generating Station) Order 2014 (SI 2014/2434), The Willington C Gas Pipeline Order 2014 (SI 2014/3328) and The Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 (SI 2015/318).

5.20.2 Article 19 empowers the undertaker to compulsorily acquire the land shaded pink on the land plans and described in the Book of Reference which is required for the authorised development or to facilitate or is incidental to it.

5.20.3 Reference in the model provision to the acquisition of land limited to subsoil lying more than 9 metres beneath the surface has not been used because this power is not required by the undertaker.

5.20.4 Article 19 also makes further provision for the extinguishment of rights, trusts and incidents to which the land was previously subject, as well as making additional provision for the extinguishment of easements, liberties, privileges, advantages, restrictions and covenants to which the land being compulsorily acquired was previously subject. This additional provision was included in The Willington C Gas Pipeline Order 2014 (SI 2014/3328).

5.20.5 Any person who suffers loss by the extinguishment or suspension of any private right of way under this article shall be entitled to compensation.

- 5.21 *Article 20 (Time limit for exercise of authority to acquire land compulsorily or use land temporarily)*
- 5.21.1 Article 21 allows the undertaker a period of 7 years from the date the Order is made to exercise its powers of compulsory acquisition.
- 5.21.2 This article is the same as article 20 of the Model Provisions, except for that it has been modified so that the period of time given to the undertaker to exercise its power to acquire land compulsorily is longer than the 5-year prescribed period and is also longer than the time limit in requirement 2 of Schedule 2 of the Order, which states that the authorised development must be commenced within 5 years from the date the Order comes into force.
- 5.21.3 Article 21 will give the undertaker seven years to issue 'notices to treat' or a 'general vesting declaration' to acquire the land that is the subject of a power of compulsory purchase. These are the two procedural methods by which the process of acquiring land is undertaken. Section 154(3) PA 2008 provides that where an order granting development consent authorises the compulsory acquisition of land, steps of a prescribed description must be taken in relation to the compulsory acquisition before the end of the prescribed period or such other period (whether longer or shorter than that prescribed) as is specified in the Order. Regulation 3(2) of the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010 prescribes the period for the purposes of section 154(3) PA 2008 for the service of a notice to treat as 5 years from the date on which the Order granting development is made.
- 5.21.4 The longer period of seven years provided for under article 20 is permitted under section 154(3) PA 2008. Seven years is required because of the scale and complexity of the works, the lead-in time required for procurement and contract award, the project programme, and also because it may not be possible or desirable to exercise the powers of compulsory purchase within 5 years of the Order coming into force.

- 5.21.5 Article 21 (*Power to override easements and other rights*)
- 5.21.6 There is no equivalent Model Provisions to Article 21. However, the Rookery South (Resource Recovery Facility) Order 2011 (SI 2013/680), The Willington C Gas Pipeline Order 2014 (SI 2014/3328) and The North Killingholme (Generating Station) Order 2014 (SI 2014/2434) all contain a similar provision.
- 5.21.7 Article 21 of the Order allows for the suspension and/or extinguishment of rights.
- 5.21.8 The power on which reliance is placed to authorise interference with rights and the extinguishment of rights is contained within sections 120(3) and 120(4) PA 2008 and paragraphs 2 (creation, suspension, extinguishment, etc. of interests in or rights over land) and 3 (the abrogation or modification of agreements relating to land) of Schedule 5 PA 2008. In reliance on this power, section 237(1) of the Town and Country Planning Act 1990 ("1990 Act") has been applied in an amended form in order to reflect the provisions of that section as inserted by Schedule 9, paragraph 4 PA 2008. As such, there is no requirement for separate drafting analogous to sub-sections (1) and (1A) of section 237.
- 5.21.9 Article 21(1)(a) allows for the suspension of rights and article 21(1)(b) allows for the extinguishment of rights.
- 5.21.10 Both articles 21(1)(a) and 21(1)(b) also apply to rights belonging to statutory undertakers as well as other private rights. This approach with respect to statutory undertakers' rights departs from that in the Model Provisions for ease of drafting. Article 31 of the Model Provisions allows for the compulsory acquisition of land belonging to statutory undertakers the extinguishment of their rights in apparatus or removal or reposting of their apparatus. Article 31 of the Model Provisions also allows for the compulsory acquisition of new rights over land belonging to statutory undertakers. Article 21(1)(b) of the Order (together with Article 23 of the Order) achieves the same effect as article 31 of the Model Provisions. The rights affected by Article 21(1)(b) of the Order are shown on the land plans and the land affected is also set out in

Schedule 12 of the Order. The Statement of Reasons also contains further information.

5.21.11 Whilst articles 19 and 22 of the Model Provisions state that the land vested in the undertaker would be discharged from all rights, trusts and incidents to which it was previously subject at the point of vesting, it is not clear whether these articles also cover situations where rights and restrictions will only be interfered with temporarily whilst works relating to the authorised development are being carried out, nor is it clear whether these articles also cover the extinguishment of rights where no land is taken.

5.21.12 The power on which reliance is placed to authorise temporary interference with rights and the extinguishment of rights is contained within sections 120(3) and 120(4) PA 2008 and paragraphs 2 (creation, suspension, extinguishment, etc. of interests in or rights over land) and 3 (the abrogation or modification of agreements relating to land) of Schedule 5 PA 2008. In reliance on this power, section 237(1) of the Town and Country Planning Act 1990 ("**1990 Act**") has been applied in an amended form in order to reflect the provisions of that section as inserted by paragraph 4 of Schedule 9 PA 2008.

5.21.13 Article 21(1) provides for successors of the undertaker pursuant to a transfer or lease under article 8 of the Order to benefit from this power. This is appropriate given the different status and roles of the undertaker and local authorities, to the latter of which section 237 of the 1990 Act ordinarily applies. It enables the interest of the undertaker to be treated appropriately within the undertaker's group companies, subject always to the provisions of the Order.

