
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 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 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 fuelled by up to 700,000 tonnes of waste and with a capacity of more than 50 megawatts of electricity (MWe) (gross) (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 of 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 up to 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) a 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 are 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 No. 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 No. 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 The provisions of the Order – Articles and Schedule 1

Article 1 (Citation and commencement)

- 5.1 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.

Article 2 (Interpretation)

- 5.2 This article substantively follows 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) 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 (as defined more specifically in the definition of “enabling 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);

- (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) 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;
- (e) the definition of “statutory undertaker” has been amended to reflect the fact that sections 128(5) and 128(2) PA 2008 have been repealed;

- (f) the definition in the Model Provisions of "undertaker" has been modified to include North London Waste Authority, its successor bodies, and those to whom powers are transferred pursuant to article 8; and
- (g) definitions of "apparatus", "code of construction practice", "design code principles", "DCO Schedules 6-8 explanatory diagrams", "enabling works", "environmental commitments and mitigation schedule", "full operation", "land clearance", "operational site", "transitional period", and "the tribunal" have also been inserted to provide for greater clarity elsewhere in the Order;

Article 3 (Development consent etc. granted by the Order)

- 5.3 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 13).
- 5.4 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.
- 5.5 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 development within the meaning of section 32 PA 2008.
- 5.6 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.

- 5.7 Requirement 4 requires the authorised development to be carried out in accordance with the approved detailed design. The details submitted for approval pursuant to requirement 4 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 34).
- 5.8 Requirement 5 requires that authorised development must be carried out within the parameters set out in requirement 5.

Article 4 (Limits of deviation)

- 5.9 The Model Provisions do not contain an equivalent article to Article 4.
- 5.10 Article 4 provides that the authorised development must be constructed, operated and maintained in the situations or within the lines 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).
- 5.11 Subject to Schedule 2 (requirements), in constructing, operating and maintaining the authorised development, the undertaker may -
- (a) deviate laterally from the lines or situation shown on the works plans to the extent of the limits of deviation shown on the works plans; and
 - (b) deviate vertically from the levels shown on the works plans:
 - (i) to any extent upwards within the limits of deviation shown on the works plans; and
 - (ii) to any extent downwards as may be necessary, convenient or expedient.
- 5.12 The reason why this power is “subject to” the requirements in Schedule 2 is because: (i) requirement 4 (detailed design) includes the obligation to submit piling risk assessments and piling method statements, which will include lateral and vertical limits of deviation for piling; and (ii) requirement 5 (parameters) also sets out limits of deviation for the works.

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

Article 5 (Maintenance of authorised development)

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

- 5.15 The power to maintain under article 5 is made subject to article 3 (Development consent etc. granted by the Order), article 4 (Limits of deviation), article 16 (Discharge of water), article 28 (Temporary use of land for maintaining authorised development), and Schedule 2 (Requirements).

- 5.16 The definition of “maintain” in the Order includes (to the extent assessed in the environmental statement) to keep up, preserve, conserve, inspect, repair, landscape, plant and re-plant, adjust, alter, remove, clear, refurbish, reconstruct, replace and improve, but not so as to vary the authorised development as described in Schedule 1. 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 in a manner or to a degree which has not been assessed.

- 5.17 These powers 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.

Article 6 (Operation of the authorised development)

- 5.18 Article 6 specifically authorises the undertaker to operate the authorised development.

- 5.19 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.

Article 7 (Benefit of Order)

- 5.20 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.

Article 8 (Consent to transfer benefit of Order)

- 5.21 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.
- 5.22 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 LondonWaste Limited, provided that LondonWaste Limited is wholly owned by North London Waste Authority. The Secretary of State's consent to the transfer of any of the powers in the Order to LondonWaste Limited should not be necessary, because North London Waste Authority is the 100 per cent shareholder of this entity.
- 5.23 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.
- 5.24 The wording of this article reflects the approach taken in The Willington C Gas Pipeline Order 2014 (SI 2014/3328) and the South Hook Combined Heat and Power Plant Order 2014 (SI 2014/2846).

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

- 5.25 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 of the Control of Pollution Act 1974 or which cannot reasonably be avoided. Unlike the Model Provisions, there is no reference to section 65 of the Control of Pollution Act 1974 as that section has been repealed.

- 5.26 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.

Article 10 (Street works)

- 5.27 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 constructing and maintaining 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**").

Article 11 (Alteration of street layout)

- 5.28 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.

Article 12 (Public rights of way)

- 5.29 Article 12 follows the principle of article 10 of the Model Provisions and grants the undertaker powers to extinguish or temporarily suspend public rights of way in order to allow the construction and maintenance of the

authorised development. The 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.

- 5.30 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).
- 5.31 Article 12(1) of the Order provides the power to temporarily suspend the public rights of way set out in Schedule 6 for the duration of the construction of the authorised development.
- 5.32 Articles 12(2) and 12(3) of the Order provide that where a public right of way is to be suspended, alternative rights of way 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).
- 5.33 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. 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)).

Article 13 (Temporary stopping up of streets)

- 5.34 This article is substantively the same as article 11 of the Model Provisions.
- 5.35 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 constructing and maintaining the authorised development.

