From: Stoneman, Claire
To: Hornsea Project Three
Cc: Batterton, Andrew
Subject: EN010080 - Deadline 4 - Written Submission of Cadent Gas Limited [DLAP-UKMATTERS.FID4521748]
Date: 15 January 2019 20:26:40
Attachments: Appendix 4 - BEIS Letter dated 26 January 2017.pdf
Appendix 5 - Letter on behalf of National Grid dated 5 January 2017.pdf
Appendix 6 - EN010071-001811-3 - The North London Heat and Power Generat....pdf
Appendix 2 - Extract from Examining Authority"s Report and Recommendatio....pdf
Appendix 3 - EN010081-001517-EGGB Generating Station Development Consent....pdf
93931096 1 UKMATTERS(EN010080 - Written Submission of Cadent - Deadline 4).PDF

Dear Sirs

Please see the attached on behalf of Cadent Gas Limited (Cadent).

Yours faithfully

DLA Piper UK LLP

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THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010

HORNSEA PROJECT THREE OFF SHORE WIND FARM

APPLICATION FOR DEVELOPMENT CONSENT ORDER

EN010080

WRITTEN SUBMISSION OF CADENT GAS LIMITED ("CADENT")

DEADLINE 4

DLA Piper UK LLP
Princes Exchange
Princes Square
Leeds
LS1 4BY
United Kingdom

1. INTRODUCTION & SUMMARY

1.1 We are instructed by Cadent Gas Limited (Cadent), who have made representations in respect of this Application.

1.2 The purpose of this Statement is to provide details of the current status of matters agreed / not agreed with the Applicant, a summary of which is provided in Section 5 below.

1.3 As a responsible and regulated statutory undertaker, Cadent's primary concern is to meet its statutory obligations and ensure that any third party development does not therefore adversely impact upon those statutory obligations.

1.4 The current dDCO dated 7 November 2018 contains a set of protective provisions at Schedule 9 Part 3 for the protection of Cadent as a gas undertaker. This form of protective provisions is not currently agreed by Cadent without further changes.

1.5 Discussions between the Applicant and Cadent have been on-going throughout the examination process in relation to matters not agreed. The following matters either remain in discussion between the Applicant and Cadent or are not yet agreed:

(a) Indemnity;

(b) Security;

(c) Insurance; and

(d) Expenses.

1.6 This Statement sets out an overview of the concerns that Cadent has in relation to these outstanding matters. For reasons explained, without further changes resulting in a form of protective provisions acceptable to Cadent and/or an arrangement with the Applicant, Cadent is not satisfied that the form of protective provisions contained in the current dDCO provides sufficient measures to enable it to operate efficiently and has the potential to expose Cadent to irrecoverable costs and losses. The dDCO therefore prejudices Cadent's ability to meet its statutory and licence requirements pertaining to its undertaking without causing unacceptable impacts.

1.7 In this regard, appended at Appendix 1 is a form of template protective provisions sought by Cadent when dealing with promoters of DCOs in response to potential impacts on its network.

With the exception of the matters described in this Statement, the proposed protective provisions in the dDCO are acceptable to Cadent as providing adequate measures in accordance with theses template provisions.

1.8 Unless or until Cadent's concerns are addressed, Cadent asks for the Examining Authority to have regard to the content of this Statement as part of its recommendation to the Secretary of State. In addition, Cadent reserves its right to and currently intends to appear at Issue Specific Hearing 6 into the dDCO to be held on 30 January 2019.

1.9 Cadent reserves its right to add to or expand on this Statement and to address any other matters or points raised by the Applicant in response to this Statement and/or matters pertaining to the protection of Cadent's apparatus affected by the Application.

2. BACKGROUND

2.1 Cadent is a licensed gas transporter under the Gas Act 1986 with statutory responsibilities for the safe and efficient distribution of gas through significant assets throughout the UK. Cadent's primary duties are to operate, maintain and develop its networks in an economic, efficient and coordinated way. Cadent is required to comply with the terms of its gas distribution licence and is regulated by OfGEM, the Office of the Gas and Electricity Markets.

2.2 As money spent and costs incurred by Cadent are ultimately passed on to consumers in their energy bills, one of Cadent's duties is to ensure that it conducts itself in an efficient and cost effective way. Cadent is therefore also concerned to ensure that it is suitably protected and indemnified by promoters from the financial implications of their commercial schemes.

2.3 Any damage to gas assets or their coating can affect its integrity and can result in failure of the gas pipeline or main with potential serious, hazardous consequences for individuals and/or property located in the vicinity of the gas pipelines or mains if they were to fail. It could also lead to loss of supply for individuals and business premises in the vicinity of the pipeline.

2.4 Cadent is required to comply with a number of industry safety standards and legal requirements in the fulfilment of its licence responsibilities, further details of which are set out in Section 3 below. Consequently, Cadent is required to ensure that its network is maintained in an efficient state, in efficient working order and in good repair. Cadent is therefore required to keep its network whole and to maintain safety standards. This includes addressing the adverse impacts of third party development on its network.

2.5 Cadent therefore reasonably expects to be kept or made whole again during and following the carrying out and operation of any third party development, either by way of the physical replacement of alternative apparatus or, where acceptable, in monetary compensation. As part of measures designed to meet this objective, Cadent requires adequate protection which includes a means of recovering of all of its properly incurred costs, expenses and losses caused by or on behalf of the third party promoter. This follows the widely understood and accepted principle of 'equivalence' but for which those costs, expenses and losses will be incurred by Cadent.

2.6 Section 138 of the Planning Act 2008 provides that a development consent order may include provision for the extinguishment of a relevant right, or removal of relevant apparatus of a statutory undertaker, only if the Secretary of State is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the order relates. The Secretary of State will balance the need for and national benefits of the Applicant's project against the impact on the statutory undertaker's ability to retain and operate a safe network in an efficient manner. Part of that determination considers the provision of measures for the benefit of the undertaker to be properly made whole again and properly compensated. It is expected that the Secretary of State will weigh heavily in this balance, instances where the third party project does not provide equivalence for the undertaker.

2.7 Cadent has the following apparatus within the onshore Order Limits which is transcended by the Applicant's project:

Approx Grid X	Approx Grid Y	Pipe size	Pipe Pressure
611077	339985	4" ST	IP
620098	303518	324mm- ST	HP
620826	303496	324mm- ST	IP
616841	305339	324mm- ST	HP
616842	305278	180mm PE (IN 8" ST)	MP
618734	303541	324mm- ST	IP
621016	302997	324mm-ST	HP
620793	303452	12"-ST	IP

Approx Grid X	Approx Grid Y	Pipe size	Pipe Pressure
622167	303004	324mm-ST	HP
621708	302561	324mm- ST	HP

2.8 Cadent does not object to the principle of the Applicant's project but, for the reasons explained in this Statement, is of the view that the current dDCO is deficient in that it does not yet contain protective provisions which would enable Cadent to satisfactorily meet its requirements to operate a safe network without the risk of incurring irrecoverable costs, expenses and losses which would not arise but for the Applicant's project and therefore impacting its efficiency requirements. In its current form the dDCO does not meet the requirements of Section 138 of the Planning Act 2008.

3. SUMMARY OF REGULATORY PROTECTION FRAMEWORK

3.1 The Applicant's project transcends High Pressure (HP), Intermediate Pressure (IP) and Medium Pressure (MP) Cadent assets.

3.2 As part of the relevant regulatory framework, Cadent is required to comply with the Pipelines Safety Regulations 1996, which derive from the Health and Safety at Work Act 1974.

3.3 The Pipelines Safety Regulations 1996 require that pipelines are designed, constructed and operated so that the risks are as low as is reasonably practicable. In judging compliance with the Regulations, the Health & Safety Executive (HSE) expects duty-holders to apply relevant good practice as a minimum. The category of pressure also has a bearing on the application of certain statutory requirements, for example, creating offences enforceable by the HSE in the case of certain HP mains.

3.4 In the case of HP assets, established national standards and protocols for gas pipelines assist the HSE in ascertaining whether the risks incurred in working with such pipelines have been mitigated as much as reasonably practicable. The following standards are relevant to HP mains:

(a) IGEM/TD/1: Steel Pipelines for High Pressure Gas Transmission (Pipeline over 16 bar).

(i) This Standard applies to the design, construction, inspection, testing, operation and maintenance of pipelines and associated installations, designed

after the date of publication. It sets out engineering requirements *"for the safe design, construction, inspection, testing, operation and maintenance of pipelines and associated installations, in accordance with current knowledge."*

(ii) This Standard is intended to protect from possible hazards members of the public and those who work with pipelines and associated installations, as well as the environment, so far as is reasonably practicable. It is also intended to ensure that the security of gas is maintained.

(b) TSP/SSW/22 'Safe Working in the Vicinity of Cadent HP pipelines'

(i) This specification manages industry protection of plant.

(ii) It is aimed at third parties carrying out work in the vicinity of Cadent high pressure gas pipelines (above 7 bar gauge) and associated installations and is provided to ensure that individuals planning and undertaking work take appropriate measures to prevent damage.

(iii) It states that *"any damage to a high pressure gas pipeline or its coating can affect its integrity and can result in failure of the pipeline with potential serious hazardous consequences for individuals located in the vicinity of the pipeline if it were to fail"*. The requirements in this document are in line with the requirements of the IGE (Institution of Gas Engineers) recommendations IGE/SR/18 Edition 2 - Safe Working Practices To Ensure The Integrity Of Gas Pipelines And Associated Installations, and the HSE's guidance document HS(G)47 Avoiding Danger from Underground Services.

3.5 The industry standards referred to above have the specific intention of protecting:

(a) the integrity of the pipelines and thus the movement of gas;

(b) the safety of the area surrounding a major accident hazard pipeline;

(c) the safety of personnel involved in working with major accident hazard pipelines.

3.6 Cadent has a statutory duty under its Gas Transmission Licence to ensure that these Regulations and protocols are complied with. Cadent requires specific provisions in place for

an appropriate level of control and assurance that the industry regulatory standards will be complied with in connection with works to connect to and in the vicinity of the HP main.

3.7 Cadent otherwise requires the provision of measures to ensure that all of the assets within its network are maintained in an efficient state, in efficient working order and in good repair. It achieves this by requiring third parties working in proximity of or directly involving its assets to adhere to asset protection measures. In the case of development consent orders, this is addressed through protective provisions, supplemented with other arrangements put in place between the Applicant and Cadent if necessary. Adherence to these measures is as much for the benefit of the third party as a means to minimise the risk of adverse impact on the integrity of Cadent's network, thereby avoiding or minimising the potential for loss that Cadent expects to recover from the third party.

4. SUMMARY OF ISSUES

Indemnity

4.1 The current dDCO contains protective provisions for the protection of Cadent at Schedule 9 Part 3 which include at Paragraph 11(1) to 11(4) indemnity provisions which are acceptable and in accordance with Cadent's template provisions at Paragraph 11(1) to 11(4) (attached as Appendix 1).

4.2 However, we understand in discussion with the Applicant that it also desires a cap on this indemnity to Cadent, the reasons for which are not clear.

4.3 Cadent contends that a cap on the Applicant's indemnity is inconsistent with the principle of equivalence and is therefore not appropriate for the following reasons:

(a) Cadent is receiving no direct benefit from the proposed development and therefore should not be put to any cost in respect of it;

(b) Cadent is a statutory undertaker with responsibilities and a duty to its regulator and the general public to conduct itself in an efficient and cost effective way. It therefore requires equivalence in monetary terms arising from the impact of the proposed development, where it is not otherwise compensated in physical terms by virtue of the reprovision of alternative apparatus;

(c) It is therefore entirely reasonable for the Applicant to be responsible to Cadent for the full extent of any losses (including consequential losses and any losses to its

customers) to which Cadent is put by reason of execution of works which are entirely within the Applicant's control; and

(d) As a means to properly and appropriately incentivise the Applicant to adhere to all appropriate standards, codes and details relevant to the execution of its development in the proximity of and in relation to Cadent's apparatus. The protective provisions are of equal benefit to the Applicant in that they provide a mechanism within which to work with Cadent to mitigate the potential for damage to Cadent's assets and consequential losses through appropriate design, working arrangements and monitoring.

4.4 The principle of equivalence was recognised and accepted in the recent decision to grant development consent for Eggborough CCGT (EN010081), where both the Examining Authority and the Secretary of State supported the Canal and River Trust (CRT) on the issue of indemnity caps and consequential losses. The Examining Authority's conclusion at paragraph 8.5.30 of its Recommendation and Report dated 27 June 2018 (attached as Appendix 2) was that such a cap *"placed an unreasonable and unjustified burden on CRT, who face a risk of meeting potential costs and losses through no fault of its own".* It was also concluded at paragraph 8.5.31 that the CRT should be *"within its reasonable rights to claim for foreseeable consequential losses as a result of the construction of the Proposed Development".* This reasoning was agreed with by the Secretary of State in his Decision Letter dated 20 September 2018 (attached as Appendix 3).

4.5 The decision of the Secretary of State follows the Examining Authority's Recommendation which at paragraph 8.5.26 (Appendix 2) set out the CRT's case that such an indemnity cap would be unacceptable *"because, amongst other things, it is a registered charity with finite resources, that it is receiving no benefit from the Proposed Development, and its statutory function as a navigational authority warrants protection from <u>any</u> such financial cost"* (our emphasis added).

4.6 Whilst the Examining Authority noted the charitable status of the CRT, in our view there is nothing in its Report and Recommendation or in the Secretary of State's Decision Letter which indicates that this status was the key material consideration or a determinative factor in the decision not to impose indemnity caps. Rather, it is clear from the rationale that the statutory undertaker status of the CRT was a material factor in the Secretary of State's decision that the CRT warrants protection from <u>any</u> financial costs of the third party project.

There is therefore no reason why the same principle should not apply in the case of Cadent, as statutory undertaker with statutory functions in relation to a gas network.

4.7 The statutory and licence requirements on Cadent to maintain in an efficient state, in efficient working order and in good repair, mean that losses can arise from damage caused to Cadent's assets. Safety is therefore a paramount consideration and a requirement that Cadent must be able to address to meet its statutory obligations. These requirements will clearly have an impact on its financial outlay for which its regulator requires Cadent to act responsibly and to recover its losses from third parties as part of its obligations to provide a distribution network. Cadent must seek to discharge its obligations in an efficient way which includes the avoidance or minimisation of costs and losses that it might incur in operating and maintaining its network and delivering services to customers. A cap on recovery under an indemnity to Cadent from the Applicant would expose Cadent to irrecoverable losses that would not otherwise be incurred by it in the ordinary course of its operations. In other words, but for the Applicant's development, Cadent would not be put to such loss. It should not be for Cadent to bear liabilities in excess of an indemnity cap where such liabilities are caused by commercial schemes.

4.8 We are not aware that the Applicant contests in any way the significance of Cadent's safety requirements. We highlight however that the principle that safety is paramount has been confirmed by the Secretary of State in the determination of the North London Heat and Power Project (EN010071). As part of a Minded To Approve Letter dated 26 January 2017 (attached as Appendix 4), he agreed to amend the protective provisions drafted by the promoter, the North London Waste Authority, relating to deemed consent provisions, on the basis that they had *"the potential to undermine safe working"* (at Annex 2 to the Letter). This was in response to National Grid's contention in its letter dated 5 January 2017 (attached as Appendix 5) that safety is paramount even if the undertaker's actions may delay the delivery of the project, so long as that approval is not unreasonably withheld. Whilst in a different context, this provides a strong indication of the importance of protection for such statutory undertakers notwithstanding the national interest in delivering infrastructure projects. The incorporation of these changes was confirmed in the Secretary of State's Decision Letter dated 24 February 2017 (attached as Appendix 6).

Security

4.9 The current dDCO does not include security provisions. Security provisions are included within Paragraph 11(5) of the template protective provisions at Appendix 1. We understand

that the Applicant is in principle agreeable to providing security, however provisions are not presently secured between the Parties.

4.10 The principle of requiring security in support of an indemnity is not exceptional and is generally common place. Security is in essence demonstration and provision of suitable means to perform the indemnity, but for which the indemnity itself provides limited benefit as there remains a risk of non-performance by a promoter. This can be particularly important where the relevant indemnifying party has limited funds and/or whose identity may change before construction of the works. The provision of security provides a source of recourse for Cadent, reflecting the low asset value of the project company in its early phases of pre-construction and construction. The provision of security is necessary to ensure that Cadent has a means of meaningful recovery, particularly during these phases and before the project company has accumulated value by virtue of the constructed asset, typically at the point that construction is significantly advanced if not completed and becomes operational. In this case, the current low asset value of the project company is recognised by the Applicant in its own Funding Statement (Paragraph 1.4.1.2).

