



**Deadline 5: Applicant's Response to the Examining Authority's Further Written Questions (ExQ3)**

**Appendix G – North London Heat and Power Project (NLHPP) Recommendation Report to Secretary of State**

**Wheelabrator Kemsley (K3 Generating Station) and Wheelabrator Kemsley North (WKN) Waste to Energy Facility Development Consent Order**

**PINS Ref: EN010083**

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**June 2020 – Deadline 5**





# The Planning Inspectorate Yr Arolygiaeth Gynllunio

**The Planning Act 2008**

**North London Heat and Power Project**

**Examining Authority's Report of Findings and Conclusions**

**and**

**Recommendation to the**

**Secretary of State for Business, Energy and Industrial Strategy**

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**Paul Hudson**

**Examining Authority**

**24 November 2016**



## **File Ref EN010071**

### **NORTH LONDON HEAT AND POWER GENERATING STATION ORDER 201( )**

This application was made pursuant to section 37 of the Planning Act 2008 (PA 2008) to enable the construction, operation and maintenance of an electricity and heat generating station of around 70 megawatts at the Edmonton EcoPark in north London, with associated development including a resource recovery facility for associated waste management purposes, household recycling, and a new visitors' centre.

The applicant is the North London Waste Authority.

The application was submitted to the Planning Inspectorate on 15 October 2015 and accepted by the Secretary of State for Communities and Local Government for examination on 11 November 2015.

The examination of the application began on 25 February 2016 and was completed on 24 August 2016.

The authorised development would consist of a new energy recovery facility, a nationally significant infrastructure project as defined in sections 14 and 15 PA 2008 in the London Borough of Enfield. It would generate electricity and heat from residual waste and would replace the existing energy from waste facility at the Edmonton EcoPark, which is expected to cease operations in around 2025.

Associated development within the meaning of section 115(2) of PA 2008 would include:

- 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;

- site preparation and demolition works;
- decommissioning, demolition and removal of the existing energy from waste facility; and
- such other minor works as may be necessary or expedient.

**Summary of Recommendation: The Examining Authority recommends that the Secretary of State should make the Order in the form at Appendix D.**

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# 1 INTRODUCTION

- 1.1.1 The main development proposed by this application is for the construction, operation and maintenance of an energy recovery facility (ERF) capable of an electrical output of around 70 megawatts (MWe) at the Edmonton EcoPark in north London. The proposed ERF would replace an existing energy from waste (EfW) facility at the Edmonton EcoPark, which has been in operation for about 45 years, with one with approximately double the capacity for handling waste as the input source of material for energy generation. A resource recovery facility (RRF) is also proposed which would be the receiving point for domestic waste to be handled and sorted prior to combustion in the ERF.
- 1.1.2 A useful overview of the main proposals is contained in the non-technical summary of the Environmental Statement (APP-038), and a selection of plans contained in a document titled Design Code Principles (REP8-002).
- 1.1.3 The applicant is the North London Waste Authority (NLWA), a statutory authority established in 1986 whose principal responsibility is the disposal of waste collected by the seven north London Boroughs of Barnet, Camden, Enfield, Hackney, Haringey, Islington and Waltham Forest. NLWA is the UK's second largest waste disposal authority, handling approximately 3% of the total national Local Authority Collected Waste (LACW) stream (APP-018).
- 1.1.4 Throughout the rest of this report, the North London Heat and Power Project application is abbreviated to "NLHPP". This abbreviation is used when referring to the whole scheme within the application site<sup>1</sup> comprising the:
- proposed ERF and RRF;
  - proposed new northern and eastern accesses;
  - temporary development to the east of the River Lee Navigation proposed for construction purposes; and
  - eventual demolition of the existing EfW facility.
- 1.1.5 The proposed operational Edmonton EcoPark site is shown on drawing number A\_0004 (REP8-001). This is a smaller area than the whole application site as it does not include the land for temporary construction purposes. It is essentially the same site as the existing Edmonton EcoPark shown on drawing number

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<sup>1</sup> the red line boundary embracing all elements of the authorised development within the Order limits as defined in article 2 of the draft Order (REP8-003)



A\_0003, but with the addition of the proposed new northern access. Where this report uses the term "EcoPark" that is either the existing or the proposed new Edmonton EcoPark as the context requires.