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

5.37 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.

5.38 Under article 13(4) of the Order, the undertaker must not temporarily stop up, alter or divert any street set out in Schedule 8 without first consulting the street authority. The undertaker must not temporarily stop up, alter or divert any other street within the Order limits without the consent of the street authority (such consent to be obtained in accordance with Schedule 3), who may also attach reasonable conditions to any consent.

5.39 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.”

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.

5.40 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 are entitled to compensation.

5.41 Article 13(6) of the Order provides for deemed consent in the absence of a decision by the relevant street authority within 56 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).

Article 14 (Access to works)

- 5.42 Article 14 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, for the purposes of constructing the authorised development. Article 14 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 Knottingley Power Plant Order 2015 (SI 2015/680).

Article 15 (Agreements with street authorities)

- 5.43 Article 15 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.

Article 16 (Discharge of water)

- 5.44 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 on land within the Order limits, 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.
- 5.45 Article 16(7) takes 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 PA 2008 limits the power conferred by section 120(5)(a) PA 2008 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(7) 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).

Article 17 (Protective works to buildings)

- 5.46 This article is the broadly the same as article 15 of the Model Provisions.
- 5.47 Article 17 authorises the undertaker to carry out protective works to any building within the Order limits where it is necessary or expedient: (a) at any time before or during the construction of any part of the authorised development in the vicinity of the building; and (b) after the completion of that part of the authorised development in the vicinity of such building at any time up to the end of a period of five years beginning with the day on which that part of the authorised development is first opened for use.
- 5.48 The undertaker may enter the building and land within its curtilage for the purposes of deciding how to exercise its powers.
- 5.49 The undertaker may also enter the building, land within its curtilage or adjacent land, to carry out protective works.
- 5.50 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. Article 17(6) provides that the owner of a building may seek referral to arbitration of the question of whether the proposed works are necessary.
- 5.51 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 five years, the protective works appear to have been inadequate.

Article 18 (Authority to survey and investigate)

- 5.52 This article is broadly based on article 16 of the Model Provisions.
- 5.53 Article 18 confers on the undertaker a power to enter: (a) any land within the Order limits; or (b) land which may be affected by the authorised development up to 250 metres away from the Order limits; or (c) land which may be affected by the authorised development which is more than 250 metres from the Order limits with the prior approval of the relevant planning authority (or the local planning authority for land outside the London Borough of Enfield), 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.
- 5.54 The power to survey and investigate land that is 250 metres and more than 250 metres beyond the Order limits is required because, if there is a claim that there is an impact from the construction works or from the operation of the authorised development, the undertaker would need the ability to investigate such a claim and not be restricted by distance. Whilst no such claims are anticipated, it is difficult to place a maximum range on such a power given that it is important for the undertaker to be able to investigate all claims that may be made. Article 18 does not confer an unrestricted power to investigate anywhere; article 18 is drafted so that the undertaker must obtain the approval of the planning authority for the relevant area and the exercise of the power must be for the purposes of the Order.

Article 19 (Compulsory acquisition of land)

- 5.55 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).

- 5.56 Article 19 states that, save in relation to land which article 23 (compulsory acquisition of rights) and article 27 (temporary use of land for construction of the authorised development) applies, the undertaker has the power to compulsorily acquire so much of the Order land as is required for or to facilitate the authorised development or is incidental to the authorised development. The effect of this is that the undertaker's powers with regard to land covered in articles 23 and 27 are limited to the powers in those articles, and the undertaker will not have the power to compulsorily acquire land that will be temporarily used during the construction of the authorised development, nor will it have the power to compulsorily acquire land over which it compulsorily acquires rights.
- 5.57 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.
- 5.58 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 leases, licences, 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).
- 5.59 Any person who suffers loss by the extinguishment or suspension of any private right of way under this article shall be entitled to compensation.

Article 20 (Time limit for exercise of authority to acquire land compulsorily or use land temporarily)

- 5.60 Article 20 allows the undertaker a period of seven years from the date the Order is made to exercise its powers of compulsory acquisition.
- 5.61 This article is the same as article 20 of the Model Provisions, except 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 five years from the date the Order comes into force.

5.62 Article 20 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 five years from the date on which the Order granting development is made.

5.63 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 five years of the Order coming into force.

Article 21 (Power to override easements and other rights)

5.64 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.

5.65 Article 21 allows for the interference with rights and interests and the breach of restrictions as to the user of land. Article 21(4) makes it clear that

interference with rights and interests and breaches of restrictions include the extinguishment, temporary suspension or discharge of those rights, interests and restrictions at the time the interference or breach commences.

- 5.66 The power on which reliance is placed to authorise interference with 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. There is therefore no requirement for separate drafting analogous to sub-sections (1) and (1A) of section 237 of the 1990 Act.
- 5.67 The land affected by article 21 is shown on the land plans contained within the Book of Plans (AD02.02). Sections 7 and 8 of the Statement of Reasons (AD03.02/REP7-006) also contains further information.
- 5.68 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.
- 5.69 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 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 of the PA 2008.