4.11 Cadent typically requires the provision of security in the course of its dealings with third parties carrying out works in proximity of or works to its apparatus. This approach is consistent with the approach of other undertakers, including undertakers of other regulated industries including electricity, water and highways. There is no reason why this approach should not apply equally in relation to an application for development consent. Cadent's position is that it should not be exposed to a higher level of risk under a DCO than it would ordinarily accept under any other proposal by a third party.

4.12 Cadent acknowledges that at the stage at which applications for development consent are typically promoted, applicants need some flexibility as to the form of such security. Cadent therefore provides the option of parent company guarantee, bank bond or letter of credit as reflected in the definition of "acceptable security" in Paragraph 2 of the template protective provisions at Appendix 1. Cadent also accepts that it is reasonable that security is provided to a limit or threshold in order that the third party promoter can realistically secure security in one of these forms.

4.13 At such an outline stage of design, applicants for development consent are rarely able to provide sufficient details to Cadent to enable a detailed assessment of the upper level of exposure to damages/or loss. Cadent therefore imposes a limit on security at a level that it considers (based on experience) to be typical of the upper level of losses that could be

incurred in the event of a significant or catastrophic event. However, this cannot be taken as an absolute upper limit of any losses which may be incurred for the purposes of the indemnity but is considered a reasonable level to provide a reasonable level of cover.

4.14 We note that the required funding statement has been submitted as part of the Applicant's application for development consent. The principal function of the funding statement in the development consent process is in order to demonstrate to the Examining Authority that a proposed project is capable of assembling land and constructing the project. The funding statement reflects how the construction and compulsory acquisition of rights will be funded and provides no guarantee to a statutory undertaker such as Cadent of the availability of funds in the project company, particularly in the early phases of its construction, to pay out any loss that Cadent suffers and claims for under the indemnity. Consequential losses arising from accidental damage can be substantial and are not anticipated by the funding statement and may include, but are not limited to loss of supply, including claims from shippers, compensation to consumers and the impact to communities/consumers of loss of supply during winter months. The level of loss incurred is typically linked to the duration over which that loss continues to occur and is dependent upon such factors as the time needed in which to repair, the time of year and market fluctuations in relation to the price of gas.

4.15 Cadent is also mindful that the dDCO includes powers that allow the benefit of the development consent to be transferred to another entity following the grant of development consent subject to Secretary of State approval.

4.16 The issue for Cadent is one of greater certainty of performance under the indemnity consistent with normal and common practice. The way in which this can be secured is by way of the provision of acceptable security in conjunction with the provision of an indemnity.

Insurance

4.17 The current dDCO does not include insurance provisions. Insurance provisions are included within Paragraph 11(5) of the template protective provisions at Appendix 1. We understand that the Applicant is in principle agreeable to providing insurance, however provisions are not secured.

4.18 The principle of third parties carrying insurance is also a further typical requirement of Cadent where they are operating on or near to Cadent's apparatus. The nature of Cadent's asset base is such that its requirement for third party liability insurance also reflects the potential for high levels of loss attributable to an event causing explosion or another

catastrophic event leading to significant harm to or loss of life or property or a disruption in the distribution of gas to provide heat and warmth to communities or power and energy to local businesses. Insurance provides Cadent with the assurance that the Applicant is carrying a level of cover that will provide recompense for the range of losses that might be incurred by events that are not otherwise planned for or ordinarily expected to be incurred by the Applicant as part of the delivery of its proposed development.

4.19 As with security, Cadent acknowledges that it is reasonable to accept an upper limit on insurance cover in order that policies can be secured by the third party promoter in the market. Again, there remains the risk to Cadent that losses may exceed the level of cover for which the uncapped indemnity is still required.

4.20 Cadent adopts as similar approach to calculation of an upper level of cover for insurance as with security.

Expenses

4.21 The current dDCO contains at Paragraph 10 of Part 3 to Schedule 9 provisions relating to expenses which are in accordance with Paragraph 10 of the template protective provisions at Appendix 1 and are acceptable to Cadent.

4.22 Cadent however understands that the Applicant may require a qualification to these provisions, whereby Cadent is required to notify the Applicant of the estimate of any costs prior to incurring such costs. After the submission of an invoice or request for payment, the Applicant would then have a specified period of time to challenge Cadent as to the invoice amount, but otherwise is required to make payment in the first instance.

4.23 Cadent is currently in discussions with the Applicant regarding these changes. While Cadent is content to provide estimates, this cannot be at the expense of dealing with urgent and/or emergency and safety works or complying with other timescales set out in any other provisions of the dDCO and any such estimates must not place a limitation on future recovery. Cadent is otherwise willing to provide estimates where time permits before it needs to incur expenses. Any concerns that the expenses have not been properly incurred should not delay or prevent payment; the Applicant can contest the level of expenses with Cadent directly and, where not resolved, any dispute can be determined by arbitration and reimbursed in accordance with that determination.

5. MATTERS AGREED/NOT AGREED

5.1 The form of protective provisions included in the dDCO is not agreed by Cadent. Cadent requires the provision of security and insurance to support the indemnity.

5.2 Cadent understands that the Parties are in agreement as to arrangements for the provision of security and insurance. These arrangements are yet to be put in place between the Parties.

5.3 Unless or until suitable arrangements are in place, Cadent reserves it right to make further comments on the dDCO and to seek the inclusion of security and insurance provisions in the dDCO.

5.4 Cadent is otherwise content with the balance of the protection measures in the dDCO for the benefit of Cadent, which includes an uncapped indemnity and the payment of anticipated and incurred expenses on demand.

DLA Piper UK LLP

15 January 2019

LIST OF APPENDICES

Appendix 1 - Cadent's Standard Protective Provisions

Appendix 2 - Extracts from the Examining Authority's Report and Recommendation on Eggborough CCGT dated 27 June 2018 (EN010081)

Appendix 3 - Secretary of State's Decision Letter on Eggborough CCGT dated 20 September 2018 (EN010081)

Appendix 4 - Secretary of State's Minded to Approve Letter on the North London Heat and Power Project dated 26 January 2017 (EN010071)

Appendix 5 - Letter on behalf of National Grid dated 5 January 2017

Appendix 6 - Secretary of State's Decision Letter on the North London Heat and Power Project dated 24 February 2017 (EN010071)

APPENDIX 1: CADENT'S STANDARD PROTECTIVE PROVISIONS

SCHEDULES

SCHEDULE 1
PROTECTIVE PROVISIONS

PART 1
FOR THE PROTECTION OF CADENT GAS LIMITED AS GAS UNDERTAKER

Application

1. For the protection of Cadent Gas Limited referred to in this Part of this Schedule the following provisions will, unless otherwise agreed in writing between the undertaker and Cadent Gas Limited, have effect.

Interpretation

2. In this Part of this Schedule—

"1991 Act" means the New Roads and Street Works Act 1991;

"acceptable credit provider" means a bank or financial institution with a credit rating that is not lower than: (i) "A-" if the rating is assigned by Standard & Poor's Ratings Group or Fitch Ratings; and "A3" if the rating is assigned by Moody's Investors Services Inc.;

"acceptable insurance" means a third party liability insurance effected and maintained by the undertaker with a limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained for the construction period of the authorised works which constitute specified works and arranged with an internationally recognised insurer of repute operating in the London and worldwide insurance market underwriters whose security/credit rating meets the same requirements as an "acceptable credit provider", such policy shall include (but without limitation):

(a) Cadent Gas Limited as a Co-Insured;

(b) a cross liabilities clause; and

(c) contractors' pollution liability for third party property damage and third party bodily damage arising from a pollution/contamination event with cover of £10,000,000.00 (ten million pounds) per event or £20,000,000.00 (twenty million pounds) in aggregate;

"acceptable security" means either:

(a) a parent company guarantee from a parent company in favour of Cadent Gas Limited to cover the undertaker's liability to Cadent Gas Limited to a cap of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £25,000,000.00 (twenty five million pounds) (in a form reasonably satisfactory to the undertaker and where required by the undertaker, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

(b) a bank bond or letter of credit from an acceptable credit provider in favour of Cadent Gas Limited to cover the undertaker's liability to Cadent Gas Limited for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £25,000,000.00 (twenty five million pounds) (in a form reasonably satisfactory to the undertaker);

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of Cadent Gas Limited to enable Cadent Gas Limited to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any mains, pipes or other apparatus belonging to or maintained by Cadent Gas Limited for the purposes of gas supply together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of the undertaker for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised development” has the same meaning as in article 2 (Interpretation) of this Order (unless otherwise specified) for the purposes of this Part of this Schedule shall include the use and maintenance of the authorised development and construction of any works authorised by this Schedule;

“Cadent Gas Limited” means Cadent Gas Limited, with Company Registration Number 10080864, whose registered office is at Ashbrook Court Prologis Park, Central Boulevard, Coventry, CV7 8PE

“commence” has the same meaning as in article 2 (Interpretation) of this Order and commencement shall be construed to have the same meaning;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by Cadent Gas Limited (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for Cadent Gas Limited’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

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

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of the undertaker including construct, use, repair, alter, inspect, renew or remove the apparatus

“parent company” means a parent company of the undertaker acceptable to and which shall have been approved by Cadent Gas Limited acting reasonably

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

"specified works" means any of the authorised development or activities undertaken in association with the authorised development which:

(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise;

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or

(c) include any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (the Cadent Gas Limited's policies for safe working in proximity to gas apparatus “Specification for safe

working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22");

3. Except for paragraphs 4 (*Apparatus of Cadent Gas Limited in streets subject to temporary stopping up*), 9 (*Retained apparatus: protection of Cadent Gas Limited as gas undertaker*), 10 (*Expenses*) and 11 (*Indemnity*) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of Cadent Gas Limited, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and Cadent Gas Limited are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of Cadent Gas Limited in streets subject to temporary stopping up

4.—(1) Without prejudice to the generality of any other protection afforded to Cadent Gas Limited elsewhere in the Order, where any street is stopped up under article 10 (*temporary stopping up of streets*), if Cadent Gas Limited has any apparatus in the street or accessed via that street Cadent Gas Limited will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to Cadent Gas Limited, or will procure the granting to Cadent Gas Limited of, legal easements reasonably satisfactory to Cadent Gas Limited in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

(2) Notwithstanding the temporary stopping up under the powers of article 10 (*temporary stopping up of streets*), Cadent Gas Limited will be at liberty at all times to take all necessary access across any such street and/or to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that street.

Protective works to buildings

5.—(1) The undertaker, in the case of the powers conferred by article 15 (*protective work to buildings*), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of Cadent Gas Limited which will not unreasonably be withheld and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of Cadent Gas Limited or any interruption in the supply of gas, the undertaker must bear and pay on demand the cost reasonably incurred by Cadent Gas Limited in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

(a) pay compensation to Cadent Gas Limited for any loss sustained by it; and

(b) indemnify Cadent Gas Limited against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by Cadent Gas Limited, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of Cadent Gas Limited or its contractors or workmen; and Cadent Gas Limited will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made by Cadent Gas Limited, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

Acquisition of land

6.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not acquire any land interest or apparatus or override any easement or other interest of Cadent Gas Limited otherwise than by agreement (such agreement not to be unreasonably withheld).

(2) The undertaker and Cadent Gas Limited agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation

and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent Gas Limited as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(3) Any agreement or consent granted by Cadent Gas Limited under paragraph [9] or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph 6(1).

Removal of apparatus

7.—(1) If, in the exercise of the agreement reached in accordance with paragraph 6 or in any other authorised manner, the undertaker acquires any interest in any Order land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of Cadent Gas Limited to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of Cadent Gas Limited in accordance with sub-paragraph (2) to (5) inclusive.

(2) If, for the purpose of executing any works compromised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Cadent Gas Limited 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Cadent Gas Limited reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Cadent Gas Limited to its satisfaction (taking into account paragraph 8(1) below) the necessary facilities and rights

(a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Cadent Gas Limited must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed, save that this obligation shall not extend to the requirement for Cadent Gas Limited to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Cadent Gas Limited and the undertaker.

(5) Cadent Gas Limited must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to Cadent Gas Limited of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for Cadent Gas Limited facilities and rights in land for the construction, use, maintenance and protection in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Cadent Gas Limited and must be no less

favourable on the whole to Cadent Gas Limited than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless agreed by Cadent Gas Limited.

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent Gas Limited under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Cadent Gas Limited than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration under paragraph [16] (*Arbitration*) and the arbitrator shall make such provision for the payment of compensation by the undertaker to Cadent Gas Limited as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection Cadent Gas Limited as Gas Undertaker

9.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to Cadent Gas Limited a plan and, if reasonably required by Cadent Gas Limited, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to Cadent Gas Limited under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant etc;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and

(f) intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) applies until Cadent Gas Limited has given written approval of the plan so submitted.

(4) Any approval of Cadent Gas Limited required under sub-paragraph (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and,

(b) must not be unreasonably withheld.

(5) In relation to a work to which sub-paragraphs (1) and (2) applies, Cadent Gas Limited may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) and (2) or as relevant sub paragraph (5), as amended from time to time by agreement between the undertaker and Cadent Gas Limited and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5), (7) and/or (8) by Cadent Gas Limited for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Cadent Gas Limited shall be entitled to watch and inspect the execution of those works.

(7) Where Cadent Gas Limited requires protective works to be carried out either by themselves or by the undertaker by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Cadent Gas Limited's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and the undertaker must give Cadent Gas Limited 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph.

(8) If Cadent Gas Limited in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs (1) to (3) and (6) to (7) apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(9) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised development works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to Cadent Gas Limited notice as soon as is reasonably practicable and a plan of those works and must—

(a) comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and

(b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order the undertaker must comply with Cadent Gas Limited's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and the Health and Safety Executive's "HS(~G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that Cadent Gas Limited retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 10.

Expenses

10.—(1) Subject to the following provisions of this paragraph, the undertaker shall pay to Cadent Gas Limited on demand all charges, costs and expenses reasonably anticipated or incurred by Cadent Gas Limited in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus or alternative apparatus which may be required in consequence of the execution of any such works as are referred to in this Part of this Schedule including without limitation—

(a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that Cadent Gas Limited elects to use compulsory purchase powers to acquire any necessary rights under paragraph 7(3);

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement settled by arbitration in accordance with article [36] (*arbitration*) of the Order to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Cadent Gas Limited by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

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

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

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

Indemnity

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works (including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works), any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purpose of those works) or property of Cadent Gas Limited, or there is any interruption in any service provided, or in the supply of any goods, by Cadent Gas Limited, or Cadent Gas Limited becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand the cost reasonably incurred by Cadent Gas Limited in making good such damage or restoring the supply; and

(b) indemnify Cadent Gas Limited for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Cadent Gas Limited, by reason or in consequence of any such damage or interruption or Cadent Gas Limited becoming liable to any third party as aforesaid

(2) The fact that any act or thing may have been done by Cadent Gas Limited on behalf of the undertaker or in accordance with a plan approved by Cadent Gas Limited or in accordance with any requirement of Cadent Gas Limited as a consequence of the authorised development or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) where the undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner

that does not materially accord with the approved plan or as otherwise agreed between the undertaker and Cadent Gas Limited.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of-

(a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent Gas Limited, its officers, servants, contractors or agents; and

(b) any authorised development and/or any other works authorised by this Part of this Schedule carried out by Cadent Gas Limited as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or article 5 (*Benefit of the order*) of the Order subject to the proviso that once such works become apparatus ("new apparatus"), any works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 11 in respect of such new apparatus.

(4) Cadent Gas Limited must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made, unless payment is required in connection with a statutory compensation scheme without first consulting the undertaker and considering its representations.

(5) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by Cadent Gas Limited or in respect of which Cadent Gas Limited has an easement or wayleave for its apparatus or any other interest or to carry out any works within [15] metres of Cadent Gas Limited's apparatus until the following conditions are satisfied:

(a) unless and until Cadent Gas Limited is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and Cadent Gas Limited has confirmed the same to the undertaker in writing; and

(b) unless and until Cadent Gas Limited is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to Cadent Gas Limited that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and Cadent Gas Limited has confirmed the same in writing to the undertaker.

(6) In the event that the undertaker fails to comply with 11(5) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent Cadent Gas Limited from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

12. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between Cadent Gas Limited and the undertaker, nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and Cadent Gas Limited in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

13.(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker or Cadent Gas Limited requires the removal of apparatus under paragraph 7(2) or Cadent Gas Limited makes requirements for the protection or alteration of apparatus under paragraphs (9), Cadent Gas Limited shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Cadent Gas Limited's undertaking and Cadent Gas Limited shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever Cadent Gas Limited's consent, agreement or approval to is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by Cadent Gas Limited, it must not be unreasonably withheld or delayed.