5.21.14 Section 237(3) of the 1990 Act does not allow interference with rights belonging to statutory undertakers. No drafting is included in Article 21 analogous to section 237(3) of the 1990 Act, because it may be necessary to interfere with rights belonging to statutory undertakers and with their apparatus using the powers of this Order. Protective provisions are contained within Schedule 16 of the Order and are currently being negotiated with affected statutory undertakers.

5.21.15 Article 21(4) is included for the purposes of clarity.

5.21.16 Article 21(5) deals with compensation and is drawn from and reflects section 237(4) of the 1990 Act.

5.21.17 Drafting reflecting sub-sections 237(5) and (6) of the 1990 Act has not been included in Article 21. This is because it is not appropriate, where the undertaker parts with its undertaking in respect of the authorised development, for it to retain any residual liability. It is more appropriate for that liability to rest with the person that is for the time being the relevant undertaker and/or landowner.

5.22 *Article 22 (Statutory authority to override easements and other rights)*

5.22.1 There is no equivalent Model Provision for Article 22 of the Order.

5.22.2 Article 22 is substantively the same as article 33 of The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (SI 2014/2384). It provides for the avoidance of doubt that by virtue of section 158 PA 2008 in carrying out or using the authorised development and doing anything else authorised by the Order the undertaker may interfere with any easement, liberty, privilege, right or advantage annexed to land or affecting other land, including any natural right to support, or breach any restriction as to user of land arising by virtue of contract.

5.22.3 It also provides that by virtue of section 152 PA 2008, compensation may be payable under section 10 of the Compulsory Purchase Act 1965 for any such interference or breach.

5.22.4 It reflects article 25 of the Hinkley Point C (Nuclear Generating Station) Order 2013.

5.23 *Article 23 (Compulsory acquisition of rights)*

5.23.1 Article 23 is substantively the same as article 21 of the Model Provisions. It allows for the compulsory acquisition of existing rights, as well as the compulsory creation of new rights. The relevant rights affected are as set out in the Book of Reference, Schedule 13 of the Order and shown on the land

plans. Article 23 departs from the Model Provisions as it allows the undertaker to acquire new rights in relation to statutory undertaker rights in land and apparatus. This has been done for ease of drafting as the additional wording comes from article 31(c) of the Model Provisions and these have been incorporated into Article 23 of the Order.

5.23.2 As from the date on which any new right is created, the land over which that new right is created will 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. Provision is made for compensation.

5.23.3 Article 23(5) has been taken from The Willington C Gas Pipeline Order 2014 (SI 2014/3328) and provides that the enactments relating to compensation in the Compulsory Purchase Act 1965 are modified as set out in Schedule 14 of the Order.

5.24 *Article 24 (Private rights of way)*

5.24.1 This article is the same as article 22 of the Model Provisions.

5.24.2 This article provides for the extinguishment of private rights over land subject to compulsory acquisition.

5.24.3 Article 24 also provides that all private rights of way over land which the undertaker takes temporary possession under the Order will be suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

5.24.4 This article provides for the payment of compensation to those who suffer loss as a result.

5.25 *Article 25 (Application of the Compulsory Purchase (Vesting Declarations) Act 1981)*

5.25.1 This article is the same as article 23 of the Model Provisions. This article applies the provisions of the 1981 Act to compulsory acquisition under the Order. Vesting declarations are one of two ways of acquiring land that is

subject to compulsory purchase (the other being by means of a notice to treat). They allow title in the land to pass to the acquirer more quickly than using the notice to treat method, and also allow several parcels of land to be acquired at once.

5.26 *Article 26 (Rights under or over streets)*

5.26.1 This article is substantively the same as article 27 of the Model Provision. It allows the undertaker to occupy land above or below and airspace above streets within the Order limits without having to acquire the land. Article 26 departs from the Model Provisions as it also allows the undertaker to occupy airspace above buildings within the Order limits. This power is required to enable the undertaker to overhang buildings during the construction of the authorised development.

5.26.2 If there are any structures below the street, then compensation is payable for any loss or damage.

5.27 *Article 27 (Temporary use of land for carrying out the authorised development)*

5.27.1 This article is substantively the same as article 28 of the Model Provisions.

5.27.2 Article 27 allows the undertaker to take temporary possession of the land specified in Schedule 15 (land of which temporary possession may be taken) for the purpose of carrying out the Authorised Development. This land is hatched brown on the land plans. The land is to be used as a temporary construction laydown area that will enable construction of the Authorised Development. This is explained in the Statement of Reasons.

5.27.3 Two of the plots which are subject to the powers contained in Article 27 (plots 11 and 12) are part of the River Lee Navigation. Pursuant to the definition of land in the PA 2008 and Section 5 of, and Schedule 1 to, the Interpretation Act 1978, the word "land" also includes land which is covered by water.

5.27.4 Provision is also made for notice, restoration and compensation.

- 5.27.5 Article 27 includes notice provisions that the undertaker must comply with and requirements for the restoration of any such land used in this way. Provision is made for compensation.
- 5.27.6 Article 27(3) departs from the Model Provisions. Article 27(3) allows the undertaker to remain on land that is temporarily possessed for 2 years (as opposed to one year in the Model Provisions) after the authorised development is constructed. This departure is necessary because 2 years is the amount of time the undertaker will require to restore the lay down area land to the reasonable satisfaction of the owner of the land. Restoration does not include the replacement of any building removed (as per the Model Provisions) as there are no buildings currently on the land.
- 5.28 *Article 28 (Temporary use of land for maintaining authorised development)*
- 5.28.1 Article 28 provides that the undertaker may take temporary possession of land within the Order limits for the purpose of maintaining the authorised development and constructing such temporary works and buildings on the Order land as may be reasonably necessary. Article 28(1) includes a right to enter on any land within the Order limits for the purpose of gaining access where this is reasonably required to maintain the authorised development.
- 5.28.2 Article 28(11) allows the undertaker to temporarily use land within the Order limits for the purpose of maintaining the authorised development for up to 5 years and to construct such temporary works as may be reasonably necessary for that purpose.
- 5.28.3 Articles 28(3) and 28(12) are a departure from article 29 of the Model Provisions as they authorise the use of land within the Order limits for the lifetime of the authorised development for the purposes of maintaining the operational site, Lee Park Way (as that will form one of the three accesses into the Edmonton EcoPark), the bridge over the River Lee Navigation (as that will form one of the three accesses into the Edmonton EcoPark), and the areas to be landscaped to the east of the Edmonton EcoPark and to the immediate east of Deephams Farm Road. The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (SI 2014/2384) establishes