- 1.1.6 Documents considered during the examination are listed in Appendix B of this report, and where they are referred to in the text they are cited with a unique reference category and number assigned to them as appropriate. Where application documents have been updated during the examination it is the final version which is generally referred to in this report.
- 1.1.7 The application for a Development Consent Order (DCO, or Order) to grant development consent for the NLHPP was submitted to the Planning Inspectorate on 15 October 2015, and accepted on behalf of the Secretary of State for Communities and Local Government for examination on 11 November 2015. I was appointed by the Secretary of State on 19 November 2015 under s61 of the Planning Act 2008 (PA 2008) as the Examining Authority (ExA) to examine and report on the application under s74 PA 2008 (PD-004). The examination of the application began on 25 February 2016 and was completed on 24 August 2016.
- 1.1.8 The proposed ERF constitutes a nationally significant infrastructure project (NSIP) for the purposes of sections 14(1)(a) and 15(2) PA 2008 because it involves the construction of a generating station that would have a capacity of more than 50MWe.
- 1.1.9 To the extent that the proposed development is or forms part of a NSIP, development consent is required before that project can proceed (s31 PA 2008). Development consent under the PA 2008 can only be granted by the Secretary of State, and this report provides the Secretary of State for Business, Energy and Industrial Strategy with my findings, conclusions and recommendation on the application for development consent for the NLHPP. This report also contains my recommendations on whether to grant consent for the powers sought for compulsory acquisition (CA) of land and rights, and the terms of the DCO should the Secretary of State decide to grant development consent for the application.
- 1.1.10 The application is Environmental Impact Assessment (EIA) development as defined by the EIA Regulations<sup>2</sup>. It was accompanied by an Environmental Statement (ES) which in my view meets the definition and the minimum requirements of an ES as set out in Regulation 2(1) of the EIA Regulations. Other

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<sup>2</sup> Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 as amended

environmental information pertaining to the environmental effects of the development was supplied by the applicant and other parties during the course of the examination.

- 1.1.11 In reaching my recommendation, I have taken all the environmental information into consideration in accordance with Regulation 3(2) of the EIA Regulations.

### **The examination**

- 1.1.12 As the Examination Library in Appendix B illustrates, 20 Relevant Representations (RR) and 12 Written Representations (WR) were received concerning the proposal, almost entirely from statutory bodies and adjacent landowners. There were also a considerable number of submissions from the applicant, made at deadlines during the examination. I sought the applicant's response to the RRs at an early stage in the examination (REP1-003).

- 1.1.13 A Preliminary Meeting (PM) was held on 24 February 2016 at which the applicant and all other Interested Parties (IP) were able to make representations to me about how the application should be examined (PD-005, EV-001 and 002). My procedural decisions as the ExA were issued on 2 March 2016 (PD-007), with some minor variations to the proposed timetable, and the examination proceeded broadly in line with this. In addition, I set out decisions in relation to Statements of Common Ground (SoCG), Local Impact Reports (LIR) and an updated draft DCO and Explanatory Memorandum (EM).

- 1.1.14 My first written questions were issued simultaneously with my letter of 2 March 2016 (PD-008) and covered a wide range of matters concerning:
- the context provided by other development proposals in the vicinity;
  - the impact of part of the proposed development on land designated as Green Belt;
  - environmental issues, including water resources, flood risk and visual impacts;
  - traffic, transport and access arrangements;
  - CA matters, and
  - the draft DCO.

- 1.1.15 Following the receipt on:

- 23 March 2016 (at deadline 2) of WRs;

- 6 April 2016 (at deadline 3) of the LIRs, responses to my first written questions, a number of SoCGs and a revised version of the draft DCO; and
- 27 April (at deadline 4) of subsequent comments on these documents received,

I issued on 11 May 2016 my second written questions (PD-009). These covered matters such as transportation, temporary development and the draft DCO, and were directed particularly to the applicant.

- 1.1.16 I held two issue specific hearings (ISH) on 18 March and 5 July 2016 to consider the structure and content of the draft DCO. Several of the statutory bodies such as Thames Water Utilities Ltd (TWUL), National Grid (NG) and Transport for London (TfL) had concerns about the protection of their interests in the draft DCO, and the matters which arose are dealt with in detail in Chapter 6.
- 1.1.17 I took the representations submitted by Kennet Properties Ltd<sup>3</sup> and TWUL (RR-014 and 015, and REP2-007), and NG (REP2-013) to be formal requests for a CA hearing. This I held on 6 July 2016 to enable me to be satisfied about specific CA provisions in the draft Order. Three requests for an open floor hearing (OFH) were received, and consequently I held such a hearing covering two sessions on 5 July 2016 to ensure all those participating in the examination had every opportunity to put their concerns to me.
- 1.1.18 During the later stages of the examination, I issued several requests for information<sup>4</sup> particularly relating to the final position of those who had submitted objections to the CA provisions, in the light of negotiations with the applicant.
- 1.1.19 I carried out an accompanied site inspection at the beginning of the examination on 17 March 2016, and another one towards the end on 17 August 2016, as well as several unaccompanied site inspections before the PM and during the examination. The examination closed on 24 August 2016.
- 1.1.20 In addition to development consent required under the PA 2008, the operation of the proposed development would be subject to an environmental permit<sup>5</sup> from the Environment Agency (EA) to prevent adverse impacts on the environment and human health. An application for an environmental permit was submitted to the EA in parallel with the application for development consent

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<sup>3</sup> a property owning subsidiary of Thames Water

<sup>4</sup> Rule 17 The Infrastructure Planning (Examination Procedure) Rules 2010 (as amended)

<sup>5</sup> Environmental Permitting Regulations 2010 as amended 2016

(REP2-004), and at the time the examination closed, no outstanding issues remained which would suggest approval from the EA would not be granted.