Access

14. If in consequence of the agreement reached in accordance with paragraph 6(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable Cadent Gas Limited to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

15. Save for differences or disputes arising under paragraph 7(2), 7(4), 8(1), 9 and 11(5) any difference or dispute arising between the undertaker and Cadent Gas Limited under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent Gas Limited be determined by arbitration in accordance with article 36 (*arbitration*).

Notices

16. The plans submitted to Cadent Gas Limited by the undertaker pursuant to paragraph [9(1)] must be sent to Cadent Gas Limited Plant Protection at [xxxxxxxxxxxxx] or such other address as the Cadent Gas Limited may from time to time appoint instead for that purpose and notify to the undertaker [in writing].

INFRASTRUCTURE PLANNING

TEMPLATE SCHEDULE FOR INCLUSION IN DEVELOPMENT CONSENT ORDERS FOR PROTECTION OF CADENT GAS LIMITED

Applicant and NYCC/SDC stated that they were unable to agree the wording.

8.5.19 The matter became a main agenda item at the ISH on Environmental Matters held on Wednesday 22 November 2017 [EV-007 to EV-010]. At this event, I asked the parties for an outline of their respective positions. The Applicant explained that work had been undertaken to see if the rating levels of 0 dB during the daytime and 3 dB during the night time could be achieved, as required by NYCC/SDC. The Applicant confirmed that 0 dB could be achieved during the daytime, but it was not in a position to commit to a 3 dB level tolerance at this early concept design stage. It could however achieve a rating level of 5 dB at night, which was in line with the parameters assessed in the ES [APP-047].

8.5.20 On that basis, I asked the Applicant why Requirement 24(2) could not include the provision to restrict daytime noise levels to 0 dB, and it agreed. I also asked whether the 5 dB night time rating could be retained but whether an additional provision could be made in which the Applicant could commit to a lower night time tolerance level once it had established the final design. This was also accepted by the Applicant and NYCC/SDC.

8.5.21 Requirement 24 was subsequently updated at DL 3 [REP3-003]. NYCC/SDC confirmed in their response [REP5-012] to my FWQ NV 2.1 [PD-011] that subject to very minor modifications, they were content with the revised wording. The agreed wording is set out in the Recommended DCO.

8.5.22 This is no longer a contentious matter, and I am satisfied with the wording of Requirement 24 in the Recommended DCO.

Schedule 12, Part 3 (Protected Provisions in relation to the Canal & River Trust)

8.5.23 The draft DCO which accompanied the Application [APP-005] made no Protected Provision for CRT, and CRT requested in its WR [REP2-031] that such provisions should be added. I asked for an update on this matter at the CAH held on Thursday 23 November 2017 [EV-012]. The Applicant stated that wording would be added to the updated version of the DCO which was submitted at DL 3 [REP3-003].

8.5.24 Notwithstanding, CRT expressed objections to the forthcoming wording in the updated draft DCO [REP3-003] on two grounds.

8.5.25 The first concerns paragraph 32(6). This stated that "*The aggregate cap of the undertaker's gross liability shall be limited to £1,000,000 (one million pounds) for any one occurrence or all occurrences of a series arising out of one original cause*".

8.5.26 CRT stated at the CAH held on Thursday 23 November 2017 [EV-012], also confirmed in its responses at DL 3 [REP3-020] that such an indemnity cap placed upon it would be unacceptable because,

amongst other things, it is a registered charity with finite resources, that it is receiving no benefit from the Proposed Development, and its statutory function as a navigational authority warrants protection from any such financial costs. I asked the Applicant to justify the paragraph in my FWQ [PD-011].

8.5.27 The Applicant responded [REP5-005] that it was raising the cap figure to £5,000,000 and that there would be no risk or liability on CRT. It further stated that an uncapped liability would raise financial risk of the project and may have detrimental economic impacts on the Proposed Development as it would be unable to control the costs of indirect losses. The Applicant also stated that it had received an alternative wording for CRT's Protected Provisions which it will consider.

8.5.28 At DL 6, the updated draft DCO [REP6-003] made some revisions to paragraphs 18(5) and 18(7), but retained Paragraphs 32(6) in respect to the indemnity cap.

8.5.29 CRT's second objection is in relation to paragraph 32(2)(b) of the draft DCO [REP3-003], which excludes the Applicant from liability for any consequential losses experienced by CRT as a result of the Proposed Development. In its response at DL 6, CRT further explained [REP6-008] that it would only accept consequential losses which are reasonably foreseeable.

8.5.30 Having considered the matter further, I reached a preliminary conclusion that both paragraphs 32(2)(b) and 32(6) of the updated DCO [REP6-003] placed an unreasonable and unjustified burden on CRT, who face a risk of meeting potential costs and losses through no fault of its own. In my draft DCO [PD-013] I recommended paragraph 32(2)(b) be amended in line with the CRT's draft wording set out in its response to DL 6 [REP6-008] to allow it to claim for consequential losses if reasonably foreseeable, and the liability cap set out in paragraph 32(6) be deleted. This was not accepted by the Applicant in its response [REP8-005], for reasons previously given in its response to my FWQs [PD-011] at DL 5 [REP5-005].

8.5.31 I have considered the Applicant's response carefully. However, I do not find that the Applicant has reasonably justified why CRT should be financially burdened with an indemnity cap if damages caused by the Applicant exceed £5,000,000, which the Applicant states is highly unlikely in any event. I also find that CRT should be within its reasonable rights to claim for foreseeable consequential losses as a result of the construction of the Proposed Development.

8.5.32 I therefore recommend to the SoS that he amend paragraph 32(2)(b) of the final version of the DCO [REP9-003] from:

- *"(b) By reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction of a specified work or protective work; and*

subject to sub-paragraph (4) the undertaker shall effectively indemnify and hold harmless CRT from and against all claims and demands arising out of or in connection with any of the matters referred to in paragraphs (a) and (b) (provided that CRT shall not be entitled to recover any consequential losses from the undertaker)."

To:

- "*(b) By reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction of a specified work or protective work; and subject to sub-paragraph (4) the undertaker shall effectively indemnify and hold harmless CRT from and against all claims and demands arising out of or in connection with any of the matters referred to in paragraphs (a) and (b) (provided that CRT shall not be entitled to recover any consequential losses* which are not reasonably foreseeable from the undertaker*)."*

8.5.33 I also recommend that the SoS remove the indemnity cap on CRT by deleting paragraph 32(6) of the final version of the DCO [REP9-003].

8.5.34 CRT in its response to DL 6 [REP6-008] recommended a number of other changes to its Protected Provision Schedule in the draft DCO [REP6-003]. It stated that paragraphs 30(2)(3) and (4) were unnecessary because paragraph 30(1) contained similarly restricted wording in respect to the repayment of CRTs fees. CRT also recommended wording changes to paragraph 30(1).

8.5.35 In my draft DCO [PD-013], I put it to the Applicant that these paragraphs should be removed and amended as recommended by CRT. The Applicant responded [REP8-005] stating that the deletion and amendment of the paragraphs would deny a negotiation process for the Applicant to examine a case to be put by CRT in the event of repayment of fees, and for those costs to be mitigated before they are demanded. CRT's interests, the Applicant says, would be protected. I am satisfied with the response and am content to recommend the paragraphs in the final DCO [REP9-003] remain unchanged.

8.5.36 CRT in its response to DL 6 [REP6-008] also recommended paragraph 17(3) of the draft DCO [REP5-002 but which remained unchanged for within the draft DCO submitted at DL 6 [REP6-003] be amended. However in my draft DCO [PD-013], I considered that the revised wording would allow CRT's Code of Practice to override the DCO which would be a statutory instrument, and not provide the SoS with any certainty as to what the DCO would be permitting. I do not recommend therefore this change is made. CRT's other suggested amendments to the Schedule were accepted by the Applicant [REP8-005] and included for the final draft DCO [REP9-003].

Department for Business, Energy & Industrial Strategy

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Our Ref: EN010081

20 September 2018

Dear Sir or Madam,

PLANNING ACT 2008

APPLICATION FOR THE EGGBOROUGH COMBINED CYCLE GAS TURBINE (GENERATING STATION) ORDER

I. Introduction

1.1 I am directed by the Secretary of State for Business, Energy and Industrial Strategy ("the Secretary of State") to advise you that consideration has been given to the report dated 27 June 2018 of the Examining Authority ("the ExA"), Richard Allen B.Sc(Hons) PGDip MRTPI, who conducted an examination into the application ("the Application") submitted on 30 May 2017 on behalf of Eggborough Power Limited ("the Applicant") for a Development Consent Order ("the Order") under section 37 of the Planning Act 2008 ("the 2008 Act") for the Eggborough Combined Cycle Gas Turbine ("CCGT") Generating Station ("the Development").

1.2 The Application was accepted for examination on 27 June 2017. The examination began on 27 September 2017 and was completed on 27 March 2018.

1.3 The Order, as applied for, would grant development consent for the construction and operation of a CCGT generating station of up to 2,500 megawatts ("MW") on land located at the existing Eggborough Coal-Fired Power Station site near Selby in North Yorkshire.

1.4 The Development would comprise:

- An electricity generating station located on land at the existing Eggborough Power Station site, fuelled by natural gas and with a gross output of up to 2500 MW; a peaking and black start plant with a combined gross output of up to 299 MW; and cooling infrastructure;

- Temporary construction and laydown area involving the infilling of an existing on-site lagoon, and reserve space for carbon capture readiness;
- Works to the existing National Grid Electricity Transmission ("NGET") sub-station including underground and overground electrical cables, replacement equipment and connections to busbars;
- Works to replace the existing cooling water intake and discharge infrastructure from the River Aire;
- Works to replace the existing groundwater and towns water supply connections;
- Installation of a high-pressure gas supply pipeline to link the proposed CCGT to the National Grid Gas Feeder pipeline;
- Installation of an above-ground installation for both the Applicant and National Grid Gas at the gas pipeline connection point;
- Landscaping and biodiversity enhancements;
- Surface water drainage works from the site to Hensall Dyke utilising an existing connection; and
- Vehicular, pedestrian and cycle access works.

1.5 Published alongside this letter on the Planning Inspectorate's website[1] is a copy of the ExA's Report of Findings and Conclusions and Recommendation to the Secretary of State ("the ExA Report"). The ExA's findings and conclusions are set out in Chapters 4 to 8 of the ExA Report, and the ExA's summary of conclusions and recommendation is at Chapter 9.

II. Summary of the ExA's Report and Recommendation

2.1 The principal issues considered during the Examination on which the ExA has reached conclusions on the case for development consent are set out in the ExA Report under the following broad headings:

- Legal and Policy Context, including the relevant National Policy Statements, European and Local planning policy (Chapter 3);
- Finding and Conclusions in relation to policy and factual issues, which includes consideration of: Sources of Information; Environmental Impact Assessment ("EIA") Methodology; the need for the proposed development and examination of alternatives; Agriculture and Socio-Economics; Air Quality and Emissions; Archaeology and Historic Environment; Biodiversity and Ecology; Carbon Capture Storage Readiness; Combined Heat and Power Readiness; Flooding and Water; Land Contamination and Ground Conditions; Landscape and Visual; Noise and Vibration; Statutory Nuisance and Human Health; Sustainability and Climate Change; Traffic and Transport; Waste Management; Cumulative and Combined Effects; and the existing Coal-fired Power Station (Chapter 4);
- Findings and Conclusions in Relation to the Habitats Regulations (Chapter 5);

[1] https://infrastructure.planninginspectorate.gov.uk/projects/yorkshire-and-the-humber/eggborough-ccgt/

- The ExA's Conclusion on the Case for Development Consent (Chapter 6);
- Compulsory Acquisition and Related Matters (Chapter 7); and
- Draft Order and Related Matters, including the Deemed Marine Licence ("DML") and other Legal Agreements and related documents (Chapter 8).

2.2 For the reasons set out in the Summary of Findings and Conclusions (Chapter 9) of the ExA Report, the ExA recommends that the Order be made, as set out in Appendix D to the ExA Report [ER 9.1.10].

III. Summary of the Secretary of State's Decision

3.1 The Secretary of State has decided under section 114 of the 2008 Act to make, with modifications, an Order granting development consent for the proposals in the Application. This letter is the statement of reasons for the Secretary of State's decision for the purposes of section 116 of the Planning Act 2008 and regulation 23(2)(d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 ("the 2009 Regulations") – which apply to this application by operation of regulation 37(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

IV. Secretary of State's Consideration of the Application

4.1 The Secretary of State has considered the ExA Report and all other material considerations, including the further representations received after the close of the ExA's examination from the Applicant and the Crown Estate both dated 20 August 2018 in response to BEIS's consultation letter dated 9 July 2018[2]. The Secretary of State's consideration of the ExA Report and further representations is set out in the following paragraphs. All numbered references, unless otherwise stated, are to paragraphs of the ExA Report.

4.2 The Secretary of State has had regard to the joint Local Impact Report ("LIR") as submitted by North Yorkshire County Council ("NYCC") and Selby District Council ("SDC") [ER 3.10 and ER 4.2.5 – ER 4.2.6], the Development Plan [ER 3.11 and ER 4.2.7 – ER 4.2.9], environmental information as defined in Regulation 2(1) of the 2009 Regulations and to all other matters which are considered to be important and relevant to the Secretary of State's decision as required by section 104 of the 2008 Act. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.

4.3 The Secretary of State notes nineteen relevant representations were made by statutory and non-statutory authorities, utility providers, NYCC and SDC, Hensall Parish Council and local residents [ER 4.2.1]. Written Representations, responses to questions and oral submissions made during the Examination were also taken into account by the ExA. Except as indicated otherwise in the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendations of the

[2] https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010081/EN010081-001480-Eggborough%20CCGT%20Consultation%20Letter%20Dated%209%20July%202018%20(2).pdf

ExA as set out in the ExA Report, and the reasons for the Secretary of State's decision are those given by the ExA in support of his conclusions and recommendations.

Need for the Proposed Development and Examination of Alternatives

4.4 After having regard to the comments of the ExA set out in Chapter 3 (ER 3.3] of the ExA Report, and in particular the conclusions on the case for development consent in Chapter 4.5, the Secretary of State is satisfied that in the absence of any adverse effects which are unacceptable in planning terms, making the Order would be consistent with energy National Policy Statements ("NPS") EN-1 (the Overarching NPS for Energy), EN-2 (the NPS for Fossil Fuel Electricity Generating Infrastructure), EN-4 (the NPS for Gas Supply Infrastructure and Gas and Oil Pipelines) and EN-5 (the NPS for Electricity Networks Infrastructure). Taken together, these NPSs set out a national need for development of new nationally significant electricity generating infrastructure of the type proposed by the Applicant. The Secretary of State notes that the ExA is satisfied that alternative options for the siting of the proposed CCGT and route corridor for Work No.6 (gas pipeline) were rigorously tested by the Applicant and that the requirements of NPS EN-1 and the EIA Regulations in this regard have been met [ER 4.5.13].

Carbon Capture Readiness ("CCR")

4.5 As set out in NPSs EN-1 and EN-2, all commercial scale fossil fuel generating stations with a generating capacity of 300MW or more have to be 'Carbon Capture Ready'. Applicants are required to demonstrate that their proposed development complies with guidance issued by the Secretary of State in November 2009[3] or any successor to it.

4.6 The Secretary of State notes that the Application was accompanied by a Carbon Capture Storage and Carbon Capture Readiness Statement, which also included an economic assessment and information on Carbon storage and transport. It is also noted that the Environment Agency ("EA") were consulted and concluded there are no foreseeable barriers to carbon capture with regard to space and, following clarification by the Applicant during the Examination, confirmed that it had no concerns in respect of CCR matters and that provision for CCR is adequately secured through Requirements 31 and 32 of the Order. The Statement of Common Ground between the Applicant and NYCC/SDC also agrees that the Development complies with the relevant regulations and guidance [ER 4.10.3 -4.10.4]. No written questions where posed by the ExA during the Examination on this matter [ER 4.10.5].

4.7 The Secretary of State is satisfied with the ExA`s assessment of this particular issue, and conclusion that the Development adequately makes provision for CCR,

[3] Carbon Capture Readiness A guidance note for Section 36 Applications URN09D/810
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/43609/Carbon_capture_readiness_-_guidance.pdf

accords with all legislation and policy requirements, and that CCR is adequately provided for and secured in its recommended Order [ER 4.10.6].