precedent to depart from the 5 year period contained in article 29 of the Model Provisions in relation to the exercise of this power. The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (SI 2014/2384) does not place a time restriction on the exercise of this power, and in fact this power operates for the lifetime of the authorised development in that Order.

5.28.4 Article 28(13) is also a departure from the Model Provisions as it authorises immediate entry onto land within the Order limits in cases of emergency, where the safety of the authorised development (or part of it), the public or the environment may be at risk.

5.28.5 Provision is also made for notice, restoration and compensation.

5.28.6 The only land outside order limits which will require maintenance is a strip of verge to the east of Deephams Farm Road as shown on plan number [C_0018] in order to ensure that Deephams Farm Road is not overgrown by vegetation (this is required because Deephams Farm Road will form part of the operational site and will also be used as one of the new accesses into the Edmonton EcoPark).

5.29 *Article 29 (Recovery of costs of new connections)*

5.29.1 This article is the same as article 33 of the Model Provisions. This was the approach followed in The Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 (SI 2015/318). The article provides for the payment of compensation to owners and occupiers of property where apparatus is removed under the powers conferred to the undertaker by articles 21 and 23 in relation to statutory undertakers.

5.30 *Article 30 (Application of landlord and tenant law)*

5.30.1 This article is the same as article 35 of the Model Provisions. It overrides the application of landlord and tenant law in so far as it may prejudice the operation of any agreement for the leasing of the whole or part of the authorised development or the right to operate the same and any agreement for the construction, maintenance, use of operation of the authorised development or any part of it entered into by the undertaker. The North

Killingholme (Generating Station) Order 2014 (SI 2014/2434) also followed the Model Provisions in this respect.

5.31 *Article 31 (Operational land for purposes of the 1990 Act)*

5.31.1 This article is the same as article 36 of the Model Provisions. It provides that for the purposes of section 264(3)(a) of the 1990 Act (cases in which the land is to be treated as operational land for the purposes of that Act), the development consent granted by the Order shall be treated as a specific planning permission. The purpose of this is to ensure that permitted development rights under Part 17 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995, will apply in relation to land used for the purposes of the authorised development. The Hornsea One Offshore Wind Farm Order 2014 (SI 2014/3331) also followed the Model Provisions in this respect.

5.32 *Article 32 (Felling or lopping of trees)*

5.32.1 This article modifies article 39 of the Model Provisions.

5.32.2 Article 32(1) enables the undertaker to fell or lop trees and shrubs for the purposes of preventing obstruction or interference with the authorised development.

5.32.3 Article 32(3) has been inserted to allow the undertaker to remove hedgerows within the Order limits for the purpose of carrying out the authorised development.

5.32.4 Provision is made for the payment of compensation to any person who suffers loss as a result of the exercise of the powers.

5.32.5 Reference to passengers in article 39 of the Model Provisions has been deleted from this article as there will be no people who will be using the authorised development as passengers.

5.33 *Article 33 (Certification of documents and plans)*

5.33.1 This article is substantively the same as article 41 of the Model Provision with amendments relating to the documents specific to the authorised

development. This article requires the undertaker to submit the works plans, the land plans, the book of reference, the environmental statement, the code of construction practice, the environmental commitments and mitigation schedule and the design code principles to the Secretary of State for certification following the making of the Order. This is the same approach that was followed in The Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 (SI 2015/318).

5.34 *Article 34 (Arbitration)*

5.34.1 This article is based on the relevant article within the Model Provisions and makes provision for the resolution, by arbitration, of differences arising under any provision of this Order. The relevant article within the Model Provisions has been amended to more closely follow article 63 of The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (SI 2014/2384) and article 41 The Preesall Underground Gas Storage Facility Order 2015 (SI 2015/1561) and article 29 of The North Blyth Biomass Power Station Order 2013 (SI 2013/1873) so as to:

- (a) provide for the President of the Institution of Civil Engineers to be responsible for the appointment of an arbitrator (rather than the Secretary of State); and
- (b) carve out disputes reserved for the Lands Chamber of the Upper Tribunal and situations where the Order provides otherwise, or the parties agree otherwise, from this article.

5.35 *Article 35 (No double recovery)*

5.35.1 This article is not contained within the Model Provisions but is substantively the same as article 44 of the Transport and Works Act Model Provisions (the Transport and Works (Model Clauses for Railways and Tramways) Order 2006 (SI 2006/1954). The article provides that compensation is not payable both under this Order and other compensation regimes for the same loss or damage. The principle of equivalence, namely that a claimant in a compulsory purchase matter shall be compensated for no more and no less than his loss, is long established and no part of the compensation code

conflicts with this principle. This article complies with section 126(2) of the 1990 Act and is a supplementary provision under section 120(5)(d) PA 2008 as well as a provision relating to the payment of compensation under sections 120(3) and (4) and item 36 of Part 1 of Schedule 5 PA 2008. The Willington C Gas Pipeline Order 2014 (SI 2014/3328) contains the same wording.