- 5.70 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. Article 29 deals with statutory undertaker land, rights and apparatus, and protective provisions are contained within Schedule 13 of the Order.
- 5.71 Article 21(4) is included for the purposes of clarity.
- 5.72 Article 21(5) deals with compensation and is drawn from and reflects section 237(4) of the 1990 Act.
- 5.73 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.

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

- 5.74 There is no equivalent Model Provision for article 22 of the Order.
- 5.75 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 constructing, operating or maintaining 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.
- 5.76 It also provides that by virtue of section 152 of the PA 2008, compensation may be payable under section 10 of the Compulsory Purchase Act 1965 for any such interference or breach.

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

Article 23 (Compulsory acquisition of rights)

5.78 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 10 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, which follows the wording from article 31(c) of the Model Provisions. This has been done for ease of drafting.

5.79 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.

5.80 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 11 of the Order.

Article 24 (Application of the Compulsory Purchase (Vesting Declarations) Act 1981)

5.81 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.

Article 25 (Rights under or over streets)

5.82 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 – (Rights over land)

5.83 Article 26 departs from the Model Provisions as it allows the undertaker to occupy airspace above buildings within the Order limits.

5.84 This power is required to enable the undertaker to overhang buildings during the construction and maintenance of the authorised development.

5.85 The land to which this power applies is indicated on drawing number E_0011 Rev 00.

5.86 Compensation is payable to owners and occupiers of land who suffer loss.

Article 27 (Temporary use of land for constructing the authorised development)

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

5.88 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 purposes of constructing the Authorised Development. This land is shown hatched on the land plans. Further explanations are provided in the Statement of Reasons.

5.89 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.

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

5.91 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.

- 5.92 Article 27(3) prohibits the undertaker to remain in possession after the end of one year from the date of completion of the relevant part of the authorised development. This is in line with the Model Provisions.
- 5.93 Article 27(4), however, departs from the Model Provisions. Article 27(4) allows the undertaker to remain on the temporary laydown area for two years after Works No. 7 are completed. This departure is necessary because two 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.

Article 28 (Temporary use of land for maintaining authorised development)

- 5.94 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.
- 5.95 Article 28(10) 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.
- 5.96 Article 28(11) is a departure from article 29 of the Model Provisions as it authorises 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. 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.

5.97 Article 28(2) 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.

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

Article 29 – (Statutory undertakers)

5.99 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 repositioning of their apparatus. Article 31 of the Model Provisions also allows for the compulsory acquisition of new rights over land belonging to statutory undertakers.

5.100 Article 29 is based on Article 31 of the Model Provisions. Article 29 of the Order It authorises the undertaker to: (a) compulsorily acquire land belonging to statutory undertakers within the Order limits as described in the book of reference; (b) suspend or extinguish rights of statutory undertakers within the Order limits as described in the book of reference and remove or reposition apparatus within the Order limits; and (c) acquire compulsorily new rights over land belonging to statutory undertakers within the Order limits as described in the book of reference. These powers are subject to the protective provisions in Schedule 13. These powers are required for the purposes set out in the Statement of Reasons.

Article 30 (Recovery of costs of new connections)

5.101 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.

Article 31 (Application of landlord and tenant law)

- 5.102 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 that 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, operation or maintenance 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.

Article 32 (Operational land for purposes of the 1990 Act)

- 5.103 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.

Article 33 (Felling or lopping of trees)

- 5.104 This article modifies article 39 of the Model Provisions.
- 5.105 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.
- 5.106 Provision is made for the payment of compensation to any person who suffers loss as a result of the exercise of the powers.

5.107 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.

Article 34 (Certification of documents and plans)

5.108 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, the design code principles and the DCO Schedules 6-8 explanatory diagrams 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).

Article 35 (Arbitration)

5.109 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.

Article 36 (No double recovery)

5.110 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. 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 of the PA 2008. The Wellington C Gas Pipeline Order 2014 (SI 2014/3328) contains the same wording.

Article 37 (Protective provisions for specified undertakers)

5.111 This article gives effect to the protective provisions in Schedule 13 of the Order.

Article 38 (Approvals, consents and appeals)

5.112 This article is included as a supplementary provision under section 120(5) of the PA 2008.

5.113 Article 38 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 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).

5.114 Article 38 also provides that the discharging authority must not unreasonably withhold its consent, agreement, approval or notice.

5.115 Article 38(5) makes it clear that where the undertaker needs to discharge a provision in accordance with approved details or a document, it is the amended details or amended document that must be followed. Paragraph

1(1) of Schedule 2 places limitations on the discharging authority in terms of variations of approved details or documents. Once the discharging authority has approved a variation, Article 38(5) applies in relation to compliance with approved details and documents.

- 5.116 Schedule 3 of the Order also sets out the process for appealing the refusal etc. by the discharging authority of applications for consent, agreement, approval or notice.

Schedule 1 (Authorised development)

- 5.117 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) of the 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**”)

- 5.118 Works No. 1a is the principal development, being the construction of an electricity and heat generating station located at the Edmonton EcoPark, fuelled by up to 700,000 tonnes of waste and with a capacity of more than 50 megawatts of electricity (MWe) (gross). 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.