- 1.1.21 As set out in Chapter 4, I decided there was no need to prepare a Report on Implications for European Sites (RIES), contingent provision for which had been made in the examination programme.
- 1.1.22 I am satisfied that all those making representations had a full opportunity to participate in the examination through the written submissions made and at the hearings. I took these matters and all representations properly made into account in my findings, conclusions and recommendation.

### **Structure of the report**

- 1.1.23 Chapter 2 sets out the main features of the site of the proposed development and the contents of the application. Chapter 3 summarises the legal and policy context applicable to it. In Chapter 4, my findings and conclusions in respect of each of the main considerations and on the development merits are set out. Chapter 5 considers the case for granting development consent and advice to the Secretary of State if he agrees with my conclusion that the proposal is compliant with relevant policy. Chapter 6 deals with CA and related matters. Chapter 7 considers the proposed draft Order, the changes which were made to it during the course of the examination, and further modifications I feel are necessary to make the draft Order acceptable if the Secretary of State decides to grant development consent. Chapter 8 sets out my overall conclusions and recommendation that the Order should be made for the reasons given.
- 1.1.24 The main events occurring during the examination are listed in Appendix A. Appendix B is the comprehensive Examination Library containing the documents submitted by the applicant and others according to the various deadlines, with the reference used assigned to each document. Appendix C contains a list of the main abbreviations used in this report. Finally, Appendix D is the recommended final version of the draft Order. It is as submitted by the applicant at the conclusion of the examination with the further modifications I propose.

## **2 MAIN FEATURES OF THE PROPOSAL**

### **2.1 EXISTING SITE USE AND OPERATION**

2.1.1 The Edmonton EcoPark is an existing waste management complex of about 16 hectares (ha) operated on behalf of the applicant by a wholly owned company, London Waste Limited (LWL). The main elements are:

- an EfW plant which treats circa 540,000 tonnes per annum (tpa) of residual waste and generates around 40MWe (gross) of electricity through turbines driven by high pressure steam raised by the boilers; electricity is transmitted by underground 33 kiloVolt (kV) cables to the 275kV grid network at Tottenham Grid Substation; treated flue gas is discharged to the atmosphere via a 100m tall (above ground level) stack;
- an in-vessel composting (IVC) facility which processes food, landscaping and other green waste from kerbside collections and reuse and recycling centres (RRCs); it currently manages around 30,000 tpa, but has a permitted capacity of 45,000 tpa;
- a bulky waste recycling facility (BWRf) and fuel preparation plant (FPP) which together receive over 200,000 tpa of bulky waste from RRCs and direct deliveries; these plants recycle wood, metal, plastic, paper, card and construction waste, and shred waste suitable for combustion;
- an incinerator bottom ash (IBA) recycling facility which processes ash from the EfW; IBA is collected from below the grates, quenched in a water bath and then passed under an electromagnet which separates out ferrous metals for recycling; aggregates suitable for use in construction are produced from the ash;
- associated offices, car parking and plant required to operate and maintain the EcoPark as a whole; and
- a former wharf and single storey building utilised by the Edmonton Sea Cadets under a lease.

2.1.2 The EcoPark operates 24 hours a day, seven days a week, and employs approximately 193 full-time equivalent (FTE) people, about 96 of whom are directly related to the existing EfW plant. The remaining employees are responsible for other site operations and/or the management of LWL and the EcoPark as a whole (e.g. security, visitors and education and administration).

2.1.3 The other main land use is that to the east of the River Lee Navigation proposed for temporary purposes. This is currently scrubland with a number of electricity cables on wooden poles crossing the site. Although there is no public access and the site is unused, from my site inspections there is evidence of several unauthorised camps currently being occupied by groups of homeless people.

## **2.2 THE APPLICATION SITE AND SURROUNDINGS**

2.2.1 The application site extends to approximately 22ha and is located wholly within the London Borough of Enfield (LBE). It comprises:

- the existing Edmonton EcoPark waste management site, where the proposed new ERF would be located;
- part of Ardra Road and land around an existing water pumping station;
- Deephams Farm Road;
- part of Lee Park Way; and
- land to the east of the River Lee Navigation to form a temporary construction site for parking, offices, storage and fabrication uses.

2.2.2 Land to the north and west of the application site is predominantly industrial in nature. Immediately to the north is an existing materials recycling facility which is operated by a commercial waste management company (Biffa), alongside other industrial buildings. Further north is the Deephams Sewage Treatment Works (STW) and beyond the industrial area to the north-west is a small residential area off Pickett's Lock Lane.

2.2.3 To the west of the application site is the Eley Industrial Estate, a mixture of industrial, office and warehousing uses. To the south, the application site is bounded by Advent Way adjacent to the A406 North Circular Road (Angel Road). Beyond the A406 North Circular Road are retail and trading estates; this area is identified by LBE for a future mixed use development scheme known as Meridian Water.

2.2.4 On the eastern side of the EcoPark is a wharf and single storey building which is currently leased to the Edmonton Sea Cadets. The immediate eastern boundary of the EcoPark is formed by the Lee Valley Regional Park (LVRP) and River Lee Navigation, a canalised river which flows through the LVRP. To the east of the River Lee Navigation is the William Girling Reservoir along with an area currently occupied by Camden Plant Ltd. which is used

for the crushing, screening and stockpiling of waste concrete, soil and other recyclable materials.