5.36 *Article 36 (Protective provisions for specified undertakers)*

5.36.1 This article gives effect to the protective provisions in Schedule 16 of the Order.

5.37 *Article 37 (Decommissioning and transitional arrangements)*

5.37.1 This article requires the details approved pursuant to requirement 21 (Decommissioning of the energy from waste facility) are to be followed.

5.38 *Article 38 (Discharge of requirements)*

5.38.1 Article 38 is based on similar articles contained within The Thames Water utilities Limited (Thames Tideway Tunnel) Order 2014 (SI 2014/2384) and Hinkley Point C (Nuclear Generating Station) Order 2013 (SI 2013/648). It provides that the mechanism for the discharge of applications for consent, agreement, approval or in relation to notices, is set out in Schedule 3 of the Order. Article 38 follows the Hirwaun Generating Station Order 2015 (SI 2015/1574) by stating that where there has been no notification by the discharging authority of its decision, such non-determination will be treated as a deemed acceptance.

5.38.2 Schedule 3 of the Order also sets out the process for appealing the refusal etc. by the discharging authority (London Borough of Enfield) of applications to discharge or satisfy requirements. This article is included as a supplementary provision under section 120(5) PA 2008.

5.39 *Schedule 1 (Authorised development)*

5.39.1 Schedule 1 of the Order specifies the development for which development consent is sought. It also specifies the associated development in

accordance with section 115(1) PA 2008 and the principles set out in the document entitled “Guidance on associated development: Applications to the Infrastructure Planning Commission” published in September 2009 by the Department of Communities and Local Government (the “**DCLG Guidance**”)

- 5.39.2 Works number 1a is the principal development, being the construction of an electricity and heat generating station located at the Edmonton EcoPark, fuelled by residual waste and capable of an electrical output of around 70 megawatts of electricity. All application documentation refers to energy output at around 70MWe. The EIA air quality assessment (reported in the Environment Statement (AD06.02 Volume 2) is based on emissions figures for an energy output of 70.6MWe. The assessment has concluded no significant effects at this level, and this outcome is incorporated into the No Significant Effects Report (AD05.17). Other topics covered in the Environment Statement rely on waste throughput figures (700,000ktpa) that are fixed.
- 5.39.3 The application documentation refers to around 70 because of uncertainties in the precise energy output, which is governed by, in particular:
- (a) Boiler and turbine efficiency;
 - (b) Cooling system performance;
 - (c) Heat off-take levels;
 - (d) High variability in CV of waste due to composition and moisture.
- 5.39.4 The applicant would be prepared to look at an upper level of energy output consistent with the ES.
- 5.39.5 The other works numbers in Schedule 1 are listed as associated development in accordance with section 115(2)(a) PA 2008 and in accordance with the advice contained within the DCLG Guidance.
- 5.39.6 The proposed electricity and heat generating station is a waste disposal facility and the associated development is described in large part by reference to the requirements of waste treatment to allow its use as fuel

generating heat and electricity. All the associated development in Schedule 1 can be described as being subordinate to, and necessary for, the electricity and heat generating station and of a type normally brought forward to support the principal development, furthermore, the associated development cannot reasonably be considered as being an aim in itself (in line with advice set out in the DCLG Guidance).

5.39.7 Works number 1b (works required to provide buildings, structures, plant and equipment for the operation of the electricity and heat generating station) is categorised as associated development to Works number 1a because, while the elements referred to are not part of the building which is the electricity and heat generating station, they are all essential for its operation. The wastewater treatment facility and water pre-treatment plant both treat water which either results from, or is needed for, the operation of the electricity and heat generating station; external stores and workshops will house the spare components for the electricity and heat generating station which are held on site for regular maintenance, and the space for maintenance work to be carried out; as a waste treatment facility, the electricity and heat generating station will rely on the delivery of waste in waste collection authority vehicles for its fuel, and so the fuelling area, fuel storage, vehicle wash, transport offices and staff facilities (including toilets for drivers arriving at the Edmonton EcoPark) are all essential elements of the operation of the ERF. Natural gas is used for start-up and shut down of the boilers, and fire control water tanks are an essential part of the safe running of the site. Electrical substations are needed for the export and import of electricity and are positioned on site to reflect the most practical operational location.

5.39.8 Works number 2 (the construction of a "resource recovery facility") is categorised as associated development because the resource recovery facility is critical in providing an area to enable oversized waste (fuel) for the electricity and heat generating station to be received and resized (made smaller), and for the receipt of waste (fuel) for the area, in accordance with the Applicant's statutory duties, delivered to the operational site by businesses and householders. The resource recovery facility is not part of

the principal development because it is, in essence, required for fuel receipt and preparation.

5.39.9 Works number 3 (the construction of a visitor, community and education facility together with offices) is categorised as associated development because its provision is in line with the operation of most modern generating stations. The energy from waste facility currently on the Edmonton EcoPark offers well-used visitor tours. The proposed building would extend the ability of the undertaker to provide tours of the electricity and heat generating station and to extend the educational role of the undertaker in explaining waste prevention and climate change issues to children and adults. The proposal is designed to provide a safe environment for visits by the public and for education. The proposed Works number 3 will also provide office facilities for the electricity and heat generating station and will be used to house remote computer servers required for the management and storage of data to ensure smooth administration of operations. The boat canopy is required to replace the existing boat canopy. If a boat canopy is not provided, the Edmonton EcoPark will no longer be suitable for housing and protecting equipment required by the Edmonton Sea Cadet Corps (which currently occupies the existing building under a protected lease) and the undertaker does not wish to stop the continuing use by the sea cadets (currently and in years to come) of the Edmonton EcoPark as a place of learning and training.

5.39.10 All elements within Works number 4 (utilities and infrastructure works, landscaping, access, security and lighting and weighbridges) are associated development because they are integral to the construction, operation and security of the electricity and heat generating station, or to the mitigation of the effects of the electricity and heat generating station as identified in the environmental assessment.