- 5.119 The application documentation refers to an electrical output of around 70 megawatts 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.

- 5.120 The other works numbers in Schedule 1 are listed as associated development in accordance with section 115(2)(a) of the PA 2008 and in accordance with the advice contained within the DCLG Guidance.
- 5.121 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).
- 5.122 Works No. 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 No. 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.

- 5.123 Works No. 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.
- 5.124 Works No. 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 No. 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.
- 5.125 All elements within Works No. 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.

- 5.126 Works No. 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.
- 5.127 Works No. 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.
- 5.128 Works No. 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 No. 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 No. 7 to ensure that the decommissioning is workable and safe.

5.129 Paragraph 3 of Schedule 1 states that also included within the authorised development are works that are connected to Works No. 1 to Works No. 7 (inclusive), to the extent that they do not otherwise form part of any such work and are associated development within the meaning of section 115(2) of the PA 2008. These works are

- (a) the enabling works (as defined in article 2); and
- (b) such other works as may be necessary or expedient for the purposes of or in connection with the construction, operation and maintenance of the authorised development which do not give rise to any new significant adverse environmental effects that were not assessed in the environmental statement.

6 The provisions of the Order – Schedules 2 to 13

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 relevant planning authority) as to the content and drafting of the requirements in the Order.

6.3 The impacts of the construction of the authorised development are regulated by the provisions of the Code of Construction Practice and the Environmental Commitments and Mitigation Schedule (ECMS) and it is a requirement that all stages of the authorised development are undertaken in accordance with

the Code of Construction Practice (requirement 16) and ECMS (requirement 6).

6.4 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.

6.5 Requirements 4 (detailed design), 9 (BREEAM), 10 (Provision of landscaping), 12 (Access and Roads), 14 (Contaminated land and groundwater), 15 (Ecology), 16 (Code of Construction Practice) and 17 (Control of noise during operational stage) contain tailpiece wording. The inclusion of a tailpiece in these contexts will not infringe the guidance on the use of tailpiece wording in PINS Advice Note 15 'Drafting Development Consent Orders' (October 2014). The guidance in paragraph 19.4 and on page 7 of PINS Advice Note 15 sets out that tailpiece wording would be acceptable if:

- (i) It does not allow a relevant planning authority to approve details which stray outside the parameters set for the development;
- (ii) It does not allow the relevant planning authority to vary the scheme in writing such that the scheme then departs from the principles fixed by the application;
- (iii) Where a requirement imposes an obligation to seek approval of final details in a scheme, the tailpiece does not allow the relevant planning authority to dispense with the need for a scheme altogether; and
- (iv) Where a requirement makes the development consent conditional on the relevant planning authority approving detailed aspects of the development in advance, it would be acceptable to allow that body to approve a change to details that that authority had already approved.

6.6 In order to comply with the guidance set out above, paragraph 1(1) of 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 that the subject-matter does not give rise to any new significant adverse environmental effects that were not assessed in the environmental statement. The effect of the wording in paragraph 1(1) of Schedule 2 is such that the use of tailpiece wording in certain requirements only relate to small scale relaxations – it will not allow the relevant planning authority to approve changes that stray outside the parameters set for the development that have been assessed and examined or depart from the principles fixed by the application. As things move along, more environmentally better ways or more efficient methods may be discovered to carry out works. The limited flexibility that the tailpiece wording in requirements 4, 9, 10, 12, 14, 15, 16 and 17 will provide and avoid an unfortunate situation where the wording of a requirement does not allow for works to be carried out in better ways considered to be such not only by the undertaker but also by the relevant planning authority. The justification for the tailpiece wording is therefore, explained below in relation to each of these requirements. The limited use of tailpiece wording and the effect of paragraph 1(1) of Schedule 2 will make it possible for the undertaker to have the ability to ask the relevant planning authority to approve better ways of carrying out works that only involve minor or immaterial changes which do not give rise to any new significant adverse environmental effects that were not assessed in the environmental statement.

6.7 This approach to the limited use of tailpiece conditions was adopted in the North Killingholme (Generating Station) Order 2014 (SI 2014/2434) (see requirement 52 of Schedule 2 of that Order).

Requirement 1 (Interpretation)

6.8 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.

Requirement 2 (Time limits)

- 6.9 This specifies the time limit for commencing the authorised development (five years). This is the same as requirement 2 of the Model Provisions, though the Model Provision does not include a specific time for commencement.

Requirement 3 (Stages of authorised development)

- 6.10 This requirement is substantively the same as requirement 3 of the Model Provisions.
- 6.11 Requirement 3 provides that no authorised development (except enabling works and the temporary display of site notices and advertisements) is to commence until a written scheme setting out all the stages of construction of the authorised development has been submitted to and approved by the relevant planning authority. Enabling works and the temporary display of site notices and advertisements are works that 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. The definition of enabling works also states that these are works that do not give rise to any new significant adverse environmental effects that were not assessed in the environmental statement.
- 6.12 Requirement 3 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 the relevant planning authority. This is necessary, since as the undertaker's programme for construction progresses, it may be necessary in practice to amend any approved written scheme of stages.