- 2.2.5 Vehicular access to the site is from Advent Way to the south of the existing EcoPark, with a secondary gated emergency access to the north via Deephams Farm Road and Ardra Road to Meridian Way (A1055). There is no public access to the site or footpaths crossing it. Lee Park Way, a private road which also forms National Cycle Network (NCN) Route 1, runs alongside the River Lee Navigation.
- 2.2.6 There is no housing anywhere within the application site. The closest residential development to the application site is Badma Close approximately 60m west of Ardra Road, Zambezie Drive approximately 125m west of the EcoPark, and on Lower Hall Lane approximately 470m east of the EcoPark. However, the housing on Lower Hall Lane would be approximately 150m from the boundary of the land to be used for temporary construction purposes within the application site.
- 2.2.7 The LVRP lying to the east of the application site comprises waterways, reservoirs and green space and is designated as Metropolitan Green Belt (MGB). Part of the LVRP is also designated as a Site of Metropolitan Importance for Nature Conservation (SMINC), the boundary of which just extends into the application site.
- 2.2.8 Within the LVRP and approximately 300m north-east of the application site boundary is the William Girling Reservoir, and beyond this the King George's Reservoir. These are known collectively as the Chingford Reservoirs and are designated as a Site of Special Scientific Interest (SSSI). Lockwood Reservoir lies approximately 1.5km south of the application site and is one of ten reservoirs forming the Walthamstow Reservoirs, which are part of the designated Lee Valley Special Protection Area (SPA) and Lee Valley Ramsar site. Ainslie Wood Local Nature Reserve (LNR) is located approximately 1.5km east of the application site boundary.
- 2.2.9 Salmon's Brook runs along the western boundary of the application site. Enfield Ditch runs along the eastern and southern edges of the EcoPark, before discharging into Salmon's Brook in the southwest corner of the application site.
- 2.2.10 The application site is located within an EA designated groundwater Source Protection Zone (SPZ) 1 and 2. It is also partly located within Flood Zone 2, which indicates it is at medium risk of flooding. The remainder of the application site is in Flood Zone 1 which indicates a low risk of flooding.
- 2.2.11 The geology of the application site comprises made ground, alluvial deposits, Kempton Park Gravels, London Clay, Lambeth

Group, Thanet Sand and White Chalk. It is underlain by several secondary aquifers and one principal aquifer.

2.2.12 The entire application site is within the Air Quality Management Area (AQMA) which covers the whole area of the LBE.

2.2.13 The nearest listed building is 110m east of the application site boundary (Chingford Mill Pumping Station Grade II listed). There are no conservation areas within or near the application site.

### **2.3 PLANNING HISTORY OF THE APPLICATION SITE**

2.3.1 The Planning Statement (APP-018) contains the planning history of the application site and current development proposals in the surrounding area. The existing EfW plant was commissioned in 1971, and since then the site has seen the development of a number of additional waste facilities, becoming the Edmonton EcoPark in the late 2000s.

2.3.2 Plans were rejected in 2002 for expansion of the existing EfW plant, which would have made it the largest household waste incinerator in Europe. In the following years, planning permission was granted for the creation of an IVC facility and BWRf. In 2009, LWL applied for planning permission for a comprehensive redevelopment of the Edmonton EcoPark site, but this application was later withdrawn as the NLWA was at that time proposing procurement for waste management services that envisaged a different use of the site. However, this procurement process itself was subsequently abandoned as detailed in the Alternatives Assessment Report (APP-019).

2.3.3 A number of existing planning permissions and major development proposals in the vicinity of the EcoPark are relevant to the assessment of the application:

- National Grid (North London Reinforcement Project) Order 2014 - two existing 275kV overhead lines running between Waltham Cross and Tottenham Grid Substation pass over part of the application site; a DCO for the upgrading of one of these to 400kV was granted in April 2014 (NG DCO);
- Meridian Water - a Masterplan approved by LBE in 2013<sup>6</sup> for the site to the south of the North Circular Road proposes up to 5,000 new homes and 3,000 new jobs in a new mixed use neighbourhood, to be connected to the proposed Lee Valley Heat Network (LVHN).

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<sup>6</sup> LB Enfield and LDA Design (2013) Meridian Water Masterplan, July 2013



- Deephams STW - planning permission was granted in 2015 to upgrade existing infrastructure at Deephams STW, which lies approximately 350m to the north of the EcoPark;
- Kedco Waste Wood Biomass Plant - planning permission was granted in 2013 for a change of use from an existing storage building approximately 330m to the west of the EcoPark to an industrial facility for the production of renewable energy; and
- Camden Plant Ltd - the most recent planning permission for the site to the east of the River Lee Navigation expired in 2000; conditions requiring reinstatement have not yet been implemented, and LBE has issued an enforcement notice.

## **2.4 THE PROPOSED DEVELOPMENT**

2.4.1 The existing EfW plant is expected to cease operations in around 2025 and the proposed development would replace it with a more efficient ERF to produce electricity and heat from residual waste. The proposed development is described in full in the application documents, particularly the ES (REP8-015 to 023) and the Works Plans (REP8-001), supplemented by illustrative plans included in the Design Code Principles (REP8-002).