Combined Heat and Power ("CHP")

4.8 NPS EN-1 requires that applications for thermal generation stations under the Planning Act 2008 should either include CHP, or evidence that opportunities for CHP have been explored where the proposal is for a generating station without CHP. The Secretary of State notes that the Application was accompanied by a CHP Assessment which concludes that the provision of heat or steam is not viable at this stage. However, the CHP assessment demonstrates that the proposed Development meets the "Best Available Techniques" tests and will be designed and built as CHP Ready to supply any identified viable heat load up to a potential maximum of 33MWth and sufficient to meet the identified load of 21MWth [ER 4.11.3]. The Statements of Common Ground between the Applicant and the Environment Agency ("EA") and the Applicant and NYCC/SDC agree that the proposed Development would be CHP ready, which would be secured by Requirement 28 of the recommended Order [ER 4.11.5].

4.9 The Secretary of State is satisfied with the ExA's conclusion that the proposed Development adequately makes provision for CHP, accords with all legislation and policy requirements and CHP is adequately provided for and secured in the recommended Order [ER 4.11.7].

V. Biodiversity and Habitats

5.1 The Development is not directly connected with or necessary to the management of any European Site. Therefore, under Regulation 63 of The Conservation Of Habitats And Species Regulations 2017 ("the Habitats Regulations"), the Secretary of State is required to consider whether the Development would be likely, either alone or in-combination with other plans and projects, to have a significant effect on a European site. If likely significant effects cannot be ruled out, then the Secretary of State must undertake an Appropriate Assessment ("AA") addressing the implications for the European Site in view of its conservation objectives. In light of any such assessment, the Secretary of State may grant development consent only if it has been ascertained that the Development will not, either on its own or in-combination with other plans and projects, adversely affect the integrity of such a site, unless there are no feasible alternative or imperative reasons of overriding public interest apply. The complete process of assessment is commonly referred to as a Habitats Regulations Assessment ("HRA").

5.2 In undertaking the HRA, the Secretary of State considered the following European Sites:

- Skipwith Common Special Area of Conservation (SAC);
- Thorne Moor SAC;
- Hatfield Moor SAC;
- Humber Estuary SAC;

- Humber Estuary Special Protection Area (SPA);
- Humber Estuary Ramsar;
- Strensall Common SAC; and
- North York Moors SAC.

5.3 All of the above listed sites were thought to either have the potential to be impacted by the Development through changes to surface water or changes to air quality. However, on the basis of the information submitted as part of the Application, the Secretary of State has concluded that the Development, alone and in-combination is not likely to have a significant effect on the on the above listed sites. This is with the exception of the Thorne Moor SAC; at this site air emissions from the operational Development are expected to contribute to increased Nutrient Nitrogen Deposition.

5.4 To assess this effect further, the Secretary of State undertook an Appropriate Assessment. This assessment focused on the effect of the increase in Nutrient Nitrogen Deposition on the site's qualifying feature ('degraded raised bogs still capable of natural regeneration'). The assessment noted that the level of Nutrient Nitrogen Deposition at this site (and many other European Sites) already exceeds the measures established for the protection of vegetation, known as Critical Loads or Critical Levels. However, on the basis that the contribution from the Development, in-combination with other plans and projects, would result in no measurable change to the protected bog habitat, the Secretary of State has concluded that the Development, alone and in-combination with other plans and projects, will not have an adverse effect on the protected bog feature, and therefore the integrity of the Thorne Moor SAC. This conclusion is supported by Natural England, the Government's Statutory Nature Conservation Advisor.

VI. Other Matters

Deemed Marine Licence Environmental Permit, and other consents, licences and permits

6.1 The Secretary of State notes that Schedule 13 of the Order is the Deemed Marine Licence ("DML") under the Marine and Coastal Act 2009 for cooling water and gas connections within the tidal section of the River Aire. The Marine Management Organisation ("MMO") submitted a number of written representations during the examination. It is understood that the MMO's principal concern had been in relation to the wording of part 2, paragraph (3)(4)(b) of the Applicant's draft DML, which they considered would have allowed the Applicant to undertake the proposed Development over a wider (and unassessed) area than indicated in the indicative DML Co-Ordinates [ER 8.8.3]. However, it is noted that revised wording was subsequently agreed within the Statement of Common Ground between the Applicant and the MMO [ER 8.8.5]. The revised wording has been included in the recommended Order and the Secretary of State agrees with the ExA that its inclusion in the Order adequately protects the interests and functions of the MMO [ER 8.8.6].

6.2 It is noted from the EA's Statement of Common Ground [REP3-008] submitted at Examination Deadline 3 that it was agreed that the proposed Development would

be subject to the Environmental Permitting regime under the Environmental Permitting Regulations 2010 ('EPR') covering operational emissions from the generating station. It was further agreed that the preferred approach to permitting the Proposed Development is to apply for a substantial variation to the existing Environmental Permit for the power station site (reference EPR/VP3930LH/V007).

6.3 The Statement of Common Ground agrees that the Secretary of State must be satisfied that potential emissions from the Development can be adequately regulated under the EPR, as outlined in paragraph 4.10.7 of NPS EN-1. It is noted, having considered the general content of the ES for the Development, the EA is satisfied and agrees that it is of a type and nature that should be capable of being adequately regulated under EPR. Further, the EA is not aware of anything that would preclude the granting of an Environmental Permit. The EA will examine information on air quality (including the air dispersion modelling), noise and other emissions to the environment which will be provided by the Applicant as part of the Environmental Permit application, but at this point in time they are not aware of any reason why it would not be possible to address these matters as part of the EPR application process and issues that may arise.

6.4 In the circumstances, the Secretary of State considers there are no reasons to believe the Environmental Permit will not be granted in due course.

6.5 Similarly, the Secretary of State notes there are various other consents, licences and permits that are likely to be required to construct and operate the proposed Development [ER 1.9.1] and has no reason to believe that the relevant approvals would also not be forthcoming.

VII. Consideration of Compulsory Acquisition and Related Further Representations

7.1 The Secretary of State notes that some issues relating to Compulsory Acquisition ("CA") and Temporary Possession ("TP") powers sought by the Applicant were unresolved at the close of the ExA's examination. As a result, the ExA recommended that the Secretary of State might wish to further consult the relevant interested parties [ER 7.6.25 and ER 7.6.29]. The BEIS consultation letter to the relevant interested parties (i.e. the Applicant, Crown Estates Commissioners and Northern Gas Networks) was issued on 9 July 2018. The outstanding issues and subsequent representations received by the Planning Inspectorate since the close of the ExA's examination are considered further below. The representations received in response to the consultation letter were:

- Dalton Warner Davis' letter of 23 July 2018 on behalf of the Applicant;
- The Crown Estate's letter of 20 July 2018;
- The Crown Estate's letter of 20 August 2018; and
- Dalton Warner Davis' letter of 20 August 2018 on behalf of the Applicant.

Crown Land/Section 135 Test

7.2 Section 135 of the Planning Act 2008 states that a DCO may include a provision authorising CA of an interest in Crown land only if: i) it is an interest which is for the time being held otherwise than by or on behalf of the Crown; and ii) the appropriate Crown authority consents to the CA. The Secretary of State notes that the Applicant is seeking powers to compulsorily acquire new rights over land that falls within the Crown interest (Plots 245, 255 and 690). Although the Applicant had been engaged with the Crown Estate's agents during the Examination to reach an agreement and stated in its submission at Deadline 9 that it had been signed, no further communication was received from the Crown Estate to confirm this or to state that it had authorised Crown land to be used. Without this confirmation, the ExA was unable to recommend that the Section 135 test has been passed and recommended that the Secretary of State seek confirmation from the Crown Estate that it has consented for Crown land to be used [ER 7.6.24 – ER 7.6.25]. Accordingly, the Crown Estate Commissioners were further consulted on this matter and confirmed by letter dated 20 August 2018 that it has reached a separate agreement with the Applicant which provides the Commissioners with sufficient assurance as to the way in which compulsory acquisition powers may be exercised and as a result confirmed their consent to the compulsory acquisition of third party interests in the relevant plots of land. This was subject to the inclusion of its suggested revised wording for Article 42 of the Order dealing with Crown rights. The Applicant has confirmed its agreement to the revised wording in the Order. The Secretary of State is also content with the Crown Estate's proposed revisions and is therefore satisfied that the Section 135 test in respect of Crown land is passed.

Northern Gas Networks Protective Provisions/Section 127 &138 Tests

7.3 Section 127 of the Planning Act 2008 relates to statutory undertakers' land. Section 127(5) and (6) states that a DCO may include provision authorising CA of a right over their land providing it can be done so without serious detriment to the carrying out of the undertaking, or that any detriment can be made good. Section 138 relates to the extinguishment of rights and section 138(4) states that a DCO may include a provision for the extinguishment of the relevant rights, or the removal of the relevant apparatus only if the Secretary of State is satisfied that the extinguishment or removal is necessary for the purposes of carrying out the development to which it relates. Both provisions are relevant to the statutory undertakers with land and equipment interests within the Order interests.

7.4 The Secretary of State notes that the Applicant and Northern Gas Networks had agreed to sign a private Asset Protection Agreement to protect the undertaker's interests. However, this was not signed by the close of the Examination [ER 7.6.27]. The ExA was content that the Section 127 and 138 tests are satisfied and there would be no serious detriment to Northern Gas Networks (or other statutory undertakers), but suggested the Secretary of State may want to seek confirmation from the Applicant that the private Asset Protection Agreement has been signed. Accordingly, the Applicant and Northern Gas Networks were further consulted on this matter and have

confirmed that an Asset Protection Agreement was signed on 12 July 2018. The Secretary of State is therefore satisfied that Northern Gas Networks' undertakings would be preserved and protected [ER 7.6.26 – ER 7.6.29].

Canal & River Trust ("CRT") Protective Provisions

7.5 The Secretary of State notes that CRT had also maintained an objection to the protective provisions in Schedule 12, Part 3 of the Applicant's draft Order. The objection related to an indemnity cap and also the Applicant's exclusion from liability for any consequential loses experienced by CRT as a result of the Development [ER 8.5.23-8.5.36]. The ExA reached a preliminary conclusion that both provisions placed an unreasonable and unjustified burden on CRT and as a result, recommended amendments to the draft Order. It is noted that the ExA's suggested modifications to the Applicant's final version of the draft Order, which are in line with the CRT's suggested wording, were not agreed before the close of the Examination. However, as both parties were given adequate opportunity to make their cases on this disagreement and their positions are clear, the Secretary of State considers nothing would have been gained by further consulting on the ExA's suggested modifications to Schedule 12, Part 3 of the Order. Further, the Secretary of State agrees with the ExA that the Applicant's suggested wording would place an unreasonable and unjustified burden on CRT, which would face a risk of potential costs and losses through no fault of its own [ER8.5.30] and is therefore satisfied with the ExA's recommendations on this matter [ER 8.5.32 - ER 8.5.36].

Human Rights Act 1998

7.6 The Secretary of State has considered the potential infringement of human rights in relation to the European Convention on Human Rights by the Development and the compulsory purchase powers contained in the draft Order. The Secretary of State notes the ExA's conclusion that: the Examination ensured a fair and public hearing; any interference with human rights arising from implementation of the Development is proportionate and strikes a fair balance between the rights of the individual and the public interest; and that compensation would be available in respect of any quantifiable loss. He agrees that there is no disproportionate or unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998 [ER 7.7.6].

Conclusion on CA [ER 7.7.1 – ER 7.7.6 and ER 9.1.5 – ER 9.1.9]

7.7 Having considered the ExA's analysis of CA and TP including the examination and also the further representations received, the Secretary of State agrees that the Development for which the land and rights are sought would be in accordance with national policy as set out in the relevant NPSs and that there is a national need for electricity generating capacity, including capacity from gas combustion. He is satisfied that the need to secure the land and rights required, and to construct the Development within a reasonable commercial timeframe represent a significant public benefit. The Secretary of State is content that the private loss to those affected is mitigated through

the choice of the Application land, and the limitation to minimum extent possible of the rights and interests proposed to be acquired. He agrees that the Applicant has explored all reasonable alternatives to the CA of the land, rights and interests sought and there are no better alternatives. The Secretary of State is content that adequate and secure funding would be available to enable CA within the statutory period following the Order being made and there would be no disproportionate or unjustified interference with human rights of individuals. In conclusion, the CA powers are justified and there is a compelling case in the public interest for land and interests to be compulsorily acquired and the Development would comply with the relevant sections of the Planning Act 2008.

VIII. Other Legal Agreements and Related Documents

8.1 The Secretary of State notes that, following concerns from the ExA during the Examination, no secure method for the demolition of the existing coal-fired power station existed. A signed Planning Agreement was therefore put in place under section 106 of the Town and Country Planning Act 1990 to secure its demolition in a timely manner if the Secretary of State makes the Order and the Development commences.

8.2 The Secretary of State understands that some loss of habitats on the Application site would occur through tree and existing lagoon removal, which the Applicant proposed would be mitigated through an agreed Landscape and Biodiversity Strategy secured by Requirement 6 of the Order. However, it is noted that there was a disagreement between the Applicant, Yorkshire Wildlife Trust and NYCC/SDC during the Examination over the Applicant's predicted onshore biodiversity offsetting calculations set out in the Indicative Landscape and Biodiversity Strategy. The Applicant subsequently recognised that its biodiversity offsetting calculations showed only a very small biodiversity gain, and on reflection it accepted more needed to be done. Yorkshire Wildlife Trust highlighted that an opportunity existed for the Applicant to contribute towards an off-site project in the Lower Aire Valley following a study on how natural processes could best be utilised to reduce flooding. This was one of two locations in the River Aire catchment (and the only one in the Lower Aire) which has high potential for habitat creation to be undertaken to reduce flood risk. As a result, a section 106 Planning Agreement was agreed to secure a financial contribution from the Applicant payable to SDC towards off-site wetland habitat creation in the Lower Aire Valley (ER 4.9].

8.3 The Secretary of State notes that in the ExA's judgement, both agreements are essential to the recommendation to make the Order [ER 8.9.2]. The Secretary of State is aware that a new National Planning Policy Framework was published in July 2018 (i.e. after the close of the ExA's Examination). However, the Secretary of State is content that there are no significant dissimilarities in the approach taken to sustainable development or to nationally significant infrastructure in the new National Planning Policy Framework [ER 3.12.2]. The Secretary of State is also satisfied the same tests set out for planning obligations still apply [ER 3.12.2] and that both of the above agreements meet the tests in that they are: necessary to make the Development acceptable in planning terms; directly related to the Development; and fair and reasonably related in scale and kind to the Development [ER 4.9.26 and ER 4.21.13].

8.4 In addition, the Secretary of State notes an Agreement under section 111 of the Local Government 1972, section 1 of the Localism Act 2011 and section 93 of the Local Government Act 2003 has also been signed to ensure parties will adopt a collaborative and constructive approach to discharge the Requirements in the Order.

IX. General Considerations

Equality Act 2010

9.1 The Equality Act 2010 includes a public sector "general equality duty". This requires public authorities to have due regard in the exercise of their functions to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Act; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect of the following "protected characteristics": age; gender; gender reassignment; disability; marriage and civil partnerships[4]; pregnancy and maternity; religion and belief; and race. This matter has been considered by the Secretary of State who has concluded that there was no evidence of any harm, lack of respect for equalities, or disregard to equality issues.

Natural Environment and Rural Communities Act 2006

9.2 The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, has to have regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting development consent.

9.3 The Secretary of State is of the view that the ExA's report, together with the environmental impact analysis, considers biodiversity sufficiently to inform him in this respect. In reaching the decision to give consent to the Development, the Secretary of State has had due regard to conserving biodiversity.

X. Secretary of State's conclusions and decision

10.1 For the reasons given in this letter, the Secretary of State considers that there is a compelling case for granting consent. Given the national need for the proposed Development, as set out in the relevant National Policy Statements referred to above, the Secretary of State does not believe that this is outweighed by the Development's potential adverse local impacts, as mitigated by the proposed terms of the Order.

[4] In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

10.2 The Secretary of State has therefore decided to accept the ExA's recommendation to make the Order granting development consent [ER 9.1.10]. In reaching this decision, the Secretary of State confirms regard has been given to the ExA Report, the joint LIR submitted by NYCC/SDC and to all other matters which are considered important and relevant to the Secretary of State's decision as required by section 104 of the 2008 Act. The Secretary of State confirms for the purposes of regulation 3(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 that the environmental information as defined in regulation 2(1) of those Regulations has been taken into consideration.