Requirement 4 (Detailed design approval)

- 6.13 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).
- 6.14 The requirement prevents any stage of the authorised development from commencing until written design details for that stage of the items (where relevant) listed in requirement 4(1) have been submitted to and approved by the relevant planning authority.
- 6.15 Requirement 4(3) requires that the relevant planning authority consult the Environment Agency in reaching its decision with respect to piling risk assessments and method statements for the proposed electricity and heat generating station (Works No. 1a), the resource and recovery facility (Works No. 2), and the building to provide visitor, community and education facilities, and office accommodation (Works No. 3). The relevant planning authority may only approve the piling risk assessments and piling method statements if it is satisfied that there is no unacceptable risk to groundwater in the relevant part of the Order land. Requirement 4(3) is not a model provision. It was inserted at the request of the Environment Agency.
- 6.16 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.
- 6.17 Requirement 4(4) states that 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 the relevant planning authority. The reasons for using tailpiece wording are set out above at the beginning of this paragraph 6.3.3. Tailpiece wording is required in this particular context because, as recognised by paragraph 19.4 of PINS Advice Note 15 (October 2014), where a requirement makes the

development consent conditional on the relevant planning authority approving detailed aspects of the development in advance, it would be acceptable to allow that body to approve a change to details that that authority had already approved. Also as stated above, better ways may be discovered of carrying out works and the tailpiece wording in this context will enable the undertaker to take these better ways into account at detailed design stage. The value of the tailpiece wording in this case is that it would provide the undertaker with some flexibility from the design code principles, where all parties are agreed that that is a sensible outcome (for example, if a cladding system was selected different to the examples in the design code principles, then that could be submitted by the undertaker to the relevant planning authority for its agreement). The effect of paragraph 1(1) of Schedule 2, however, will limit the extent of the changes to those that are minor or immaterial and that do not give rise to any new significant adverse environmental effects that were not assessed in the environmental statement. In this way, the relevant planning authority will not have the ability to approve changes to details that stray materially outside the parameters set for the development that have been assessed and examined, or depart from the principles fixed by the application.

Requirement 5 (Parameters)

- 6.18 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.
- 6.19 Works No. 1b is comprised of a number of minor buildings, structures, plant and equipment such as a vehicle wash, waste water treatment plant, electrical substations and water treatment plant. Requirement 5(2) sets the parameters for Works. No. 1b in terms of maximum height only. Works plan number C_0002 Rev 01 shows the lateral limits of deviation for area within which Works No. 1b will take place. The area shown reserved for Works No. 1b on works plan number C_0002 Rev 01 will also be needed for access and circulation and parking. It is not possible set lateral limits of deviation or

vertical limits of deviation (downwards) for each specific element of Works No. 1b because the Applicant requires an element of flexibility in terms of where each element can be positioned at the detailed design stage. Given the nature of Works No. 1b and that the area reserved for it will also be needed for access and circulation, and parking, it will not be possible for one element of Works No. 1b to cover the entire footprint of the area shown reserved for it. A common sense approach will be taken when designing each element of Works No. 1b, without exceeding the parameters set in Requirement 5(2). The Planning Act 2008 recognises the need for flexibility and to attempt to micro-manage the precise height and size of small structures would go against the intention of the Planning Act 2008. Requirement 4 (detailed design) will assist to control the parameters of small structures as it requires that before any stage commences, the details of all new buildings and structures need to be approved by the relevant planning authority.

Requirement 6 (Environmental commitments and mitigation schedule)

- 6.20 There is no equivalent requirement in the Model Provisions. Requirement 6 has been inserted to ensure that the Order secures the carrying out of the mitigation measures identified in the ECMS (the measures contained in the ECMS are drawn from the environmental statement).
- 6.21 Requirement 6 specifies that the undertaker must implement the authorised development in accordance with the mitigation measures set out in the ECMS.
- 6.22 The ECMS is a document that is to be certified by the Secretary of State pursuant to article 34.

Requirement 7 (Type of waste to be managed)

- 6.23 Requirement 7 specifies the type of waste that can be managed at the authorised development. Requirement 7 also states that the waste permitted to be managed at the authorised development must not exceed 890,000 tonnes per annum.

- 6.24 Requirement 7 is an addition to the Model Provisions, as the Model Provisions do not provide for this type of project-specific or technology-specific requirement.
- 6.25 Requirement 7 has been inserted because the Applicant 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.

Requirement 8 (Notices)

- 6.26 This requirement provides the mechanism for when notices must be given to the relevant planning authority and in what circumstances. This is an addition to the Model Provisions to ensure that the relevant planning authority is aware of the progress of key stages of the authorised development.