2.4.2 The main features of the project would comprise:

- a northern area of the EcoPark where the proposed ERF would be constructed;
- the existing BWRf and FPP activities would be relocated within the application site; the IVC facility would be decommissioned and IBA recycling would take place off-site;
- a southern area of the EcoPark would accommodate the proposed RRF, and a visitor, community and education centre with offices and a base for the Edmonton Sea Cadets (EcoPark House);
- the existing EfW which is currently located in the centre of the EcoPark would be decommissioned and demolished once the replacement ERF is fully operational; the site would be cleared and would be available for future waste-related development (not part of this application for development consent);
- a new landscaped area along the eastern edge of the EcoPark adjoining the River Lee Navigation; and

- new northern and eastern vehicular accesses into the EcoPark.

2.4.3 In addition, a temporary construction site (termed the temporary laydown area in the application) is proposed on land to the east of the River Lee Navigation. The applicant states that this temporary laydown area is required for the construction phase because there is insufficient space within the EcoPark to construct the proposed new development at the same time as keeping the existing EfW service in full operation.

2.4.4 In terms of the application for development consent for the NHLPP, the principal development comprising the NSIP (Works No. 1a) would be the proposed ERF. This would consist of two process lines, each having a grate, furnace, boiler and a flue gas treatment plant, and a proposed capacity of 350,000 tpa. The total capacity of the proposed ERF would be 700,000 tpa therefore. The boilers would supply steam to a turbine generator with an air cooled condenser, capable of an electrical output of around 70MWe (gross) of electricity, and including equipment for heat off-take.

2.4.5 Associated development (Works Nos. 1b to7) within the meaning of s115(2) PA 2008 would comprise:

- buildings, structures, plant and equipment needed for the operation of the ERF, including a waste water treatment facility, a water pre-treatment plant and electrical substation(s);
- the RRF which would include a recycling and fuel preparation facility (RFPF), a RRC, related plant and equipment, offices, and staff and visitor welfare facilities;
- construction of EcoPark House to provide visitor, community and education facilities, office accommodation, and a boat canopy for use by Edmonton Sea Cadets;
- diversion, removal, replacement, modification and creation of utilities and infrastructure works across the operational site as a whole;
- landscaping, vehicle, cycle and pedestrian routes, parking, weighbridges security and lighting;
- widening of the existing entrance into the EcoPark from Advent Way, including modification of the bridge over Enfield Ditch;
- construction of a new eastern access to the EcoPark from Lee Park Way, including bridging over Enfield Ditch,

improvements to Lee Park Way and the existing bridge over the River Lee Navigation;

- improvements to Deephams Farm Road and its use as a new northern access to the EcoPark;
- creation of the temporary laydown area to the east of the River Lee Navigation including areas of hardstanding for vehicle parking, storage and fabrication, office and staff welfare accommodation, utility works and vehicular, cycle and pedestrian accesses from Lee Park Way and Walthamstow Avenue;
- demolition of existing buildings, structures and plant (excluding the existing EfW), site preparation works, and construction of a temporary ash storage building;
- decommissioning and demolition of the existing EfW including removal of the existing stack and demolition of the existing water pumping station on Ardra Road;
- such other works as may be necessary in connection with the construction, operation and maintenance of the authorised development which do not give rise to any materially new or different environmental effects from those assessed and set out in the ES.

2.4.6 Some aspects of the project design have yet to be fixed, for example, the precise location and scale of the buildings. In order to accommodate this, the application is based on limits of deviation set out in the Book of Plans (REP8-001), which establish the area in which the development can be located, and the maximum building envelopes. Illustrative plans included in the Design Code Principles (REP8-002) set out the indicative form and location of buildings, structures, plant and equipment.

### **Stages of development**

2.4.7 The proposed ERF is intended to be operational before the end of 2025, but with the precise timing contingent on identifying a suitable technology supplier and contracts for design, build and operation. Site preparation and construction would be undertaken over a number of years and it is expected that the earliest construction would commence is 2019/20. Construction would be implemented in stages to ensure that the existing waste management operations based on the EfW remain functioning until the new ERF is fully commissioned.

2.4.8 The components of each stage of development are set out in detail in the Planning Statement (APP-018), and in summary would comprise:

- stage 1a: site preparation and enabling works, including the Deephams Farm Road access, diversion of utilities and services; creation of the new Lee Park Way access and establishment of the temporary laydown area and its accesses;
- stage 1b: construction of the RRF, EcoPark House, an adjacent staff and visitor parking area, a temporary ash storage building; bringing into use the temporary laydown area and the new Lee Park Way access;
- stage 1c: operation of the RRF, EcoPark House and the RRC element of the RRF building via the new Lee Park Way access; demolition/clearance of the FPP, BWRP, IBA and IVC to create the site for the proposed ERF;
- stage 1d: construction of the ERF and a new pumping station on Ardra Road to abstract raw water from Deephams STW outflow channel;
- stage 2: commissioning of the ERF alongside continuing operation of the existing EfW;
- stage 3: operation of the ERF, RRF and EcoPark House; decommissioning and demolition of the EfW and existing water pumping station on Ardra Road; construction of a widened southern access to the EcoPark from Advent Way; completion of landscaping; restoration of the temporary laydown area; and
- stage 4: full use of the ERF, RRF and EcoPark House, i.e. the final operational situation.