XI. Modifications to the Order by the Secretary of State

11.1 The Secretary of State has made the following modifications to the Order:

- Renaming the Order applied for from *'The Eggborough CCGT (Generating Station) Order'* to '*The Eggborough Gas Fired Generating Station Order 2018'* for consistency with other recent Orders for CCGT generating stations made by the Secretary of State;
- Amendments to Article 6 to clarify the entity having the benefit of the provisions of the Order; and
- Amendments to Article 42 (Crown rights) to reflect the revisions agreed by the Crown Estate and Applicant.

Other Drafting Changes

11.2 In addition to the above, the Secretary of State has made various changes to the draft Order which do not materially alter its effect, including changes to conform with the current practice for statutory instruments (for example, modernisation of language), changes in the interests of clarity and consistency and changes to ensure that the Order has the intended effect.

XII. Challenge to decision

12.1 The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at the Annex to this letter.

XIII. Publicity for decision

13.1 The Secretary of State's decision on this Application is being publicised as required by section 116 of the 2008 Act and regulation 23 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

13.2 Section 134(6A) of the Planning Act 2008 provides that a compulsory acquisition notice shall be a local land charge. Section 134(6A) also requires the compulsory acquisition notice to be sent to the Chief Land Registrar, and this will be the case where the order is situated in an area for which the Chief Land Registrar has given notice that he now keeps the local land charges register following changes made by Schedule 5 to the Infrastructure Act 2015. However where land in the order is situated in an area for which the local authority remains the registering authority for

local land charges (because the changes made by the Infrastructure Act 2015 have not yet taken effect), the prospective purchaser should comply with the steps required by section 5 of the Local Land Charges Act 1975 (prior to it being amended by the Infrastructure Act 2015) to ensure that the charge is registered by the local authority.

Yours sincerely

Gareth Leigh
Head of Energy Infrastructure Planning

ANNEX

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Order is published. The decision documents are being published on the date of this letter on the Planning Inspectorate website at the following address:

https://infrastructure.planninginspectorate.gov.uk/projects/yorkshire-and-the-humber/eggborough-ccgt/

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655)

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Your Ref:

Our Ref: EN010071

Date: 26 January 2017

Dear Sir/Madam

Planning Act 2008 (as amended) and the Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) –

Application by the North London Waste Authority ("the Applicant") for an Order Granting Development Consent for the North London Heat and Power Project

REQUEST FOR COMMENTS FROM THE APPLICANT, NATIONAL GRID, THE LONDON BOROUGH OF ENFIELD AND TRANSPORT FOR LONDON ON THE APPLICATION FOR THE PROPOSED NORTH LONDON HEAT AND POWER PROJECT- EN010071

Following the completion of the examination on 24 August 2016, the Examining Authority submitted a Report and Recommendation in respect of its findings and conclusions on the above application to the Secretary of State for Business, Energy and Industrial Strategy ("the Secretary of State") on 24 November 2016. In accordance with section 107 of the Planning Act 2008, the Secretary of State has three months to determine the application.

On 13 December 2016, the Secretary of State invited comments from the Applicant, National Grid and any landowners affected by compulsory acquisition on issues relating to the application. The responses can be viewed at:

https://infrastructure.planninginspectorate.gov.uk/projects/london/north-london-heat-and-power-project/?ipcsection=docs

There are several issues on which the Secretary of State should be grateful if parties identified in bold below could provide an update or further clarification.

Time Limit for Exercise of Authority to Acquire Land Compulsorily

Having considered the responses from the Applicant, Transport for London and the

evidence submitted by the Applicant in the application and during the examination, the Secretary of State is minded to allow the undertaker a period of 5 years to exercise its compulsory acquisition powers, rather than the 7 years requested by the Applicant. The Secretary of State notes the reasons put forward by the Applicant but does not consider that the Applicant has demonstrated that having 5 years for the exercise of compulsory acquisition powers would prevent a phased approach or necessitate the acquisition of all rights immediately following commencement. The Applicant is therefore asked to provide any additional information to demonstrate why a 5 year period would prevent a phased approach to construction or necessitate the acquisition of all rights immediately following the commencement of the Development.

Plot 21 – New Footpath

The Secretary of State has considered the responses from the Applicant and the National Grid on whether a further power should be included within the proposed Order to allow for the new footpath to be temporarily stopped up or diverted. In light of these responses, the Secretary of State is minded to insert such a power into Article 12 (Public rights of way). However, he considers it appropriate that the precise details of any future stopping up or diversion of the footpath should be subject to control by the relevant public authorities rather than being agreed solely between the Applicant and National Grid, as was proposed by the Applicant. He therefore proposes to include this in the form below and invites comments from **National Grid,** the **London Borough of Enfield** and **Transport for London** and the **Applicant** on the adequacy of these powers.

> *"(6) Subject to paragraph 12(7), the undertaker may at any time during the construction and maintenance of the authorised development, temporarily suspend any public right of way over the proposed footpath labelled RW08 on plan C_0014 Rev 00 for a reasonable period of time if necessary in connection with works by National Grid Electricity Transmission Plc authorised by The National Grid (North London Reinforcement Project) Order 2014.*
>
> *(7) The public right of way specified in paragraph 12(6) must not be suspended under this article unless the physical extent and duration of the temporary suspension and the provision of an alternative right of way has been agreed between the undertaker and National Grid Electricity Transmission PLC, and approved by the relevant planning authority which may attach reasonable conditions to any approval (such approval to be obtained in accordance with the provisions of Schedule 3 (procedure for approvals, consents and appeals)."*

Protective Provisions – National Grid

The Secretary of State has considered the comments received from the Applicant and National Grid on the protective provisions attached to the consultation letter of 13 December 2016. The Secretary of State has made amendments to the protective provisions attached to this letter at Annex 1 to reflect these comments where considered appropriate. A summary of the reasoning for these amendments to the protective provisions is also attached to this letter at Annex 2. The Secretary of State invites comments from **National Grid** and the **Applicant** on the adequacy of these protective provisions.

The deadline for any response is 3 February 2017.

Responses to the points outlined in this letter should be submitted by email to NLHPP@pins.gsi.gov.uk. Please send any hard copy response to North London Heat

and Power Project Team, Secretary of State for Business, Energy and Industrial Strategy c/o the Planning Inspectorate, Eagle Wing 3/18, Temple Quay House, Temple Quay, Bristol, BS1 6PN. If you will have difficulty in submitting a response by the consultation deadline, please inform the Project Team.

Your response will be published on the North London Heat and Power project page of the Planning Portal website as soon as possible after 3 February 2017.

This letter is without prejudice to the Secretary of State's decision whether or not to grant development consent for the North London Heat and Power Project, and nothing in this letter is to be taken to imply what that decision might be.

Yours faithfully

Giles Scott

Giles Scott
Head of Energy Infrastructure Planning and Coal Liabilities

Annex 1

SCHEDULE 13
PROTECTIVE PROVISIONS

PART 5
Protection of National Grid as Electricity and Gas Undertaker

Application

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

Interpretation

2. In this Part of this Schedule—

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

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of the statutory undertaker to enable the statutory undertaker to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

(a) in the case of an electricity undertaker, electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by the statutory undertaker for the purposes of electricity supply, transmission or distribution and any of its entities;

(b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by the statutory undertaker for the purposes of gas supply and any of its entities;

together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of the statutory undertaker or any of its entities for the purposes of transmission, distribution and supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2 of this Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works;

“commence” has the same meaning as in article 2 of this Order and commencement shall be construed to have the same meaning;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by the statutory undertaker (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for the statutory undertaker’s approval a ground mitigation scheme;

"ground subsidence event" means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

"maintain" and "maintenance" shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of the statutory undertaker including construct, use, repair, alter, inspect, renew or remove the apparatus

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

"undertaker" means the undertaker as defined in article 2 of this Order;

"statutory undertaker" means, as appropriate—

(a) National Grid Electricity Transmission Plc as an electricity undertaker being a licence holder within the meaning of Part 1 of the Electricity Act 1989; and

(b) National Grid Gas Distribution Limited as a gas transporter within the meaning of Part 1 of the Gas Act 1986.

"specified works" means any of the authorised works or activities undertaken in association with the authorised works which:

(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus, the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise;

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and

(c) include any of the activities that are referred to in paragraph 8 of T/SP/SSW/22;

3. Except for paragraphs 4 (apparatus of statutory undertakers), 9 (retained apparatus: protection gas undertakers), 10 (retained apparatus: protection: electricity undertakers), 11 (expenses) and 12 (indemnity) of this Part of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of the statutory undertaker, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and the statutory undertaker are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of Statutory Undertakers

4.—(1) Subject to paragraph 4(2), if as a consequence of the exercise of the powers of this Order access to the apparatus is to be materially obstructed, the undertaker must first give the statutory undertaker 14 days written notice of its intention, and provide such reasonable alternative means of access to such apparatus as will enable the statutory undertaker to operate, maintain, repair or replace, or use the apparatus.

(2) In the event of an emergency, the statutory undertaker will be at liberty to access and execute and do all such works and things in, upon or under the Order land if it reasonably considers that immediate measures must be taken. In such circumstances, the statutory undertaker must notify the undertaker as soon as reasonably practicable of such emergency measures and must provide details of the emergency measures and any alternative means of access to the relevant part of the Order land so far as is reasonably safe and practicable.

Protective works to Buildings

5.—(1) In relation to plot 4 the undertaker, in exercising the powers conferred by article **Error! Reference source not found.** (protective work to buildings), must exercise those powers so as not to obstruct the access to any apparatus without the written consent of the statutory undertaker and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of the statutory undertaker or any interruption in the supply of electricity and gas, as the case may be, by the

statutory undertaker is caused, the undertaker must bear and pay on demand the cost reasonably incurred by the statutory undertaker in making good such damage or restoring the supply; and, subject to paragraph 5(2), shall—

(a) pay compensation to the statutory undertaker for any loss sustained by it; and

(b) indemnify the statutory undertaker against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by that statutory undertaker, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of a statutory undertaker or its contractors or workmen; and the statutory undertaker will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made by the statutory undertaker, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

Acquisition of land

6.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not exercise any power to acquire any land interest or apparatus or override any easement and/or other interest of the statutory undertaker otherwise than by agreement (such agreement not to be unreasonably withheld or delayed).

(2) As a condition of agreement between the parties in paragraph 6(1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between the statutory undertaker and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of the statutory undertaker and/or affects the provisions of any enactment or agreement regulating the relations between the statutory undertaker and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as the statutory undertaker reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between the statutory undertaker and the undertaker acting reasonably and which must be no less favourable on the whole to the statutory undertaker unless otherwise agreed by the statutory undertaker, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and the statutory undertaker agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by the statutory undertaker and/or other enactments relied upon by the statutory undertaker as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by the statutory undertaker under paragraph 9 or 10 or any other paragraph of this part of this Schedule, shall not be taken to constitute agreement under sub-paragraph 6(1).

Removal of apparatus

7.—(1) If the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this part of this Schedule and any right of a statutory undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of the statutory undertaker or the statutory undertaker has confirmed that no alternative apparatus is required.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the statutory undertaker 56 days' advance written notice of that requirement, together with a plan of the work proposed.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for the statutory undertaker facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the statutory undertaker and the undertaker and must be no less favourable on the whole to the statutory undertaker than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by the statutory undertaker.

(2) If the facilities and rights to be afforded by the undertaker and agreed with the statutory undertaker under paragraph 8(1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to the statutory undertaker than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration in accordance with paragraph 16 (arbitration) of this Part of this Schedule and, the arbitrator shall make such provision for the payment of compensation by the undertaker to the statutory undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection Gas Undertakers

9.—(1) Not less than 56 days before the commencement of any specified works, the undertaker must submit to the statutory undertaker a plan of the works to be carried out and, if reasonably required by the statutory undertaker, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to the statutory undertaker under paragraph 9(1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which paragraphs 9(1) and 9(2) apply until the statutory undertaker has given written approval of the plan so submitted.

(4) Any approval of the statutory undertaker required under paragraph 9(2)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in paragraph 9(5) or 9(7); and,
- (b) must not be unreasonably withheld or delayed.

(5) In relation to any work to which paragraphs 9(1) and 9(2) apply, the statutory undertaker may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and necessary means of access to any apparatus.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under paragraph 9(1) or as relevant paragraph 9(4), as approved or as amended from time to time by agreement between the undertaker and the statutory undertaker and in accordance with such reasonable requirements as may be made in accordance with paragraphs 9(5) or 9(7) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the statutory undertaker will be entitled to watch and inspect the execution of those works.

(7) Where the statutory undertaker requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to the statutory undertakers' satisfaction (the statutory undertaker's confirmation of whether it is

satisfied or not is not to be unreasonably withheld or delayed) prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and the statutory undertaker must give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If the statutory undertaker in accordance with paragraphs 9(5) or 9(7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 7 and 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

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

(10) The undertaker will not be required to comply with paragraph 9(1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to the statutory undertaker notice as soon as is reasonably practicable and a plan of those works and must—

(a) comply with paragraphs 9(5), 9(6) or 9(7) insofar as is reasonably practicable in the circumstances; and

(b) comply with paragraph 9(11) at all times.

(11) At all times when carrying out any works authorised under the Order the undertaker must comply with the statutory undertaker's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that the statutory undertaker retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 12 (indemnity).

Retained apparatus: Protection: Electricity Undertakers

10.—(1) Not less than 56 days before the commencement of any specified works, the undertaker must submit to the statutory undertaker a plan of the works to be carried out and seek from the statutory undertaker details of the underground extent of their electricity tower foundations. The statutory undertaker must not unreasonably withhold or delay its provision of those details.

(2) The plan to be submitted to the statutory undertaker under paragraph 10(1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

(f) any intended maintenance regimes; and

(g) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under paragraph 10(1) must, in addition to the matters set out in paragraph 10(2), include a method statement describing—

(a) details of any cable trench design including route, dimensions, clearance to pylon foundations;

(b) demonstration that pylon foundations will not be affected prior to, during and post construction;

(c) details of load bearing capacities of trenches;

(d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;

(e) a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;

(f) written details of the operations and maintenance regime for the cable, including frequency and method of access;

(g) assessment of earth rise potential if reasonably required by the statutory undertaker's engineers; and

(h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic.

(4) The undertaker must not commence any works to which paragraphs 10(2) or 10(3) apply until the statutory undertaker has given written approval of the plan so submitted.

(5) Any approval of the statutory undertaker required under paragraphs 10(2) or 10(3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in paragraphs 10(6) or 10(8); and,

(b) must not be unreasonably withheld or delayed.

(6) In relation to any work to which paragraphs 10(2) or 10(3) apply, the statutory undertaker may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and necessary means of access to any apparatus.

(7) Works to which this paragraph applies must only be carried out in accordance with the plan, submitted under paragraph 10(1) or as relevant paragraph 10(5), as approved or as amended from time to time by agreement between the undertaker and the statutory undertaker and in accordance with such reasonable requirements as may be made in accordance with paragraphs 10(6) or 10(8) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the statutory undertaker will be entitled to watch and inspect the execution of those works.

(8) Where the statutory undertaker requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to the statutory undertakers' satisfaction (the statutory undertaker's confirmation of whether it is satisfied or not is not to be unreasonably withheld or delayed) prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and the statutory undertaker shall give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If the statutory undertaker in accordance with paragraphs 10(6) or 10(8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 7 to 9 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

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

(11) The undertaker will not be required to comply with paragraph 10(1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to the statutory undertaker notice as soon as is reasonably practicable and a plan of those works and must—

(a) comply with paragraphs 10(6), 10(7) and 10(8) insofar as is reasonably practicable in the circumstances; and

(b) comply with paragraph 10(12) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with the statutory undertaker's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

11.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to the statutory undertaker on demand all charges, costs and expenses reasonably anticipated or reasonably and properly incurred by the statutory undertaker in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the carrying out of any authorised works as are referred to in this Part of this Schedule including without limitation—

(a) in connection with the cost of the carrying out of any diversion work; and

(b) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus; and

(c) the carrying out of protective works;

(d) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule; and

(e) the approval of plans.

(2) There will be deducted from any sum payable under paragraph 11(1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

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

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

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 35 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the statutory undertaker by virtue of paragraph 11(1) will be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

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

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

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

Indemnity

12.—(1) Subject to paragraphs 12(2) and 12(3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to

any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of the statutory undertaker, or there is any interruption in any service provided, or in the supply of any goods, by the statutory undertaker, or the statutory undertaker becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand the cost reasonably and properly incurred by the statutory undertaker in making good such damage or restoring the supply; and

(b) indemnify the statutory undertaker for any other proper and reasonable expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the statutory undertaker, by reason or in consequence of any such damage or interruption or the statutory undertaker becoming liable to any third party as aforesaid other than arising from any default of the statutory undertaker.