Requirement 9 (BREEAM Rating)

- 6.27 This is an additional requirement to those contained in the Model Provisions. Requirement 9 requires proposals be approved by the relevant planning authority identifying the range of options to achieve a BREEAM rating of no less than “very good” and for the relevant stages of the authorised development to be carried out in accordance of the approved details, unless otherwise approved by the relevant planning authority.
- 6.28 Requirement 9 has been inserted because the undertaker wishes to ensure that the buildings forming part of the authorised development will be of a high sustainability standard.
- 6.29 Requirement 9 does not apply to temporary structures or temporary buildings.
- 6.30 In addition to the reasons set out at the beginning of this paragraph 6.3.3, the use of tailpiece wording in requirement 9 is necessary in the specific context of BREEAM because: (i) if after detailed design approval the undertaker finds that the approved details can be easily improved upon by taking minor steps (for example a contractor may have a better proposal to meet the same approved aims), the undertaker should have the flexibility to agree these with

the relevant planning authority; and (ii) without the limited flexibility afforded by the tailpiece wording, the undertaker will have to procure the development against a very precise specification with reduced completion as a result, and also a reduced ability for contractors to provide input into the specific details.

Requirements 10 and 11 (Provision and maintenance of landscaping)

- 6.31 Requirement 10 provides that no stage (other than the restoration of the temporary laydown area (Works No. 5(x)) can commence until a landscaping scheme has been approved by the relevant planning authority. The landscaping scheme must include the details set out in Article 10(1)(a) to (f); 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. The landscaping scheme must also be in accordance with the design code principles and the environmental commitments and mitigation schedule.
- 6.32 Requirement 10 requires the provision of hard and soft landscaping works as part of the authorised development.
- 6.33 Requirement 10 is a departure from the Model Provisions because it provides that the authorised development must be carried out:
- in accordance with the approved landscaping scheme and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards, unless otherwise approved by the relevant planning authority; and
 - in all cases must comply with the measures set out in the environmental commitment and mitigation schedule.
- 6.34 The general reasons for using tailpieces in requirements are explained above at the beginning of this paragraph 6.3.3. The specific reasons for a tailpiece in relation to the approved landscaping scheme are because there may be environmentally better methods that are developed in relation to landscaping in the future that may not be caught by the approved landscaping scheme. Furthermore, detailed planting requirements may change over time due to the availability of good species of particular species. Also, the design code

principles set out palettes of materials that can be used for landscaping and the tailpiece wording would allow the undertaker to have the flexibility to ask to switch between elements of the palette.

- 6.35 The requirement to comply in all cases with the measures set out in the ECMS was inserted to make requirement 10 consistent with the obligation in requirement 6 to carry out the authorised development in accordance with the ECMS.
- 6.36 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.
- 6.37 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).

Requirement 12 (Access and Roads)

- 6.38 Requirement 12 is based on requirements 10 and 20 of the Model Provisions. It provides that no stage is to commence until written details relating to that stage of the design, layout and management of new permanent or temporary means of access to a public highway, any alteration to existing means of access to a public highway, and the taking of necessary traffic management measures, are approved by the relevant planning authority.
- 6.39 Requirement 12 also requires that the construction of new accesses, the alteration of existing accesses and the taking of necessary traffic management measures to be carried out in accordance with the approved details, unless otherwise agreed by the relevant planning authority. In addition to the general reasons for including tailpieces in requirements set out at the beginning of this paragraph 6.3.3, the specific reasons for a tailpiece in the context of requirement 12 are because the undertaker would need flexibility on traffic measures should the undertaker discover something that will greatly improve the safety and efficiency of traffic flows to and from the Order land.

Requirement 13 (Operational Surface and Foul Water Drainage)

- 6.40 Requirement 13 is a departure from requirement 14 of the Model Provisions as requirement 13 in the Order only relates to operational surface water and foul water drainage.
- 6.41 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).
- 6.42 Requirement 13 requires details of surface and foul water drainage systems of each stage of the authorised development to be approved by the relevant planning authority. No stage of the authorised development can be commenced until the operational surface and foul water drainage system applicable to that stage have been approved.

Requirement 14 (Contaminated Land and Groundwater)

- 6.43 This is a modified version of requirement 15 of the Model Provisions, which 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).
- 6.44 The wording of requirement 14 was agreed with the Environment Agency as part of its Statement of Common Ground with the Applicant.
- 6.45 Requirement 14 requires the approval of an investigation and assessment report. That report must contain a verification plan, setting out details of the data to be collected to demonstrate that the works set out in any remediation strategy (any remediation strategy is to be based on verification plan) are complete. Any requirements for long term monitoring of pollutant linkages, maintenance and arrangements for a contingency plan are to be contained within the management plan referred to at requirement 14(2).
- 6.46 Requirement 14 also requires the production and agreement of a verification report to demonstrate the completion of works set out any remediation strategy and the effectiveness of remedial works.