### **Project outputs**

- 2.4.9 The proposed ERF would have a gross electrical power generation capacity of circa 70MWe. The ancillary site electrical load would be approximately 9MWe, leaving 61MWe available for export to the grid. This would be transmitted from the UK Power Networks (UKPN) switchgear on the EcoPark via underground cabling circuits to the Tottenham Grid Substation, located approximately 2km from the application site.
- 2.4.10 The proposed ERF could also supply up to 160MWth of heat, but at this level, gross electrical output would diminish to 15MWe. However, the actual likely peak heat demand is expected to be about 35MWth. Two routes have been safeguarded within the application site for the supply of heat in the form of hot water or steam to third party customers.

## **2.5 CHANGES TO THE APPLICATION DURING THE EXAMINATION**

2.5.1 The application was formally accepted for examination on 11 November 2015. The applicant subsequently submitted on 23 December 2015 a number of further documents prior to the PM and the formal start of the examination:

- a response to a post acceptance letter from the Planning Inspectorate (APP-056);
- a revised Book of Reference (APP-057) and CA Powers Roadmap (APP-058);
- a definitive list of Category 3 Persons (APP-060).

2.5.2 On 6 April 2016, the applicant submitted a number of additional documents as part of its responses to my first written questions (REP3-016) covering:

- illustrative masterplans, drawing nos. E\_0009, E\_0010;
- explanatory diagrams relating to Schedules 6 to 8 of the draft DCO;
- an updated schedule of cumulative developments;
- additional photomontages in Figures 8.1.1 to 8.1.16;
- a technical note covering traffic flows on Ardra Road;
- updated Tables 1 to 4 of the Statement of Reasons;
- SoCGs with the Greater London Authority (GLA), Lee Valley Regional Park Authority (LVRPA), Natural England (NE) and TfL (REP3-012, 013, 014 and 015); and
- an amended draft DCO (REP3-018) and Table of Revisions (REP3-017).

2.5.3 I concluded that these did not constitute material changes to the application and accordingly formally accepted these for examination at the PM (EV-002) and as part of the submissions at deadline 3. During the course of the examination itself, I requested a number of supplementary documents to clarify elements of the proposal. Conversely, some original application documents were superseded or withdrawn by the applicant. All these changes are reflected in the applicant's final revised application documents submitted at deadline 8.

2.5.4 Accordingly, I am satisfied that the proposed authorised development in Schedule 1 of the draft Order comprising the

NSIP (Works No. 1a), the various elements of associated development (Works Nos. 1b to 7), and the range of further works listed following Works No. 7 in the draft Order are capable of being granted development consent under s115 PA 2008.

## 3 LEGAL AND POLICY CONTEXT

### 3.1 LEGAL FRAMEWORK

3.1.1 As an NSIP, this is an application where a relevant national policy statement (NPS)<sup>7</sup> has effect. Under s104 PA 2008 the Secretary of State must decide the application in accordance with the NPS, and in doing so he must have regard to:

- any local impact report (LIR);
- any prescribed matters; and
- any other matter the Secretary of State thinks both important and relevant to his decision.

3.1.2 NPSs that are relevant to the consideration of this application are the:

- Overarching National Policy Statement for Energy EN-1 (NPS EN-1)<sup>8</sup>; and
- National Policy Statement for Renewable Energy Infrastructure EN-3 (NPS EN-3)<sup>9</sup>.

#### **Overarching National Policy Statement for Energy**

3.1.3 NPS EN-1 sets out how the energy sector can help to deliver the Government's climate change objectives and contribute to a diverse and affordable energy supply for the UK. It covers Government policy on energy and energy infrastructure development, the assessment principles for deciding applications and how impacts from new energy infrastructure should be considered in applications.

3.1.4 The NPS demonstrates the need case for those types of energy infrastructure and given the scale and urgency of that need the [IPC]<sup>10</sup> should start with a presumption in favour of granting consent to applications for energy NSIPs unless any more specific and relevant policies clearly indicate that consent should be refused (paragraph 4.1.2, NPS EN-1).

3.1.5 In considering any proposed development, and in particular when weighing its adverse impacts against its benefits, the [IPC] should take into account:

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<sup>7</sup> as defined in s5 PA 2008 and referred to in s104 of the Act

<sup>8</sup> Department of Energy and Climate Change, Overarching National Policy Statement for Energy (EN-1), July 2011

<sup>9</sup> Department of Energy and Climate Change, National Policy Statement for Renewable Energy Infrastructure (EN-3), July 2011

<sup>10</sup> the former Infrastructure Planning Commission, merged with the Planning Inspectorate in April 2012

- its potential benefits including its contribution to meeting the need for energy infrastructure, job creation and any long-term or wider benefits; and
- its potential adverse impacts, including any long-term and cumulative adverse impacts, as well as any measures to avoid, reduce or compensate for any adverse impacts (paragraph 4.1.3).