5.39.11 Works number 5 (creation of a temporary laydown area) is associated development because such an area is required to enable the construction of the authorised development. The Edmonton EcoPark will continue to operate during the construction of the authorised development to ensure the

waste created in north London continues to be treated/managed and as such there will be insufficient on-site space for construction support activities on the Edmonton EcoPark. The temporary laydown area will enable the authorised development to be constructed and the existing facility to operate in parallel with each other and would comprise site hoarding, open parking and storage areas (with space for fabrication works), temporary offices, welfare facilities and associated utilities and water attenuation systems.

5.39.12 Works number 6 (site preparation and demolition works) is associated development because it is necessary to enable the removal of existing structures (other than the existing energy from waste facility) for the siting and construction of the authorised development.

5.39.13 Works number 7 (decommissioning and demolition of the existing energy from waste facility) is associated development because it is not necessary to decommission and demolish the existing energy from waste facility in order to construct the proposed electricity and heat generating station. In principle, both the existing energy from waste facility and the proposed electricity and heat generating station could operate side by side. However, as it is not the intention of the undertaker to increase the capacity of the Edmonton EcoPark beyond that which is being applied for in the Application, and in line with principles of good site management and modernisation, the undertaker is making a direct statement that it will demolish the existing facility as associated development to the principal development, which is the energy recovery facility. Decommissioning has been included in Works number 7 because it may be necessary to undertake physical works to the existing energy from waste facility in order to render it safe and ready for demolition. The detail of the decommissioning methodology will be addressed as part of compliance with requirement 20 and the undertaker therefore requires a wide enough description in Works number 7 to ensure that the decommissioning is workable and safe.

6 Schedule 2 (Requirements)

6.1 Schedule 2 of the Order sets out certain requirements in relation to the construction and operation of the authorised development. These

requirements take a similar form to planning conditions and follow the form of the requirements contained in the Model Provisions except where the particular requirements of the authorised development justify an amendment to or deletion of those Model Provisions or the inclusion of additional requirements.

6.2 Discussions have been held with London Borough of Enfield (the local planning authority) as to the content and drafting of the requirement in the Order. These discussions are on-going and will continue after the submission of the Application.

6.3 The approach taken in respect of the requirements within the Order is as follows:

6.3.1 The impacts of the construction of the authorised development are regulated by the provisions of the Code of Construction Practice and it is a requirement that all stages of the authorised development are undertaken in accordance with the Code of Construction Practice; and

6.3.2 The authorised development will be subject to the Environmental Permitting (England and Wales) Regulations 2010 (as amended) and the undertaker will need to obtain an Environmental Permit prior to commencing the operation of the authorised development. The Environmental Permit will regulate the operation of the authorised development with respect to waste input and output, emissions to the environment, noise limits, odour, operating hours, allowable treatment processes, management systems, and environmental reporting requirements.

(a) *Requirement 1 (Interpretation)*

(i) This sets out the definitions for the requirements which are in addition to terms defined within the main body of the Order. This requirement follows the approach of the Model Provisions, however it differs to include such further defined terms which are specific to the Application.

(b) *Requirement 2 (Time Limits)*

- (i) This specifies the time limit for commencing the authorised development (5 years). This is the same as Requirement 2 of the Model Provisions, though the Model Provision does not include a specific time for commencement.
- (c) *Requirement 3 - Detailed Design Approval*
- (i) This requirement is adapted from requirements 4, 5 and 6 of the Model Provisions and uses wording in respect of specific design elements contained within requirement 7 of the Model Provisions. It is also similar to the relevant requirements in The Knottingley Power Plant Order 2015 (SI 2015/680) and The South Hook Combined Heat and Power Plant Order 2014 (SI 2014/2846).
 - (ii) The requirement prevents any stage of the authorised development from commencing until written design details for that stage of the items listed in requirement 3 have been submitted to and approved by London Borough of Enfield.
 - (iii) The details submitted must accord with the design code principles. The purpose of the design code principles is to set out the design intent and provide a framework against which the final design of the authorised development will be assessed. The design code principles are a document to be certified under article 34.
 - (iv) The authorised development must be carried out in accordance with the details approved (which therefore also means in accordance with the design code principles), unless otherwise approved by London Borough of Enfield.
 - (v) Schedule 2 states that where a requirement contains the wording "unless otherwise approved", or "unless otherwise agreed" such approval or agreement shall not be given except in relation to minor or immaterial changes where it has been demonstrated to the satisfaction of the discharging

authority (the London Borough of Enfield) that the subject-matter is unlikely to give rise to any materially new or materially different environmental effect from those assessed in the environmental statement. The use of “unless otherwise approved” is not to be used to avoid or circumvent submission, discharge or consideration of matters properly to be dealt with through and in accordance with Schedule 3. This approach to the limited use of 'tail piece' conditions was adopted in the North Killingholme (Generating Station) Order 2014 (SI 2014/2434) (see requirement 52 of Schedule 2).

(d) *Requirement 4 – Parameters*

- (i) This requirement sets out the parameters (used in the assessment of the environmental impacts of the authorised development) within which the authorised development must be constructed. There is no equivalent requirement in the Model Provisions.

(e) *Requirement 5 – Mitigation measures in the environment statement*

- (i) There is no equivalent requirement in the Model Provisions. It has been inserted to ensure that the Order secures the carrying out of the mitigation measures identified in the environmental commitments and mitigation schedule.
- (ii) This requirement specifies that in relation to each stage, the undertaker must implement the mitigation measures that are set out in the environmental commitments and mitigation schedule, which is a document that is to be certified by the Secretary of State pursuant to article 33.

(f) *Requirement 6 - Type of waste to be treated*

- (i) Requirement 6 specifies the type of waste that can be accepted/treated by the authorised development. This is an addition to the Model Provisions, as the Model Provisions do

not provide for this type of project-specific or technology-specific requirement.