- 6.47 Under requirement 14, there will be long-term monitoring and maintenance plans in respect of contamination, including a timetable of monitoring and the submission of reports along with details of any necessary contingency action arising from the monitoring. On completion of the monitoring specified in the verification plan, a final report demonstrating that all long-term remediation works have been carried out and confirming the achievement of remedial targets must be provided.
- 6.48 Requirement 14 requires procedures for the remediation of contamination not previously identified in relation to ongoing work.
- 6.49 The ECMS requires a piling risk assessment and method statement for the Energy Recovery Facility, Resource Recovery Facility and EcoPark House. Requirement 4 states that: (i) the piling risk assessments and method statements for the Energy Recovery Facility, Resource Recovery Facility and EcoPark House must include lateral and vertical limits of deviation relating to piling, with the limits to not exceed those lines and situations shown on the works plans; (ii) the piling risk assessments and method statements must be approved by the relevant planning authority, who must consult the Environment Agency (EA) in reaching its decision; and (iii) the relevant planning authority must only approve the piling risk assessments and method statements where the approved investigation and assessment report mentioned at requirement 14(2) has concluded that there is no unacceptable risk to groundwater in the relevant part of the Order land.
- 6.50 The Statement of Common Ground between the Applicant and the Environment Agency also states that the Applicant would consult the EA on the piling risk assessments and piling method statements, after which they would be submitted to and approved by the relevant planning authority.
- 6.51 Article 4 (Limits of deviation) makes reference to the approved lateral and vertical limits of deviation contained in the approved piling risk assessments and method statements for the Energy Recovery Facility, the Resource Recovery Facility and EcoPark House.

6.52 Requirement 14(4) states that if during any stage of construction contamination not previously identified by the investigation and assessment report is found to be present, a further remediation strategy (if required by the relevant planning authority) must be submitted to and approved by the relevant planning authority in consultation with the EA. The authorised development must be carried out in accordance with any remediation strategy approved pursuant to paragraph 14(4), unless otherwise approved by the relevant planning authority. In addition to the general reasons for including tailpieces in requirements set out at the beginning of this paragraph 6.3.3, the specific reasons for a tailpiece in the context of requirement 14(4) are: (i) the tailpiece wording was agreed to with the EA as part of the Applicant's statement of common ground with the EA; (ii) environmentally better methods of remediation and managing contamination could be developed after the remediation strategy is approved. The tailpiece wording would enable the undertaker to use better methods with the approval of the relevant planning authority and subject to the restrictions placed in paragraph 1(1) of Schedule 2; and (iii) there could be improved methods of working that all parties agree could be implemented to reflect the need for effective working practices.

Requirement 15 (Ecology)

6.53 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 relevant planning authority.

6.54 Requirement 15 departs from the wording of the Model Provisions because the undertaker's environmental impact assessment has concluded that extensive ecological mitigation measures are not 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 occur until written details of the approach to monitoring and managing the landscaping and bat boxes (which must be

in accordance with the ECMS) have been approved by the relevant planning authority.

- 6.55 The authorised development must be carried out in accordance with the approved written details, unless otherwise approved by the relevant planning authority. In addition to the general reasons for including tailpieces in requirements set out at the beginning of this paragraph 6.3.3, the specific reasons for a tailpiece in the context of requirement 15 are because that environmentally better methods could be developed after written details of the approach to monitoring and managing the landscaping and bat boxes have been approved. The tailpiece wording would enable the undertaker to use better methods with the approval of the relevant planning authority and subject to the restrictions placed in paragraph 1(1) of Schedule 2.

Requirement 16 (Code of Construction Practice)

- 6.56 Requirement 16 broadly reflects requirement 18 of the Model Provisions as it requires the authorised development to be undertaken in accordance with an approved code of construction practice, which will be certified under the Order.
- 6.57 Requirement 16 departs from requirement 18 of the Model Provisions as it states that before commencing the enabling works or any stage of the authorised development, the undertaker must review the code of construction practice to establish whether it should be updated to reflect any new relevant construction methodology or environmental guidance and, where it is to be updated, the undertaker must seek the approval in writing of the relevant planning authority to any update of the code of construction practice. Regular updates to a code of construction practice are not uncommon and it is therefore necessary for this requirement to contain a mechanism to deal with updates and approvals of the updates (given that the code of construction practice will be a certified document).
- 6.58 Requirement 16 provides for compliance with the code of construction practice unless otherwise agreed by the relevant planning authority. In addition to the general reasons for including tailpieces in requirements set

out at the beginning of this paragraph 6.3.3, the specific reason for a tailpiece in the context of requirement 16 is because requirement 16(1) allows for the code of construction practice to be updated.

Requirement 17 (Control of Noise during Operational Stage)

6.59 Requirement 17 is broadly based on requirement 25 of the Model Provisions and requires a scheme for noise management (including monitoring and attenuation and an implementation timetable) to be agreed by the relevant planning authority prior to the full operation of the electricity and heat generating station. The authorised development must be carried out in accordance with the approved scheme, unless otherwise approved by the relevant planning authority. This follows the approach taken in The Knottingley Power Plant Order 2015 (SI 2015/680). The tailpiece wording has been inserted because (in addition to the general reasons given for tailpieces at the beginning of this paragraph 6.3.3), some better piece of equipment may become available that could justify a tighter noise requirement. Also, the undertaker may though operation, find better ways of noise management and the tailpiece wording will give the undertaker some flexibility to agree to these better ways with the relevant planning authority (subject to the limitations in paragraph 1(1) of Schedule 2).

6.60 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.

Requirement 18 – Combined heat and power

6.61 Requirement 18 is an additional requirement, as the Model Provisions do not provide for this type of project-specific requirement.

6.62 Requirement 18 requires the undertaker to construct Works No. 1a to produce combined heat and power as specified in that requirement, and to safeguard a corridor of land to contain heat pipes from the proposed electricity and heat generating station to the edge of the Edmonton EcoPark.