(2) The fact that any act or thing may have been done by the statutory undertaker with the agreement of and on behalf of the undertaker or in accordance with a plan submitted by the undertaker and approved by the statutory undertaker or in accordance with any requirement of the statutory undertaker or under its supervision will not (unless paragraph 12(3) applies), excuse the undertaker from liability under the provisions of paragraph 12(1) unless the statutory undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in paragraph 12(1) shall impose any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or default of the statutory undertaker, its officers, servants, contractors or agents; and

(b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by the statutory undertaker as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article **Error! Reference source not found.** (consent to transfer benefit of order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised works yet to be executed and not falling within this paragraph 12(3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph 12.

(4) The statutory undertaker must give the undertaker reasonable written notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and taking into account undertaker's representations.

Enactments and agreements

13. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between the statutory undertaker and the undertaker, nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and the statutory undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

14.—(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker or the statutory undertaker requires the removal of apparatus under paragraph 7(2) or the statutory undertaker makes requirements for the protection or alteration of apparatus under paragraphs 9 or 10 the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the statutory undertaker's undertaking and the statutory undertaker shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever the statutory undertaker's consent, agreement or approval to is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the statutory undertaker, it must not be unreasonably withheld or delayed.

Access

15. If in consequence of the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable the statutory undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

16. Any difference or dispute arising between the undertaker and the statutory undertaker under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and the statutory undertaker, be determined by arbitration in accordance with article 35 (arbitration).

Approval Process

17. When submitting the plans to the statutory undertaker for approval under paragraph 8 or paragraph 9 the undertaker must send the plans to the statutory undertaker in hard copy by recorded post and by email to such address as the statutory undertaker may notify the undertaker in writing from time to time and clearly bearing the name of the project and contact details for responses, unless otherwise agreed with the statutory undertaker.

The Secretary of State has made amendments to the protective provisions attached to the consultation letter to reflect comments received from National Grid and the Applicant where considered appropriate.

In particular, the Secretary of State notes the following (references are to the numbering in the attached protective provisions):

- As a general point, paragraph 1 of the protective provisions provides that they have effect unless otherwise agreed in writing between the Applicant and National Grid.
- The Applicant's request that the following additional wording be included in paragraphs 9(3) and 10(4) "such approval not to be unreasonably withheld". However, the Secretary of State considers this is already covered in paragraphs 9(4)(b) and 10(5)(b) which state that an approval of the statutory undertaker "must not be unreasonably withheld or delayed".
- National Grid's comments as to why deemed consent or approval has the potential to undermine safe working and has removed any deemed approval from the protective provisions in the attached. The Secretary of State considers that the requirement that an approval of the statutory undertaker "must not be unreasonably withheld or delayed" is appropriate to ensure that the Applicant receives a timely response from National Grid.
- National Grid's reasoning for the deletion of the requirement in paragraphs 9(7), 10(1) and 10(4) for it to provide a response within 14 days. The Secretary of State has amended these provisions in the attached to require instead that National Grid's responses "must not be unreasonably withheld or delayed".
- The Applicant's comments on the inclusion of "the approval of plans" in paragraph 11 (expenses). The Secretary of State considers that the Applicant will not be required to pay expenses for the approval of plans in accordance with this provision unless the statutory undertaker in fact incurs expenses for approving plans. Given this, the Secretary of State considers that the inclusion of "the approval of plans" is appropriate.
- The Applicant's comments on paragraphs 11(3)(a), 11(3)(b) and 11(5). The Secretary of State considers that it is appropriate to include these provisions as they are intended to provide protection to the statutory undertaker if such proposals materialise.
- National Grid's request to amend paragraph 16 (arbitration) to exclude its application to certain provisions. The Secretary of State notes that

paragraph 16 provides that it applies "unless otherwise agreed in writing between the undertaker and the statutory undertaker" and considers that it is not appropriate to otherwise exclude its application to certain provisions. The Secretary of State considers that the relevant regulatory requirements could be taken into account in arbitration.

- National Grid's comments on paragraph 17 (approval process). The Secretary of State considers that the inclusion of paragraph 17 is appropriate to provide for the means of sending plans to the statutory undertaker. The Secretary of State has removed the reference to response periods from paragraph 17 given the removal of deemed approval and other response periods referred to above.
- National Grid's request to include an additional paragraph titled "Acquisition of land". The Secretary of State notes that the Examining Authority raised a specific question on this during the Examination. The Secretary of State notes National Grid's comments that all DCOs that affect its interests require the exercise of compulsory acquisition powers to be subject to its approval in order to ensure it does not incur serious detriment. The Secretary of State also notes National Grid's response that paragraph 6 does not emasculate the general application of compulsory acquisition powers and that instead paragraph 6 manages the engagement of the parties to ensure the protection if its interests in land and assets and safe working. Having considered National Grid's response, the Secretary of State considers it appropriate to include paragraph 6 subject to the minor amendments in the attached. In particular, the Secretary of State considers that it is appropriate to amend paragraph 6 to provide that National Grid's agreement to the exercise of the powers is not to be unreasonably withheld or delayed.

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Your reference

Our reference
SDS/SKS/80035/120019
UKM/80381681.1

5 January 2017

By Email Only

Dear Sirs

NORTH LONDON HEAT AND POWER PROJECT - EN010071
RESPONSE TO BEIS LETTER DATED 13 DECEMBER 2016

1.1 We write on behalf of National Grid in response to your letter dated 13 December 2016.

1.2 Since our response to Deadline 8 in August 2016, the assets affected by the North London Heat and Power Project Draft Order ("the Order") held by National Grid Gas plc have transferred to National Grid Gas Distribution Limited (company registration number 10080864). As of 1 October 2016, all of National Grid's gas distribution assets are operated by the new company .National Grid Gas plc is no longer the relevant party for non-transmission assets affected by the Order. National Grid Gas Distribution Limited is the current gas transporter licensee for these assets and is the relevant undertaker and relevant beneficiary of the requested protective provisions. Details of the gas transporter license are available for inspection from Ofgem (https://www.ofgem.gov.uk/system/files/docs/2016/09/stat_con_decision_letter_final_signed.pdf)

1.3 The assets held by National Grid Electricity Transmission plc remain unchanged. This submission is therefore provided on behalf of National Grid Electricity Transmission plc and National Grid Gas Distribution Limited (together "National Grid").

1.4 We respond to each of the matters raised with National Grid in the same order as they appear in your letter.

Time Limit for Exercise of Authority to Acquire Land Compulsorily.

2.1 National Grid does not wish to make any comment in respect of the Applicant's case for seeking seven year period for exercise of compulsory acquisition powers and considers this a matter for the Applicant.

2.2 To the extent that National Grid is however affected by the potential exercise of compulsory acquisition powers as against the interest of National Grid, National Grid has significant concerns with the proposed level of protection it will be afforded under the proposed form of protective provisions attached to

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your letter. This is addressed below in paragraph 4.1 onwards.

Plot 21 - New Footpath.

3.1 In the absence of an express power in the draft Order enabling the temporary stopping up of the new footpath to be created on Plot 21, National Grid and the Applicant have already put in place arrangements between them in order that the potential for conflicts associated with the simultaneous exercise of the North London Reinforcement DCO and the draft Order, if consented, can be managed. Such arrangements require the reasonable co-operation of both parties and onus is placed on the Applicant to manage the conflict without material detriment to the implementation of the North London Reinforcement DCO.

3.2 National Grid would welcome the addition of a further power for inclusion in the draft Order that would enable the Applicant to temporarily stop up and/or divert this new footpath in the period of the construction of the North London Reinforcement Order works. If there is any concern that National Grid may not benefit from this new power unless expressly stated to be a beneficiary, National Grid has no objection to it being a named beneficiary in the draft Order for the purpose of this power thereby avoiding the need for further express consent of the Secretary of State at a later date. This view is expressed on the basis that the power is permissive only and that any obligations or liabilities that flow from the exercise of the power would require National Grid's election to utilise the power if included in the Order. National Grid is willing to consider the detailed drafting of any such provision if the Secretary of State is so minded before granting the Order.

3.3 However, the Secretary of State may be satisfied that this power can rest with the Applicant as a power that it can exercise for purposes necessary to deliver its Project and in which National Grid indirectly benefits. National Grid assumes that the Applicant would be committed to exercise any such power for this purpose (as an act of reasonable co-operation under the terms of the subsisting arrangement in place between the parties).

Protective Provisions - National Grid.

4.1 National Grid does not consider the form of protective provisions attached to the letter of 16 December 2016 to be adequate for its purposes for the reasons as set out in the schedule appended to this submission. National Grid therefore continues to object in the strongest possible terms subject to the imposition of protective provisions in a form acceptable to it for which it has previously provided its required form of protective provisions as part of its submission to Deadline 8. If not adequately protected, National Grid's assets will or have the potential to be subject to serious detriment to the carrying on of its undertaking in circumstances where no replacement land or rights is expressly provided for in the Order. Sections 127 and 138 of the Planning Act 2008 are therefore engaged and the Secretary of State is otherwise invited to exclude from any confirmed Order compulsory acquisition rights in respect of National Grid's land, its rights in land and in apparatus within the Order

Limits.

4.2 National Grid has set out the basis for its objection in earlier submissions as part of the Examination and in particular in its response to Deadline 8. Those observations remain relevant as part of this further response.

4.3 National Grid's ability to meet its statutory obligations as a licensed gas transporter and distributor under the Gas Act 1986 and electricity undertaker under the Electricity Act 1989 cannot be fettered. The absence of further changes to the form of protective provisions attached to your letter puts the Applicant in a position that it could exercise the Order in a manner which fetters National Grid's ability to meet the statutory and licence requirements pertaining to its undertaking. To further explain, the absence of adequate protection, could lead to National Grid failing to comply with Industry Safety Standards, its legal requirements and other Health and Safety Executive guidance.

4.4 The form of protective provisions submitted by National Grid at Deadline 8 has already had regard to any project specific changes that can be readily accommodated - noting that the North London Waste Authority's Project is subject to detailed design and that a number of matters of detail will not be known for some time until after consent is granted. This is particularly important to note given that the Applicant is unable to further particularise the precise nature of rights that it will exercise and how it intends to affect National Grid's interests in land and apparatus until that later point. For reasons already advanced by National Grid, its form of protective provisions accommodates this scenario whilst providing National Grid with an adequate level of protection required for the exercise of its statutory undertaking.

4.5 We note that the suggested form of protective provisions appear to be amended against the form of provisions submitted by the Applicant rather than the form submitted by National Grid as part of Deadline 8. This may explain a number of omissions from the drafting required to put the provisions in a form acceptable to National Grid. To assist you, we have further marked up the suggested form of protective provisions against the version attached to your letter. Changes are supported with commentary set out in table form as an appendix to this submission. We can confirm that if this form of protective provisions are included in the Order that National Grid's objection will be addressed and it shall be in a position to formally withdraw its holding objection to the Order.

4.6 National Grid wishes to note that it has continued to keep open a line of communication with the Applicant throughout this process and continues to do so on the basis that it always seeks to reach settled agreement, where possible, with promoters on the form of adequate protection. National Grid's general expectation is that agreement can and should be reached. National Grid only objects in circumstances that it is necessary to do so. National Grid further notes that the changes that it seeks to the version of protective provisions attached to your letter are consistent with the form of provisions that has been tested and accepted on many other occasions in respect of other

major energy and infrastructure projects promoted through the development consent order process.

Appendix

National Grid's Specific Responses to Proposed Protective Provisions in letter dated 13 December 2016

Relevant Section of the draft protective provisions, as amended by National Grid	National Grid's supporting comments
Paragraph 4	National Grid can accept the wording in Paragraph 4 (which is based on the Applicants preferred wording), notwithstanding that it differs from National Grid's normal required form of provisions, because the apparatus located in highways (to be temporarily stopped up for the purposes of this project) is a medium pressure gas main and to which alternative access can be readily provided by the Applicant.
Paragraph 5	National Grid can accept this form of provision which is limited to an identified plot only (Plot 4) for project specific reasons. However, National Grid requires deletion of the word "material" in relation to obstruction of access to its apparatus given the identified plot, Plot 4, houses a gas governor which is of operational importance and therefore any obstruction will be material.
Paragraph 6	National Grid has reinserted its absolute standard requirement at Paragraph 6 to ensure that the Applicant is not able to simply side step the application of the protective provisions and compulsorily acquire the interests of National Grid, which in this case include operational land on which a district gas governor is located supplying gas to the local area. Detailed reasons for the requirement for the wording in Paragraph 6 is set out in National Grid's response to Deadline 8 (which is not repeated here) and remains relevant.

	The Applicant has indicated during the examination process that it does not intend to extinguish or compulsorily acquire National Grid's operational land and assets – this is not contested and rather supports the points that National Grid has advanced. If the Applicant does not intend to acquire National Grid's interests the exclusion of the general application of compulsory acquisition rights as against National Grid's interests should not be contested by the Applicant. Essentially, the Applicant must accept that it does not meet the tests relevant to the Secretary of States' determination for such acquisition rights as against National Grid. The inclusion of Paragraph 6 is the means by which the otherwise general application of the compulsory acquisition rights in the Order can be dis-applied as against National Grid. National Grid considers that the absence of Paragraph 6 is contrary to its statutory functions, its last duties and license requirements as it leaves National Grid open to the risk of serious detriment should the Applicant exercise compulsory acquisition powers against it. The alternative of monetary compensation is not sufficient remedy. For the reasons stated in the response to Deadline 8, National Grid reconfirms that Paragraph 6 does not emasculate the general application of compulsory acquisition powers granted by the Order in the way in which the Applicant requires them - rather the balance of Paragraph 6 and other complementary protective provisions clearly manage the engagement of the parties by providing the Applicant with a means to have approved the detail of its works where in close proximity to National Grid's assets in a safe manner and if necessary, to provide for the extinguishment and/or re-provision of National Grid's interests as National Grid reasonably requires. For example, Paragraph 7(1) and 8(1) lead on from Paragraph 6 and Paragraphs 9 and 10 provide the mechanism for approval of works in proximity to National Grid's assets. Retention of Paragraph 6 is considered by National Grid to be critical to the effective operation of the protective provisions and in turn to the protection of its interests in land and assets affected by the Order.
Paragraph 7	National Grid can accept the proposed form of drafting for Paragraph 7, notwithstanding that it differs from its normal required form of wording. This is because National Grid is satisfied, based on its engagement with

	the Applicant (albeit only informal assurances have been provided), that the Applicant does not intend to extinguish its apparatus. The wording that is omitted from Paragraph 7 (based on National Grid's normal wording) is largely for the benefit of the Applicant but the Applicant has expressed preference as to its deletion for the purpose of this Project
Paragraphs 9(3) and 10(4)	In addition to its other statutory duties, National Grid's paramount concern is that all works that could or may affect its operational land and apparatus are carried out safely. The inclusion of deemed consent or approval provisions has the potential to undermine safe working. The Applicant's proposal is at an informative stage and is subject to detailed design that will take place after the grant of the Order. National Grid is therefore unable to anticipate what will be required in order to assess and approve detailed proposals until a later stage. National Grid's normal approach in such circumstances is to seek a period of 56 days as a reasonable and realistic period of time in which to respond fully to the Applicant's later detailed design. National Grid has put in place and has been operating for some time a robust and tested plant integrity system which ensures that requests for approvals are considered in a timely manner. The nature and extent of proposed work and the particular grade of National Grid asset affected have a bearing on the time in which National Grid requires on each occasion to respond. National Grid seeks to respond as quickly as it can and otherwise encourages applicants to establish points of communication with its integrity teams and to share information on a regular basis in order that works can be approved as soon as possible. The protective provisions must however provide for a realistic worst case requirement until further detail is known. To assist developers, National Grid has put in place an online tool http://www.beforeyoudig.nationalgrid.com/ which provides an immediate response as to what level of approval or verification will be required for specific proposals. This service is provided to assist applicants in managing their expectations in normal response times subject to the provision of sufficient supporting information. In the event that any work of the Applicant is deemed acceptable and is commenced before National Grid has expressly approved it presents an unacceptable risk to safety and one which could cause National Grid and/or the Applicant to breach safety requirements. Details of the statutory framework are set out in National Grid's response to Deadline 8.