3.1.6 Part 4 of NPS EN-1 sets out the assessment principles in considering applications for development consent. Those which I regard as particularly significant in relation to this application are:

- (a) in the event of a conflict between Development Plan Documents or any other documents and an NPS, the NPS prevails for the purposes of decision-making given the national significance of the infrastructure (paragraph 4.1.5);
- (b) from a policy perspective, there is no general requirement to consider alternatives or to establish whether the proposed project represents the best option (paragraph 4.4.1);
- (c) good design for energy infrastructure goes far beyond aesthetic considerations, but is important for fitness for purpose and sustainability; it is acknowledged that the nature of much energy infrastructure development will often limit the extent to which it can contribute to the enhancement of the quality of the area (paragraph 4.5.1);
- (d) substantial additional positive weight should be given to applications incorporating CHP (paragraph 4.6.8); and
- (e) the planning and pollution control systems are separate, but complementary; in considering an application for development consent, [the IPC] should focus on whether the development itself is an acceptable use of the land, and on the impacts of that use, rather than the control of processes, emissions or discharges themselves (paragraph 4.10.2).

3.1.7 Part 5 of NPS EN-1 contains a range of generic impacts covering 14 topics that should be considered as the most frequently arising matters in handling applications for energy NSIPs.



## **National Policy Statement for Renewable Energy Infrastructure**

- 3.1.8 NPS EN-3 sets out the technology-specific considerations to be taken into account additionally in the preparation and assessment of applications for renewable energy infrastructure, including those using waste as a fuel and generating more than 50 MWe of electricity. The NPS recognises that EfW will play an increasingly important role in meeting UK's energy needs. It can also contribute to meeting UK's renewable energy targets where the waste burned is deemed renewable (paragraph 2.5.2, NPS EN-3).
- 3.1.9 Specific assessment principles relevant to EfW applications include:
- air quality and emissions;
  - landscape and visual effects;
  - noise and vibration impacts;
  - odour, insects and vermin infestation;
  - waste management (i.e. accordance with the waste hierarchy);
  - residue management; and
  - water quality and resources.
- 3.1.10 The assessment of this application against these topics and those in Part 5 of NPS EN-1 is set out in the following Chapter.

### **Local Impact Reports**

- 3.1.11 As part of its WR (REP2-008), the GLA submitted a comprehensive LIR covering compliance with waste policy, heat network potential, transport, air quality and environmental matters.
- 3.1.12 A detailed LIR was submitted by LBE (REP3-003), prepared for the Council by consultants, covering the impact topics contained in the applicant's ES. These were systematically appraised against the relevant paragraphs of the National Planning Policy Framework (NPPF) rather than the NPSs, and a number of specific changes to the draft DCO were proposed to mitigate the adverse impacts the Council anticipates.
- 3.1.13 LIRs were also submitted by the neighbouring London Boroughs of:

- Haringey, covering the heat network, air quality, transport and local employment impacts of the proposal (REP3-002), and
- Barnet, drawing attention to the relationship between the NLHPP application and the NLWA existing Hendon waste transfer station which provides a rail linked facility for waste disposal sites outside London (REP3-001).

3.1.14 The issues raised by the LIRs are considered in the appropriate sections in Chapter 4 of this report.

### **Other Matters**

3.1.15 No matters were prescribed by the Secretary of State for specific consideration in the examination of this application.

3.1.16 The EIA Regulations require the Secretary of State to notify other European Economic Area (EEA) States and publicise an application for a DCO if he is of the view that the proposed development is likely to have significant effects on the environment of another EEA Member State. Appendix 5.3, Vol.1 of the ES concludes it is not anticipated that the proposed development would result in any significant environmental effects on neighbouring EEA states (REP8-016). This conclusion is agreed with in the screening assessment undertaken by the Planning Inspectorate on the Secretary of State's behalf (OD-001).

3.1.17 Every public authority has a duty under the Natural Environment and Rural Communities Act 2006 (NERC) with regard to the conservation of biodiversity<sup>11</sup>. In particular, the Secretary of State must have regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992 when deciding an application for development consent.

3.1.18 NPS EN-1 requires the Secretary of State in determining this application in accordance with the Habitats Regulations, to consider whether the proposed development may have a significant effect on a European site<sup>12</sup> of nature conservation importance. Specific steps are required to be taken under the Habitats Regulations<sup>13</sup> in order to protect species and habitats.

3.1.19 If there were European designated sites likely to be significantly affected by the proposed development (either directly or

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<sup>11</sup> section 40: 'Every public authority must, in exercising its functions, have regard, so far as consistent with the proper exercise of those functions, to the purpose of conserving biodiversity'

<sup>12</sup> the term "European sites" in this context includes Sites of Community Importance (SCIs), Special Areas of Conservation (SACs), candidate SACs, possible SACs, Special Protection Areas (SPAs), potential SPAs, and Ramsar sites

<sup>13</sup> Conservation of Habitats and Species Regulations 2010 (as amended)

indirectly, alone or in-combination with other plans or projects), an appropriate assessment<sup>14</sup> would need to be undertaken by the Secretary of State prior to granting consent for the project, if he were so minded. My findings in respect of Habitats Regulations Assessment (HRA) matters for the NLHPP are discussed further in Chapter 4 of this report.