- (ii) Requirement 6 has been inserted because the undertaker has a specific statutory duty in relation to the transport and disposal of waste in north London and it considers it reasonable, necessary and proportionate to include a requirement in relation to the types of waste to be treated.

(g) *Requirement 7 – Notices*

- (i) This requirement provides the mechanism for when notices must be given to the London Borough of Enfield and in what circumstances. This is an addition to the Model Provisions to ensure that the London Borough of Enfield is aware of the progress of key stages of the authorised development.

(h) *Requirement 8 – Stages of the authorised development*

- (i) This requirement is substantively the same as requirement 3 of the Model Provisions.
- (ii) It provides that a written scheme setting out all the stages of the authorised development must be provided to and approved by the London Borough of Enfield prior to the authorised development commencing.
- (iii) This requirement contains additional wording to that of the Model Provisions so as to allow the undertaker to submit further written schemes setting out stages of development for approval by London Borough of Enfield. This is necessary as the undertaker's programme for construction progresses, it may be necessary in practice to amend any approved written scheme of stages.

(i) *Requirement 9 – BREEAM Rating*

- (i) This is an additional requirement to those contained in the Model Provisions. This is been inserted because the undertaker wishes to ensure that the buildings forming part of the authorised development will be of a high sustainability standard. This requirement will not apply to temporary structures or buildings.
- (j) *Requirements 10 and 11 – Provision, implementation and maintenance of landscaping.*
 - (i) Requirement 10 provides that no stage (other than stage 1a) can commence until a landscaping scheme has been approved by London Borough of Enfield. The landscaping scheme must include the details set out in Article 10(1)(a) to (d); these details are a modified version of what is in requirement 7 of the Model Provisions as they relate directly to the nature of the authorised development.
 - (ii) Requirement 10 requires the provision of hard and soft landscaping works as part of the authorised development.
 - (iii) The authorised development must be carried out in accordance with the approved landscaping scheme, unless otherwise approved by London Borough of Enfield. This is a departure from the Model Provisions as requirement 10 requires the authorised development to be carried out in accordance with the approved landscaping scheme and British Standards, unless otherwise approved by London Borough of Enfield. The undertaker's approach to the use of 'tail pieces' in the requirements in the Order is explained above in relation to requirement 3 of the Order.
 - (iv) Requirement 11 is based on requirement 8 of the Model Provisions. It requires the undertaker to maintain the agreed landscaping for a period of five years following first planting.

- (v) This approach was generally also followed in The Knottingley Power Plant Order 2015 (SI 2015/680) and The Willington C Gas Pipeline Order 2014 (SI 2014/3328).

- (k) *Requirement 12 – Access and roads*
 - (i) Paragraphs 1, 2 and 3 of requirement 12 are based on model requirement 10 of the Model Provisions and provide for London Borough of Enfield to approve the design and layout of new accesses to a highway. As Transport for London also have responsibility for highways in the area of the authorised development, provision has been made for Transport for London to also be consulted on the design and layout of the accesses. This requirement also requires an access management scheme to be approved by the relevant planning authority prior to the commencement of any part of the authorised development.

 - (ii) Paragraphs 4 and 5 of requirement 12 are based on requirement 20 of the Model Provisions and provide for a design to be approved for any traffic management or control measures.

- (l) *Requirement 13 – Operational Surface and foul water drainage*
 - (i) This is a departure from requirement 14 of the Model Provisions as the requirement only relates to operational surface water and foul water drainage. Surface and foul water drainage during construction is dealt with in the Code of Construction Practice (requirement 16 requires each stage of the authorised development to be undertaken in accordance with the Code of Construction Practice). Requirement 13 requires details of surface and foul water drainage systems of each stage of the authorised development to be approved by London Borough of Enfield. No stage of the authorised development can be commenced

until the operational surface and foul water drainage system applicable to that stage has been approved.

(m) *Requirement 14 – Contaminated Land and Groundwater*

- (i) This is based on requirement 15 of the Model Provisions and requires the approval of a scheme to address contaminated land and groundwater. This approach was taken in The Willington C Gas Pipeline Order 2014 (SI 2014/3328).

(n) *Requirement 15 – Ecological management plan*

- (i) This is a departure from requirement 17 of the Model Provisions which prohibits the commencement of each relevant stage of the authorised development until an ecology management plan has been approved by the London Borough of Enfield.
- (ii) Requirement 15 departs from the wording of the Model Provisions because the undertaker's environmental impact assessment has not concluded that extensive ecological mitigation measures are required. However, to ensure the provision and monitoring of appropriate ecology mitigation measures, requirement 15 requires that the full operation of the electricity and heat generating station cannot commence until written details of the approach to monitoring and managing the landscaping and bird/bat boxes have been approved by the London Borough of Enfield. The approved scheme must then be monitored and maintained by the undertaker.

(o) *Requirement 16 – Code of Construction Practice*

- (i) Requirement 16 reflects requirement 18 of the Model Provisions and requires the authorised development to be undertaken in accordance with an approved Code of Construction Practice which will be certified under the Order.

Requirement 16 provides for compliance with the code of construction practice unless otherwise agreed by the relevant planning authority - this has been inserted to allow the Code of Construction Practice to be updated to respond to any future changes in law. The undertaker's approach to the use of 'tail pieces' in the requirements in the Order is explained above in relation to requirement 3.

(p) *Requirement 17 – Control of Noise during Operational Phase*

- (i) Requirement 17 is broadly based on requirement 25 of the Model Provisions and requires a scheme for noise management (including monitoring and attenuation) to be agreed by the London Borough of Enfield prior to any new component of the authorised development becoming operational. The approved scheme must then be implemented and maintained. This follows the approach taken in The Knottingley Power Plant Order 2015 (SI 2015/680).
- (ii) Requirement 23 of the Model Provisions (control of noise during construction and maintenance) is not included in the Order because the Code of Construction Practice contains appropriate controls.