	National Grid notes that if deemed consent provisions had been considered an appropriate means by which it should be governed for the purpose of providing its approvals to work in proximity to its apparatus, then the place for addressing that would have been in the Pipeline Safety Regulations which derive from the Health and Safety at Work Act. The fact that these Regulations do not consider it necessary or appropriate to include deemed consent provisions is further indication that it is not appropriate for such provisions to be now incorporated in individual consent orders.
Paragraphs 9(7), 10(8) and 10(8)	For the same reasons set out immediately above, a period of 14 days in which to respond to works requiring approval is insufficient in all cases, is unreasonable and gives rise to unacceptable risk to safety.
	In the case of Paragraph 10(1), information relating to electricity tower foundations is only held in generic form by National Grid and ground surveys are often required for site specific confirmations. National Grid cannot commit to providing safe and accurate information within the short timeframe of 14 days as proposed.
Paragraph 11(1)	National Grid can accept the form of wording proposed on the basis that the heads of claim is indicative and non-exhaustive.
Paragraph 12(1)	"Additional apparatus" has been reinserted into the scope of the indemnity. The Applicant has not formally confirmed that it has no requirement to seek the alternative provision of apparatus as a consequence of its works and is seeking powers of compulsory acquisition which could be exercised against National Grid's interest in land and apparatus. It is therefore appropriate for any re-provided apparatus to be similarly protected by any later works that are carried out under the terms of the Order. This approach is standard to National Grid's protective provisions and is generally applied as part of the consenting of other orders.
Paragraph 16	Exceptions to the application of the arbitration provision have been reinserted for the reasons that National Grid considers that it is the appropriate party to determine whether or not the matters to be addressed under Paragraphs 7(2), 8(1), 9, 10 and 11(5) are sufficient or not without the need for further referral. On the basis that National Grid is the relevant license holder of the statutory undertaking and for whom Ofgem is its

	regulator, it does not deem such matters to be appropriate for the determination by another arbitrator.
Paragraph 17	On the basis that deemed approval provisions are not considered acceptable, we have deleted reference to this provision as it is not required.

Yours faithfully

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Your ref: EN010071

24 February 2017

Dear Ms Taylor

PLANNING ACT 2008

PLANNING CONSENT APPLICATION – THE NORTH LONDON HEAT AND POWER PROJECT

1. Introduction

1.1. I am directed by the Secretary of State for Business, Energy and Industrial Strategy ("the Secretary of State") to advise you that consideration has been given to:

- the report dated 24 November 2016 of the Examining Authority ("the ExA") on the application dated 15 October 2015 ("the Application") by the North London Waste Authority ("the Applicant") for a Development Consent Order ("the Order") under section 37 of the Planning Act 2008 ("the 2008 Act") for the North London Heat and Power Project ("the Development");
- representations received by the Secretary of State in respect of the Application; and
- further consultation engaged in by the Secretary of State in respect of issues raised in the Examination and by the draft Order as submitted to the Secretary of State.

1.2. The Examination of the Application began on 24 February 2016 and was completed on 24 August 2016. The Examination was conducted on the basis of written evidence submitted to the ExA, accompanied site inspections on 17 March and 17 August 2016 and hearings on 18 March and 5 July 2016.

1.3. The Order, as applied for, would grant development consent under the 2008 Act for the construction and operation of an energy recovery facility with a gross electrical output of

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up to 70MW at the site of the existing energy from waste facility at the Edmonton EcoPark in the London Borough of Enfield which is expected to cease operation in 2025. The Development would also comprise the following:

- site preparation and demolition works;
- decommissioning, demolition and removal of the existing energy from waste facility;
- works required to provide buildings, structures, plant and equipment needed for the operation of the energy recovery facility;
- the construction of a resource recovery facility;
- the construction of a building (EcoPark House) to provide visitor, community and education facilities, office accommodation, and a base for the Edmonton Sea Cadets;
- utilities and infrastructure works, landscaping along the edge of the River Lee Navigation, security and lighting;
- access improvements to the Edmonton EcoPark, including the widening of the existing entrance from Advent Way, construction of an eastern access from Lee Park Way, and improvements to Deephams Farm Road to enable its use as a northern access;
- works for the creation of and use of a temporary construction site to the east of the River Lee Navigation, comprising areas of hardstanding for storage of materials and fabrication, vehicle parking, office and staff welfare accommodation, utility works, fencing and security facilities, and an access from Walthamstow Avenue; and
- such other minor works as may be necessary or expedient.

1.4. Published alongside this letter on the Planning Inspectorate's website[1] is a copy of the ExA's Report of Findings and Conclusions and Recommendation to the Secretary of State ("the Report"). The ExA's findings and conclusions are set out in the Report, and the ExA's summary of findings and conclusions is at section 4. (All numbered references, unless otherwise stated, are to paragraphs of the Report ("ER").)

2. Summary of the ExA's Report and Recommendation

2.1 The Secretary of State notes that the Report included findings and conclusions on the following principal issues:

- Habitats and Species Regulations;
- compulsory acquisition;
- combined heat and power;
- grid connection;
- design;
- cumulative impacts with other development proposals;
- transportation;
- land use, including open space, green infrastructure and Green Belt;
- landscape and visual impacts;

[1] https://infrastructure.planninginspectorate.gov.uk/projects/london/north-london-heat-and-power-project/

- historic environment;
- noise and vibration;
- biodiversity, ecology and nature conservation;
- climate change adaptation;
- flood risk;
- water quality and resources;
- socio-economic impacts;
- construction;
- ground conditions and contamination;
- air quality and emissions;
- dust, odour, and other nuisances;
- pollution control and other environmental regulatory regimes;
- health;
- waste management; and
- utilities.

2.2 The ExA also considered the terms of the draft Order sought. For the reasons set out in the Report, the ExA recommended that the Secretary of State grants development consent for the Development in the form of the Order set out in the Report [ER 8.1.4].

3. Summary of the Secretary of State's Decision

3.1 The Secretary of State has decided under section 114 of the 2008 Act to make, with modifications, an Order granting development consent for the proposals in the Application. This letter is the statement of reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and the notice and statement required by regulation 23(2)(c) and (d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 ("2009 Regulations").

4. Secretary of State's Consideration of the Application

4.1 The Secretary of State has considered the Report, the representations made in respect of the Application and all other material considerations. The Secretary of State's consideration of the Report is set out in the following paragraphs.

4.2 The Secretary of State has had regard to the National Policy Statements referred to in paragraph 4.4 below, the Local Impact Reports submitted by the London Boroughs of Enfield, Barnet, Haringey and the Greater London Authority, the relevant local plans and to all other matters which are considered to be important and relevant to the Secretary of State's decision as required by section 104 of the 2008 Act. The Secretary of State also confirms for the purposes of regulation 3(2) of the 2009 Regulations that he has taken into consideration the environmental information as defined in regulation 2(1) of those Regulations. In making his decision, the Secretary of State has complied with all applicable legal duties on him and has not taken account of any matters which are not relevant to the decision.

4.3 Except as indicated otherwise in the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendation of the ExA as set out in the Report, and the reasons for the Secretary of State's decision are those given by the ExA in support of its conclusions and recommendation.

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Need for the Proposed Development

4.4 In making his decision, the Secretary of State has had regard to the Energy National Policy Statements ("NPS") EN-1 (Overarching NPS for Energy) and EN-3 (NPS for Renewable Energy Infrastructure) which set out a national need for development of new nationally significant electricity generating infrastructure of the type proposed by the Applicant. The case for the Development is considered throughout the Report, and after considering in particular the ExA's conclusions in paragraph ER 4.2.11 and 8.1.1, the Secretary of State is satisfied that the decision to make the Order would be consistent with the Government's policy objectives as set out in EN-1 and EN-3 and that there is a need for the Development.

4.5 In addition, the Secretary of State notes that a range of issues related to socio-economic impacts were examined by the ExA during its consideration of the Application. The ExA noted that although the Development would result in a net overall loss of jobs for the EcoPark, the Development would create additional employment opportunities during construction and provide benefits to the community through the potential for community activities to take place in the new EcoPark House. The ExA therefore concluded that there would be no significant socio-economic impacts [ER 4.17.15]. The Secretary of State agrees with the ExA's conclusions in this matter.

Ecology and Biodiversity

a) Habitats Regulations Assessment

4.6 Regulation 61 of the Conservation of Habitats and Species Regulations 2010 ("the Habitats Regulations") requires the Secretary of State to consider whether the Development is likely to have a significant effect, either alone or in combination with other plans and projects, on a European site as defined in the Habitats Regulations. If likely significant effects cannot be ruled out, then an Appropriate Assessment must be undertaken by the Secretary of State to address the implications for the site in view of its conservation objectives. In light of any such assessment, the Secretary of State may grant development consent only if the Secretary of State has ascertained that the Development will not, either on its own or in combination with other plans and projects, adversely affect the integrity of a European site, unless there is no alternative solution and imperative reasons of overriding public interest apply.

4.7 European sites protected include Special Areas of Conservation ("SACs") established under Council Directive 92/43/EC on the conservation of habitats and species and of wild flora and fauna (the "Habitats Directive") and Special Protection Areas ("SPAs") established under Council Directive 2009/147/EC on the conservation of wild birds (the "Wild Birds Directive"). As a matter of policy, Government also affords the same degree of protection to Ramsar sites designated under the Ramsar Convention.

4.8 The ExA's overall findings and conclusions in relation to the Habitats Regulations are found in section 4 of the Report.

4.9 A Habitats Regulations Assessment Report was submitted with the Application, which assessed the potential impacts of the Development on the Lee Valley SPA and Ramsar site, and the Epping Forest SAC. In the Secretary of State's view, the Habitats Regulations Assessment Report contains sufficient information to inform consideration under regulation 61(1) of the Habitats Regulations as to the likely impact on the European sites, or other sites to which the same protection is applied as a matter of policy, and the Secretary of State agrees with the advice of the ExA as set out in the Report [ER 5.1.6] that the Development does not give rise to any likely significant effects alone or in-combination with other plans or projects. The Secretary of State considers that sufficient information has been provided to determine that an Appropriate Assessment is not required.

b) Effects on other protected Sites and Species

4.10 As to the likely impact on other protected sites and species, the Secretary of State agrees with the ExA's conclusion that although the proposal has the potential to affect a non-statutory site, Lee Valley Site of Metropolitan Importance for Nature Conservation, mainly during the construction period, arrangements provided for in the Order including restoration of the temporary laydown area following construction works and appropriate enhancement of habitats within the Development site will offset and reduce impacts to below significant levels during the operational phase of the Development.

Compulsory Acquisition Powers

4.11 The Secretary of State has considered the compulsory acquisition ("CA") powers sought for land, the creation of new rights over land and the extinguishment or suspension of rights over land of both a permanent and temporary nature, for the purpose of constructing, operating and maintaining the Development. The ExA sets out his consideration of matters relating to CA in section 6 of the Report.

4.12 Section 122 of the 2008 Act provides that an order granting development consent may include provision authorising the compulsory acquisition of land only if the land is required for the development to which the development consent relates or is required to facilitate or is incidental to that development and there is a compelling case in the public interest for the land to be acquired compulsorily. The ExA was satisfied [ER 6.5.12] that the statutory tests in section 122 are met. The Secretary of State has considered the CA powers sought by the Applicant and agrees with the ExA's conclusions and reasoning on this matter. The Secretary of State's consideration of the Human Rights Act 1998 is set out below.

4.13 The Examiner noted that the Applicant has secured by agreement the majority of the land required for the proposed Development. However, CA powers are sought over the whole Application site due to the number of third party interests [ER 6.2.1]. The Examiner also noted that although progress was being made by the Applicant on negotiating private agreements outside the CA process with a number of statutory undertakers, the Applicant requires compulsory powers to ensure it can deliver the Development if for any reason the interests in the Order land cannot be acquired through private agreements.

Adequacy of Funding

4.14 The ExA notes that the Applicant's Funding Statement confirms that the Applicant has the financial resources required for the proposed Development, including the cost of acquiring any rights over land and the payment of compensation [ER 6.2.18], and that therefore the ExA was satisfied that the Applicant has the financial resources to meet such a liability [ER 6.5.3]. The Secretary of State agrees with the conclusions of the ExA and is satisfied that the resource implications in terms of CA and temporary possession obligations have been adequately met, and that the requirements of the 2008 Act and NPS in respect of funding are met.

Time Limit for Exercise of Compulsory Acquisition Powers

4.15 The Applicant sought through Article 20 of the proposed Order a period of seven years, rather than the usual five years, to exercise CA powers. Following the Secretary of State's consultation dated 13 December 2016 requesting further information from the Applicant on why the longer seven year period is necessary and inviting comments from all landowners affected by CA, the Secretary of State received a response from TfL stating that it did not consider that the Development is of a type that requires a longer period of time for CA powers to be implemented, and that it saw no reason why the land in which the Applicant has an interest should be unnecessarily blighted for a potentially

longer period of time than necessary. The Applicant responded to the Secretary of State's 13 December 2016 citing the scale and complexity of the works, the lead-in time required for procurement and contract award, and the project programme as factors in support of this element of its Application. However, the Secretary of State did not consider that the Applicant had demonstrated that seven years for the exercise of compulsory acquisition powers was justified. The Secretary of State requested further project specific details as to why a seven year period for the exercise of CA powers would be justified from the Applicant in the 27 January 2017 consultation. The Applicant responded to confirm that a five year period for the exercise of CA powers would be acceptable. The Secretary of State has modified the Order accordingly.

Statutory Undertakers

4.16 Section 127 of the 2008 Act provides that an Order may only include provisions authorising the CA of statutory undertakers' land if certain conditions are met. The Secretary of State notes the Applicant seeks CA powers both of a permanent and temporary nature for the purposes of constructing, installing, operating and maintaining the Development on statutory undertakers' land [ER 6.4.9]. The Report records that for many statutory undertakers, the protective provisions in Schedule 13 of the Order were considered satisfactory and no objections to the proposed CA provisions were made [ER 6.4.12]. However, the Report also records that at the close of the Examination, there were outstanding representations under section 127(1)(b) of the 2008 Act in respect of the following statutory undertakers' land [E.R. 6.3.1]:

- Kennet Properties Limited ("Kennet Properties");
- Thames Water Utilities Limited ("TWUL");
- Canal & River Trust ("CRT");
- Transport for London ("TFL");
- National Grid ("NG");
- Lee Valley Regional Park Authority ("LVRPA"); and
- Zayo Group Limited ("Zayo").

4.17 Where such a representation is made and has not been withdrawn, the Secretary of State's powers to grant compulsory acquisition in respect of statutory undertakers' land may be exercised only if the Secretary of State is satisfied that the CA will not cause serious detriment to the carrying on of the undertaking. The Order contains an extensive set of protective provisions for the operators of electronic communications code networks; electricity, gas, water and sewerage undertakers; and, specifically, CRT, the Environment Agency and NG. The ExA concluded that the protective provisions in Schedule 13 of the Order, as modified by the ExA, would provide adequate protection of the interests of statutory undertakers [ER 6.4.11 – 6.4.12]. The ExA was therefore satisfied that there is no conflict with the requirements of section 127 or section 138 of the 2008 Act concerning the CA of statutory undertakers' land [ER 6.4.15]. Subject to the protective provisions included for National Grid, the Secretary of State agrees with the ExA's analysis of these issues and that the protective provisions contained within the Order sufficiently protect the interests of these statutory undertakers and there will be no serious detriment to the carrying on of their undertakings. However, the Secretary of State considered it necessary to consult the Applicant and National Grid on the protective provisions included for National Grid's benefit in Part 5 of Schedule 13 for the reasons set out below.

Transport for London

4.18 There were objections raised by TfL during the Examination that had not been withdrawn at the end of the Examination. TfL responded to the Secretary of State's consultations maintaining the following concerns: 1) that it was not specifically named in the Order as a consultee concerning works and requirements which may affect its function; 2) that it was not specifically named in the Order as a consultee on the Code of Construction Practice; and 3) that TfL should not be exposed to any financial or administrative burden as a result of the carrying out of landscaping works which the Applicant is required to undertake as part of the mitigation works.

4.19 The Secretary of State considers that these matters have been considered during the Examination and addressed in the ExA's Report. The Secretary of State agrees with the ExA's conclusions that article 37 and Schedule 3, which requires discharging authorities to consult all relevant and appropriate statutory consultees, is adequate [ER 4.18.13]. It is established practice for such works to be approved by the Local Planning Authority, in consultation with bodies such as TfL. The Secretary of State is also satisfied with the ExA's conclusion that the compulsory acquisition powers that the Applicant is seeking over the plots in question are justified, and that the ExA's amendment to Requirement 11 (Maintenance of Landscaping) in Schedule 2 of the Order ensures that the maintenance of the landscaping remains the responsibility of the Applicant [ER 6.3.32].