- 6.63 Requirement 18 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".
- 6.64 The authorised development is configured to allow heat supply. To ensure that the authorised development is effectively able to supply heat, requirement 18 safeguards space for heat pipework to the edge of the Edmonton EcoPark.
- 6.65 Article 27 of both The North Killingholme (Generating Station) Order 2014 (SI 2014/2434) and The Knottingly Power Plant Order 2015 (SI 2015/680) 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.
- 6.66 Unlike some other generating stations, the Project will not be constructed isolated from other developments in the Edmonton area, and potential heat offtakers (other than the Lee Valley Heat Network (LVHN)) 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 Applicant has entered into planning obligations with London Borough of Enfield within an agreement pursuant to S106 of the Town and Country Planning Act 1990 (the Development Consent Obligation AD03.03), (enforceable against the Edmonton EcoPark, and registrable against the property title) requiring the Applicant to provide heat to the LVHN. This obligation will be subject to reaching agreement on commercial terms and various other matters. The S106 agreement will also provide that 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 requirement 18 and the obligations under the S106 agreement, taken together, represent an appropriate and proportionate approach with respect to heat offtake duties.

Requirement 19 (Transitional Period)

- 6.67 This is additional to the Model Provisions.
- 6.68 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 Applicant 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.
- 6.69 Requirement 19 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), following which time the decommissioning and demolition of the energy from waste

facility must be undertaken in accordance with the written scheme approved under requirement 20.

- 6.70 Requirement 19 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.

Requirement 20 (Decommissioning and demolition of the energy from waste facility)

- 6.71 This is not a requirement in the Model Provisions.
- 6.72 Requirement 20 prohibits Works No. 7 from commencing until a written scheme for such works has been approved by the relevant planning authority in consultation with the Environment Agency. The written scheme must set out the methods and timing for the decommissioning, demolition and removal of the existing energy from waste facility.
- 6.73 Requirement 20 has been inserted in order to control the manner and timing of the decommissioning, demolition and removal of the existing energy from waste facility.

Requirement 21 (Decommissioning of the proposed electricity and heat generating station)

- 6.74 This is not a requirement in the Model Provisions.
- 6.75 Requirement 21 requires a plan for the decommissioning, demolition and removal of the electricity and heat generating station to be submitted to the relevant planning authority within 24 months of the electricity and heat generating station ceasing to be used for waste management purposes. Subject to obtaining the necessary consents and approvals, the

decommissioning, demolition and removal of the electricity and heat generating station must be implemented in accordance with the approved plan. On the one-year anniversary of the operational site ceasing to be used for waste management purposes the undertaker must notify the relevant planning authority of the same.

- 6.76 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, demolition and removal of the electricity and heat generating station will be followed.

Requirements not included within Schedule 2 in the Model Provisions

- 6.77 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 S106 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 draft Order covers the matters covered by this model requirement. Article 27 requires the undertaker to restore such land to the reasonable satisfaction of the relevant landowner;
- (v) Requirement 36 (any approvals to be given must be given in writing) – Paragraph 1(2) of Schedule 3 of the Order already provides for this; and
- (w) Requirement 38 (consent of Civil Aviation Authority and Ministry of Defence) – this requirement is only relevant where the authorised development is a wind farm.

Schedule 3 (Procedure for approvals, consents and appeals)

6.78 This schedule relates to article 38 and is based on the relevant schedule in The Hinkley 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.

Schedule 4 (Streets subject to street works)

- 6.79 Schedule 4 sets out a list of the streets that may be subject to street works pursuant to article 10 of the Order.

Schedule 5 (Streets subject to alteration of layout)

- 6.80 Schedule 5 specifies which streets the undertaker may alter the layout of, pursuant to article 11 of the Order.

Schedule 6 (Public rights of way to be temporarily suspended)

- 6.81 Schedule 6 sets out the public rights of way that may be temporarily suspended pursuant to article 12 of the Order.

Schedule 7 (Public rights of way to be extinguished)

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

Schedule 8 (Streets to be temporarily stopped up)

- 6.83 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.

6.84 ***Schedule 9 (Access to works)***

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.

Schedule 10 (Land in which rights etc. may be acquired)

- 6.85 Schedule 10 sets out a list of the land in which new rights may be acquired out pursuant to article 23 of the Order.

Schedule 11 (Modification of compensation and compulsory purchase enactments for creation of new rights)

- 6.86 Schedule 11 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.

Schedule 12 (land of which temporary possession may be taken)

- 6.87 Schedule 12 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.

Schedule 13 (Protective provisions)

- 6.88 This schedule details any protective provisions which will apply to statutory undertakers pursuant to article 37.
- 6.89 The protective provisions are based on the provisions contained in previous DCOs granted for energy projects, in particular The Knottingley Power Plant Order 2015, The North Killinghome (Generating Station) Order 2014, The Willington C Gas Pipeline Order 2014, The Dogger Bank Teesside A and B Offshore Wind Farm Order 2015 and The Walney Extension Offshore Wind Farm Order 2014.



Series 03 Draft Development
Consent Order

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