(q) *Requirement 18 – Requirement for written approval*

- (i) Requirement 18 follows requirements 36 and 37 of the Model Provisions and provides that any approvals to be given must be given in writing. The South Hook Combined Heat and Power Plant Order 2014 (SI 2014/2846) also adopted this approach.

(r) *Requirement 19 – Combined Heat and Power*

- (i) Requirement 19 requires the undertaker to ensure the authorised development is 'enabled' to provide heat and that

a later connection to a heat network outside order limits should be made if a commercial arrangement is identified for combined heat and power which is economically viable.

- (ii) Requirement 19 is an additional requirement, as the Model Provisions do not provide for this type of project-specific requirement.
- (iii) It has been included following a statement in National Policy Statement EN-3 (Renewable Energy Infrastructure) which provides that applicants for nationally significant infrastructure projects relating to energy should consider how the authorised development can be combined heat and power "ready".
- (iv) The authorised development is configured to allow heat supply. To ensure that the authorised development is effectively able to supply heat, requirement 19 safeguards space for heat pipework to the edge of the Edmonton EcoPark.
- (v) The North Killingholme (Generating Station) Order 2014 (SI 2014/2434) and The Knottingley Power Plant Order 2015 (SI 2015/680). Article 27 of both The North Killingholme and the Knottingley Orders imposed an obligation to review opportunities for the use of heat with further duties with respect to monitoring and exploration of future opportunities. An obligation of a similar nature is not appropriate for inclusion in the Order. The Edmonton EcoPark is located in a built-up, urban area with long-established land uses, with few development sites in the vicinity of the site that would be of a size capable of supporting uses that might reasonably have a need for heat from the Project in the future.
- (vi) Unlike some other generating stations, the Project will not be constructed isolated from other developments in the

Edmonton area, and potential heat offtakers are unlikely to establish themselves sufficiently close to the Edmonton EcoPark in the short, medium or long term to make a heat offtake viable. On this basis the undertaker does not expect that future reviews and monitoring of heat offtake opportunities are likely to result in a potential heat offtaker being found. However, the undertaker does propose to enter into planning obligations with London Borough of Enfield within an agreement pursuant to S106 of the Town and Country Planning Act 1990, (enforceable against the Edmonton EcoPark, and registrable against the property title) requiring it to provide heat to the Lee Valley Heat Network. This obligation will be subject to reaching agreement on commercial terms and various other matters. The s106 agreement will also provide that if no commercial agreement is reached by the "Full Commercial Operations Date", the undertaker will be under a duty to provide technical information regarding the potential heat output to local developers who may request it in future. The undertaker considers that the requirement and the obligations under this agreement, taken together, represent an appropriate and proportionate approach with respect to heat offtake duties.

(s) *Requirement 20 – Decommissioning*

- (i) This is not a requirement in the Model Provisions. It requires the undertaker to provide a written plan setting out a programme for decommissioning the *existing* energy from waste facility and commissioning the proposed electricity and heat generating station. This written plan must be approved by the London Borough of Enfield and the authorised development cannot be commenced until the written plan is approved.

- (ii) This requirement stipulates the details the written plan must include.
- (t) *Requirement 21 – Decommissioning of the electricity and heat generating station*
 - (i) The decommissioning and demolition of the electricity and heat generating station does not form part of the authorised development. However, requirement 21 has been included to make it clear that a process of decommissioning and demolishing the electricity and heat generating station will be followed, and that this process will include seeking the necessary permission for demolition and seeking the necessary approvals from the Environment Agency in relation to the surrender of the Environmental Permit for the electricity and heat generating station.
- (u) *Requirement 22 - Transitional Period*
 - (i) This is additional to the Model Provisions.
 - (ii) There will be a period of time between when physical works to construct the electricity and heat generating station have substantially completed and when it is fully operational, during which time it will need to undergo commissioning. During this time, the existing energy from waste facility will need to deal with waste that would in the future be dealt with in the electricity and heat generating station. As the undertaker is under a statutory duty to dispose of waste, it cannot decommission the existing energy from waste facility and stop treating waste until it is fully satisfied that the electricity and heat generating station is fully operational (also because to decommission the existing facility before the new facility is fully operational would lead to an unacceptable accumulation of waste). There will therefore need to be a period of transition during which the proposed

electricity and heat generating station will be commissioned and the existing energy from waste facility will continue to operate at lower capacity and start to be decommissioned. The amount of waste being treated in the electricity and heat generating station will increase fractionally, taking waste that would otherwise be treated in the energy from waste facility.

- (iii) Requirement 22 sets out the parameters of the transitional period during which the proposed electricity and heat generating station will be commissioned and the existing energy from waste facility will be decommissioned. The transitional period will be no longer than a period of 12 months (a transitional period of 12 months is consistent with the assessment period assessed in the environmental statement).
- (iv) Requirement 22 also states that the maximum amount of waste that can be managed and / or treated by the existing energy from waste facility and / or the electricity and heat generating station or both shall be no more than 700,000 tonnes per annum in aggregate. 700,000 tonnes in aggregate has been chosen by the undertaker because this is maximum amount which has been assessed as needing to be treated through the electricity and heat generating station, taking account of projections of waste arisings in the area. This is consistent with the assumptions in the environmental statement for the transitional period.