National Grid

4.20 Following the close of consultation, the Secretary of State received a letter from National Grid addressed to the Planning Inspectorate dated 22 November 2016 confirming that an agreement with the Applicant on the overlap of powers between The National Grid (North London Reinforcement Project) Order 2014 ("the North London Reinforcement Order") and the proposed Order had been concluded, and that therefore it was withdrawing its objections to the proposed Order on this ground. The letter also confirmed, however, that National Grid's objections on the adequacy of the protective provisions in the Applicant's proposed Order were still outstanding. The Order recommended by the ExA based the form of the protective provisions for National Grid on that submitted by the Applicant [ER 6.3.46] with modifications made by the ExA which it considered addressed the concerns raised by the National Grid.

4.21 However, National Grid's concerns relating to the adequacy of the protective provisions remained outstanding following the close of the Examination. The Secretary of State therefore consulted National Grid and the Applicant on the form of the protective provisions to be included on 13 December 2016 and invited comments on the ExA's recommended protective provisions. Following the receipt of comments from both National Grid and the Applicant, the Secretary of State considered that the ExA's recommended protective provisions required modification in light of the consultation responses in order to ensure that there is no serious detriment to National Grid. The Secretary of State consulted again to invite comments from both parties on a revised version of the protective provisions amended to reflect, where the Secretary of State considered appropriate, the responses to the earlier consultation. National Grid responded to confirm that it considered that this version of the protective provisions adequately protected its interests. However, the Applicant responded with further comments on this version and there was still disagreement on the wording of the protective provisions at the end of the Secretary of State's second consultation. The Secretary of State has included protective provisions for National Grid in a form which the Secretary of State considers protects the interests of National Grid and ensures there is no serious detriment to the carrying on of this undertaking.

Section 132 (Special Category Land)

4.22 The ExA notes that there are 17 plots of land where the Applicant is seeking CA powers to acquire land around the Lee Park Way and on which they propose to undertake a range of improvements. This land is used for the purposes of public recreation and therefore falls within the category of "open space" to which section 132 of the 2008 Act Applies. This requires the Order to be subject to special parliamentary procedure unless the Secretary of State is satisfied that the exemption applies. The exemption to the special parliamentary procedure for such special category land as set out in section 132(3) of the 2008 Act only applies if the Secretary of State is satisfied that the relevant land will be no less advantageous than it was before to persons with interests in it and the public.

4.23 The ExA agrees in the Report with the Applicant's conclusion that those who can currently use the land in question would be able to continue to do so, and that the improvements proposed by the Applicant such as landscaping and other works to improve the land that surrounds the Lee Park Way would mean a safer and more pleasant experience for vehicle users, cyclists and pedestrians. The ExA therefore recommended that the exemption applies and that the Order should not be subject to the special parliamentary procedure. The Secretary of State is satisfied with the ExA's conclusion and confirms that the exemption to the special parliamentary procedures set out in section 132(3) applies in this instance.

Relationship with existing National Grid Order and Plot 21 – New Footpath

4.24 The Secretary of State has considered the relationship between the proposed Order and the North London Reinforcement Order, including the analysis of potential interactions between the two projects agreed by the Applicant and National Grid and the conclusions reached by the ExA on this matter [ER 4.7.8 - 4.7.13]. The Applicant and National Grid confirmed that they have entered into a private agreement to manage any overlap between these projects and National Grid has withdrawn its objections to the proposed Order on this ground. The Secretary of State agrees with the ExA's reasoning on this issue and has concluded that any interactions can be managed by the Applicant and National Grid to allow both projects to proceed.

4.25 Relating to this, the Secretary of State consulted the Applicant and National Grid on whether a further power should be included in the proposed Order to allow for the new footpath in plot 21 to be temporarily stopped up or diverted on request by National Grid to allow works under the North London Reinforcement Order to be carried out. Both the National Grid and the Applicant agreed that such a power should be included, and the Applicant provided suggested text for the proposed new power to be inserted in Article 12 (Public rights of way). Following these responses, the Secretary of State consulted National Grid, the Applicant, TfL and the London Borough of Enfield on an amended version of the proposed wording to be inserted in Article 12 as the Secretary of State considered that the powers should be subject to the control of relevant public authorities.4.22 The Applicant and National Grid responded to say that the proposed power as drafted by the Secretary of State was acceptable. The Secretary of State has modified the Order accordingly to include this power.

4.26 The Canal and River Trust submitted a response to the Secretary of State's consultation of 13 December 2016 to raise a potential issue with the proposed temporary closure powers in relation to Plot 21. CRT later responded to confirm that the temporary closure of the footpath affecting Plot 21 would be unlikely to preclude the CRT's ability to access its neighbouring assets.

Green Belt

4.27 The Secretary of State is satisfied with the ExA's conclusion [ER 5.2.11 – 5.2.12] that the use of the Metropolitan Green Belt ("MGB") is justified because there is no feasible alternative for the temporary laydown area, the MGB land would be used temporarily, and the Order would provide for the establishment of the Green Belt function of the land following construction, and that these considerations outweigh the harm to the MGB and amount to very special circumstances which justify development of the temporary laydown area on MGB.

Public Rights of Way

4.28 The Order contains a provision to allow the Applicant to make some changes to the public rights of way ("PRoW") network on a temporary basis during construction and some permanent diversions. Section 136 of the 2008 Act provides that an Order may only include provisions to extinguish PRoWs if the Secretary of State is satisfied that there will be an alternative PRoW provided or that an alternative PRoW is not required. The Secretary of State agrees with the ExA's conclusion that the proposed changes to the access and rights of way in the Order deals adequately with the consequences to the PRoW of the construction of the Development [ER 4.8.53] and satisfy the requirements of section 136. The Secretary of State notes that where a PRoW is to be extinguished, the Order provides for an alternative to be provided.

5. Other Matters

Environmental Permit

5.1 In addition to development consent required under the 2008 Act, the operation of the proposed Development would be subject to an environmental permit from the Environment Agency ("EA") to prevent adverse impacts on the environment and human health. The Secretary of State notes that an application for an environmental permit was submitted by the Applicant to the EA in parallel with the application for the Order, and that the ExA recorded in the Report that no outstanding issues remained at the close of examination that suggested approval from the EA would not be granted [ER 1.1.20]. In the circumstances, the Secretary of State considers there are no reasons to believe the Environmental Permit and other licences will not be granted in due course.

Transboundary Impacts

5.2 A screening exercise for transboundary impacts was undertaken by the Secretary of State for Communities and Local Government ("SoSCLG") for the purposes of regulation 24 of the 2009 Regulations on 13 March 2015, and again on 9 December 2015 following the Planning Inspectorate's acceptance of the Application documents. SoSCLG applied the precautionary approach set out in the Planning Inspectorate's "Advice Note 12: Transboundary Impacts Consultation", and concluded that the Development was not likely to have a significant effect on the environment of another European Economic Area state. The Secretary of State agrees with this assessment.

Water Framework Directive

5.3 Issues relating to the Water Framework Directive were considered during the Examination. During the Examination, the EA stated in a response to the ExA's first written questions that in order to accurately assess the impacts of works that have not reached the design stage, the EA would require the opportunity to review any pre-construction surveys and designs to ensure that the works are compliant with the Water Framework Directive. The ExA notes that measures in the Applicant's Code of Construction Practice, the requirements of the Environmental Commitments and Mitigation Schedule, along with the permit to be sought from the EA provide mitigation

against any impact relating to water quality and resources during both the construction and operational stage of the Development, and that therefore the Development does not conflict with the Water Framework Directive [ER 5.1.9]. The Secretary of State agrees with the ExA's conclusions on this matter.

Combined Heat and Power

5.4 EN-1 requires that applications for thermal generation stations applied for under the 2008 Act should include Combined Heat and Power ("CHP"). Where a proposal is for a generating station without CHP, EN-1 requires developers to provide evidence that opportunities for CHP have been explored to demonstrate why the proposal should be excluded from being CHP ready. The Application for the Development included a CHP Strategy which concluded that the application of CHP to the Development is not feasible because there are currently no suitable local users of the heat that would be made available from the operational Development. Although the Applicant had not identified any potential future requirements for heat demands that the Development could potentially supply, the Development would be enabled to supply heat in the future when circumstances become more favourable. The ExA concluded therefore that while the Development does not include CHP, because the Applicant has explored the potential for CHP and has demonstrated that the Development would be CHP ready should there be the demand for it in future, the Application meets the CHP requirements of EN-1 [ER 4.4.10]. The Secretary of State has considered the information provided by the Applicant and agrees with the ExA's conclusion that CHP issues have been adequately addressed. The Secretary of State has amended requirement 18 (combined heat and power) to align with combined heat and power policy.

Carbon Capture Readiness (CCR)

5.5 As set out in EN-1 and EN-2, all commercial scale fossil generating stations with a capacity of 300MW or more must be 'Carbon Capture Ready' (CCR). Applicants are required to demonstrate that their proposed development complies with guidance issued in November 2009[2] or any successor to it. As this Application seeks consent for a heat generating station with a gross rated electrical output of no more than 70MW using waste as fuel, the Secretary of State is satisfied that this is not a development to which the CCR requirement applies.

The Infrastructure Planning (Compulsory Acquisition) (Amendment) Regulations 2017 (SI 2017/105)

5.6 The Secretary of State draws the Applicant's attention to the above Regulations which replace the old Form C compulsory acquisition notice in Schedule 1 to the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (SI 2010/104) with new Forms A and B. The Applicant will need to ensure that it uses the new forms in respect of notification of the compulsory acquisition powers conferred in the Order. If the Applicant intends to exercise compulsory acquisition powers by executing general vesting declarations, the Applicant's attention is drawn to The Compulsory Purchase of Land (Vesting Declarations) (England) Regulations 2017 (SI 2017/3), which contain revised forms.

[2] Carbon Capture Readiness A guidance note for Section 36 Applications URN09D/810

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/43609/Carbon_capture_readiness_-_guidance.pdf

6. Consultation and Representations Received After the Close of the Examination

6.1 Following receipt of the ExA's Report, the Secretary of State consulted a number of Interested Parties on 13 December 2016 and 26 January 2017 on the issues listed below. These issues are considered in more detail in this letter in the paragraphs indicated below:

- the time limit for the exercise of compulsory acquisition powers (see paragraph 4.15 of this letter);
- the Protective Provisions to be included for the protection of National Grid's interests (see paragraphs 4.20 – 4.21 of this letter); and
- a further power to allow for the new footpath to be created on Plot 21 to be temporarily stopped up or diverted on request by National Grid to allow works under the North London Reinforcement Order to be carried out (see paragraphs 4.24 – 4.25 of this letter).

6.2 As well as responses from the Applicant, Canal and River Trust and National Grid, the Secretary of State received a response from Transport for London.

6.3 The Secretary of State's consultation letters and responses to the Secretary of State's consultations can be accessed on the Planning Inspectorate website at:

https://infrastructure.planninginspectorate.gov.uk/projects/london/north-london-heat-and-power-project/?ipcsection=docs&stage=6&filter1=BEIS+Consultation

6.4 The Secretary of State also received the following correspondence after the close of the examination:

- An email from National Grid dated 22 November 2016 confirming that it had concluded a private agreement with the Applicant on the overlap of powers between the North London Reinforcement Order and this Order and that it therefore it withdrew its objections on this ground. National Grid also confirmed in this email that it maintained its objection on other outstanding matters and reemphasised the need to attach appropriate Protective Provisions in the Order to ensure that their interests are protected (this is considered in paragraphs 4.20 – 4.21 above).

- A letter dated 29 September from Eastern Power Networks Limited confirming that it had reached a private agreement with the Applicant and that they had no outstanding objections; a letter from the Applicant dated 30 November 2016 confirming the same.

- A letter from Zayo Group UK Limited dated 29 September 2016 confirming that it had reached a private agreement with the Applicant and that it therefore withdrew its objections; and a letter from the Applicant dated 4 October confirming the same.

- An email from Mr David Arweny dated 25 September 2016 stating the Development should not be granted consent due to lack of housing in the area, and that instead the site should be used for housing development. The Secretary of State does not consider that this matter impacts on the Examiner's consideration of the need for the Development or the decision in relation to this Application.

7. General Considerations

Equality Act 2010

7.1 The Equality Act 2010 includes a public sector "general equality duty". This requires public authorities to have due regard in the exercise of their functions to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Act; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect of the following "protected characteristics": age; gender; gender reassignment; disability; marriage and civil partnerships[3]; pregnancy and maternity; religion and belief; and race. The Secretary of State is satisfied that there is no evidence of any harm, lack of respect for equalities, or disregard to equality issues in relation to the Application.

Human Rights Act 1998

7.2 The Secretary of State has considered the possible interference with human rights protected by the Human Rights Act 1998 by the Development and compulsory purchase powers. The Secretary of State notes that the ExA concluded that the proposed interference with human rights would be for legitimate purposes that would justify such interference in the public interest and to a proportionate extent. The Secretary of State agrees with the ExA's rationale for reaching its conclusion, as set out in ER 9.7.5. The Secretary of State therefore considers that the grant of development consent would not violate any human rights protected by the Human Rights Act 1998.

Natural Environment and Rural Communities Act 2006

7.3 The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, has to have regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting development consent. The Secretary of State is of the view that the Report considers biodiversity sufficiently to accord with this duty.

8. Secretary of State's conclusions and decision

8.1 For the reasons given in this letter, the Secretary of State considers that there is a compelling case for granting development consent, given the national need for the proposed Development and that the potential adverse local impacts of the Development do not outweigh the benefits of the scheme, as mitigated by the terms of the Order.

8.2 The Secretary of State has therefore decided to accept the ExA's recommendation in paragraph 8.1.4 of the Report to make the Order granting development consent and to impose the requirements recommended by the ExA, but subject to the modifications described below.

9. Modifications to the Order

9.1 In considering the recommended Order submitted with the ExA's report, the Secretary of State has decided to make modifications to the Order. The principal modifications, and the reasons for them, are set out below.

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[3] In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

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The Order has been amended to ensure that it complies with current drafting practice and ensures certainty of consent granted. In particular, the Secretary of State has made the following modifications:

- Amendment of the wording in relation to the capacity of the generating station in Schedule 1 (authorised development) to remove the reference to a minimum capacity and to instead refer to a maximum capacity of 70MWe. The environmental statement refers to a capacity of around 70MWe but the Secretary of State considers that it is appropriate to include a maximum figure and has included 70MWe as this has been assessed in the environmental statement.
- Amendments of Schedule 13 (protective provisions), Part 5 (for the protection of National Grid as electricity and gas undertaker) to reflect the outcome of the Secretary of State's consultation on this matter and to ensure that there will be no serious detriment to the carrying on of their undertaking as a result of the exercise of CA powers in the Order (see paragraphs 4.20 – 4.21).
- Amendments to Article 12 (public rights of way) to reflect the outcome of the Secretary of State's consultation in relation to powers to stop up the new footpath in plot 21 (see paragraphs 4.24 – 4.25).
- Amendments to Article 20 (time limit for exercise of authority to acquire land compulsorily or use land temporarily) to reflect the outcome of the Secretary of State's consultation on the appropriate time limit for the exercise of compulsory acquisition powers (see paragraph 4.15).
- Amendments to Article 34 (arbitration) to provide that, failing agreement between the parties, the Secretary of State is to appoint an arbitrator.
- Amendments to requirement 18 (combined heat and power) to align with combined heat and power policy.
- Removal of what was Article 22 (statutory authority to override easements and other rights) in the ExA's recommended Order as the Secretary of State considers that this unnecessarily duplicates section 158 (nuisance: statutory authority) of the 2008 Act.
- Amendments to Article 23 (application of the Compulsory Purchase (Vesting Declarations) Act 1981 to reflect the fact that sections 3 and 5(1) of that Act have been repealed.

10. Challenge to decision

10.1 The circumstances in which the Secretary of State`s decision may be challenged are set out in the note attached in Annex A to this letter.

11 Publicity for decision

11.1 The Secretary of State`s decision on this application is being publicised as required by section 116 of the 2008 Act and regulation 23 of the 2009 Regulations.

Yours sincerely,

Giles Scott

Giles Scott, Head of Energy Infrastructure Planning and Coal Liabilities

Department for
Business, Energy
& Industrial Strategy

Annex A

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the date when the Order is published (or, if later, the day after the day on which the Secretary of State's Statement of Reasons (the decision letter) is published). The North London Heat and Power Generating Station Order 2017 as made is being published on the date of this letter on the Planning Inspectorate website at the following address:

https://infrastructure.planninginspectorate.gov.uk/projects/london/north-london-heat-and-power-project/

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge, you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London WC2A 2LL (0207 947 6655).