6.4 *Requirements not included within Schedule 2 in the Model Provisions*

6.4.1 The following requirements of the Model Provisions have not been included within Schedule 2:

- (a) Requirement 9 (trees) – the matters covered by this requirement are addressed in requirements 10 and 11 relating to landscaping and in the Code of Construction Practice;

- (b) Requirement 11 (public rights of way) – the matters covered by this are addressed in the Code of Construction Practice;
- (c) Requirement 12 (fencing – special roads) – this has been excluded because there are no special roads affected by the authorised development;
- (d) Requirement 13 (fencing and other means of enclosure) - the matters covered by this are addressed in the Code of Construction Practice;
- (e) Requirement 14 (surface water drainage) – the requirement in the Model Provisions covers drainage during construction as well as operation whereas the relevant requirement in Schedule 2 only covers operational drainage; however, construction phase surface water drainage matters are addressed in the Code of Construction Practice;
- (f) Requirement 16 (archaeology) - the matters covered by this are addressed in the Code of Construction Practice;
- (g) Requirement 20 (design of roads) - the matters covered by this are addressed in the Code of Construction Practice. Note that there are no trunk roads affected by the authorised development;
- (h) Requirement 21 (external lighting) - the matters covered by this are addressed in the Code of Construction Practice;
- (i) Requirement 22 (construction traffic) - the matters covered by this are addressed in the Code of Construction Practice;
- (j) Requirement 23 (control of noise during construction and maintenance) - the matters covered by this are addressed in the Code of Construction Practice;
- (k) Requirement 24 (construction hours) - the matters covered by this are addressed in the Code of Construction Practice
- (l) Requirement 26 (control of odour emissions) - the matters covered by this are addressed in the Code of Construction Practice;

- (m) Requirement 27 (control of artificial light emissions) - the matters covered by this are addressed in the Code of Construction Practice;
- (n) Requirement 28 (control of dust emissions) - the matters covered by this are addressed in the Code of Construction Practice and existing management/operational controls will remain in place;
- (o) Requirement 29 (control of smoke emissions) – water vapour emissions will be controlled by the environmental permit applicable to the authorised development;
- (p) Requirement 30 (control of steam emissions) – no steam will be emitted from the authorised development;
- (q) Requirement 31 (control of insects) - the matters covered by this are addressed in the Code of Construction Practice and existing management/operational controls will remain in place;
- (r) Requirement 32 (accumulations and deposits) - the matters covered by this are addressed in the Code of Construction Practice and existing management/operational controls will remain in place;
- (s) Requirement 33 (travel plan) – the section 106 agreement with the London Borough of Enfield contains obligations on the undertaker to provide travel plans;
- (t) Requirement 34 (European Protected species) - No European Protected species have been identified on site, however the Code of Construction Practice contains a provision to undertake further surveys;
- (u) Requirement 35 (restoration of land used temporarily for construction) – article 27 of the DCO covers the matters covered by this model requirement. Article 27 requires the undertaker to restore such land to the reasonable satisfaction of the relevant land owner; and

- (v) Requirement 38 (consent of Civil Aviation Authority and Ministry of Defence) – this requirement is only relevant where the authorised development is a wind farm.

6.5 Schedule 3 (*Procedure for discharge of requirements etc. and appeals*)

- 6.5.1 This schedule relates to article 39 and is based on the relevant schedule in The Hinckley Point C (Nuclear Generating Station) Order 2013 (SI 2013/648) and The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (SI 2014/2384). It deals with the application process, provision of information, fees and appeals.

6.6 Schedule 4 (*Streets subject to street works*)

- 6.6.1 Schedule 4 sets out a list of the streets that may be subject to street works pursuant to article 11 of the Order.

6.7 Schedule 5 (*Streets subject to alteration of layout*)

- 6.7.1 Schedule 5 specifies which streets the undertaker may alter the layout of.

6.8 Schedule 6 (*Public rights of way to be suspended*)

- 6.8.1 Schedule 6 sets out the public rights of way that may be temporarily suspended pursuant to article 125 of the Order.

6.9 Schedule 7 (*Public rights of way to be extinguished*)

- 6.9.1 Schedule 7 sets out the public rights of way that may be extinguished pursuant to article 12 of the Order.

6.10 Schedule 8 (*Streets to be temporarily stopped up*)

- 6.10.1 Schedule 8 sets out a list of the streets that may be temporarily stopped up pursuant to article 13 of the Order. It also states whether a substitute street is to be provided and (if so) the extent of that substitute.

6.11 Schedule 9 (*Access to works*)

- 6.11.1 Schedule 9 sets out a list of the new accesses to be constructed and existing access to be altered as part of the works pursuant to article 14 of the Order.

- 6.12 Schedule 10 (*Land to be compulsorily acquired*)
 - 6.12.1 Schedule 10 specifies all land which is to be compulsorily purchased pursuant to article 19 of the Order.
- 6.13 Schedule 11 (*Land in which private rights may be temporarily suspended*)
 - 6.13.1 Schedule 11 sets out a list of the land in which in which private rights may be temporarily interfered with pursuant to article 21 of the Order.
- 6.14 Schedule 12 (*Land in which rights may be extinguished*)
 - 6.14.1 Schedule 12 sets out a list of land in which private and statutory rights may be permanently extinguished pursuant to article 21 of the Order.
- 6.15 Schedule 13 (*Land in which rights etc. may be acquired*)
 - 6.15.1 Schedule 13 sets out a list of the land in which new rights may be acquired out pursuant to article 23 of the Order.
- 6.16 Schedule 14 (*Modification of compensation and compulsory purchase enactments for creation of new rights*)
 - 6.16.1 Schedule 14 relates to Article 23 of the Order (*Compulsory acquisition of rights*) and sets out the proposed modifications to the existing compensation regime for the compulsory purchase of land. The Schedule clarifies that the existing compensation regime applies, with the necessary modifications to extend the compensation provisions concerning the compulsory purchase of land and interests in land generally to compulsory acquisition by the creation of new rights under this Order.
- 6.17 Schedule 15 (*land of which temporary possession may be taken*)
 - 6.17.1 Schedule 15 specifies which plots the undertaker may take temporary possession of for the purposes of constructing the works pursuant to article 27 of the Order and for the purposes of maintaining the works pursuant to article 28 of the Order.
- 6.18 Schedule 16 (*Protective provisions*)

6.18.1 This schedule details any protective provisions which will apply to statutory undertakers pursuant to article 36.



Series 03 Draft Development
Consent Order

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