3.1.20 In determining an application for a DCO, the Secretary of State must be satisfied that the applicant has had regard to relevant river basin management plans and that the proposed development is compliant with the terms of the Water Framework Directive (WFD). Appendix 11.3, Vol.2 of the ES (REP8-021) presents a WFD assessment and my findings in respect of WFD issues are presented in Chapter 4 of this report.

3.1.21 Every public authority is required to have regard to the Public Sector Equality Duty under s149 of the Equality Act 2010, and I have taken these matters into account as part of the examination of this application.

### **3.2 IMPORTANT AND RELEVANT POLICIES**

3.2.1 I set out below the policy context that I consider is important and relevant to the application and within which I draw conclusions on the evidence in later Chapters of this report.

#### **National policies**

3.2.2 In addition to a number of European Directives<sup>15</sup> there is a range of national policy documents which have been considered in the development of the application, and these are set out in the Planning Statement (APP-018). The main ones are as follows.

#### ***National Planning Policy Framework***

3.2.3 The NPPF was published in 2013 and sets out the Government's planning policies for England, followed in 2014 by the Planning Practice Guidance (PPG) web-based resource to provide support and clarification on the policies outlined in the NPPF. Although the NPPF does not contain policies specifically concerning NSIPs or waste management, it forms part of other relevant matters for determining DCO applications. I consider some parts of it to be relevant to this application, and have therefore taken it into account in the assessment of matters where appropriate.

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<sup>14</sup> Regulation 61

<sup>15</sup> for example, the Waste Framework Directive (2008/98/EC) and the Waste Incineration Directive (2000/76/EC)

### ***UK Renewable Energy Roadmap Update***

- 3.2.4 The UK Renewable Energy Roadmap Update<sup>16</sup> is the second update to the document first published in 2011. It records that the UK has made good progress against the target of 15% of energy coming from renewable sources by 2020. It notes that biomass, energy from waste CHP and heat pumps are key renewable heat technologies.

### ***Waste Management Plan for England***

- 3.2.5 The Waste Management Plan for England (2013)<sup>17</sup> supports efficient energy recovery from residual waste of materials which cannot be reused or recycled to deliver environmental benefits, reduce carbon impact and provide economic opportunities.

### ***National Planning Policy for Waste***

- 3.2.6 National Planning Policy for Waste (2014)<sup>18</sup> sets out key planning objectives for sustainable waste management, requirements for waste plan-making authorities and the approach for the determination of planning applications.

### ***National Infrastructure Plan***

- 3.2.7 The National Infrastructure Plan (2014)<sup>19</sup> sets out the Government's long-term plans for UK infrastructure. The Plan notes that large-scale investment in gas and low-carbon electricity generation is vital in order to replace ageing energy infrastructure, maintain secure energy supplies and meet the requirements of the EU Landfill Directive targets for biodegradable municipal waste.

### ***Development Plan Policies***

- 3.2.8 The formal Development Plan applicable to this application consists of the London Plan<sup>20</sup> and Local Development Documents prepared by LBE (REP5-003).
- 3.2.9 The London Plan provides the strategic framework for the development of London to 2036. Policies of relevance to the application are:

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<sup>16</sup> Department of Energy and Climate Change, UK Renewable Energy Roadmap: 2013 update

<sup>17</sup> Department for Environment, Food and Rural Affairs, the Waste Management Plan for England, December 2013

<sup>18</sup> Department for Communities and Local Government, National Planning Policy for Waste, October 2014

<sup>19</sup> HM Treasury, National Infrastructure Plan, December 2014

<sup>20</sup> Mayor of London, The London plan: the Spatial Development Strategy for London (consolidated with alterations since 2011), March 2015

- Policy 2.13 covering the Upper Lee Valley Opportunity Area, which contains the Edmonton EcoPark; this has been developed through more detailed planning guidance<sup>21</sup>; and
- Policy 5.17 which highlights the need to increase waste processing capacity in London, including strategically important sites for waste management and treatment, and resource recovery works.

3.2.10 The Enfield Local Plan comprises:

- the Core Strategy adopted in 2010, which sets out the spatial framework for the long term development of the borough to 2025; and
- the Development Management Document adopted in 2014, which provides detailed criteria and standard based policies for assessing planning applications.

3.2.11 Both documents set out a number of policies which deal with waste applications and the EcoPark more specifically. Core Policy 22 (Delivering Sustainable Waste Management) relates particularly to the application by safeguarding existing waste management sites, but also promoting their more efficient use, with potential for co-location of various waste uses.

3.2.12 A number of local planning designations apply to the application site, shown on the Enfield Adopted Local Plan Policies Map (2014). The EcoPark is allocated as Strategic Industrial Land and a small area in the north east corner is within a SMINC. The part of the application site to the east of the River Lee Navigation is within the MGB, LVRP, and most of it within the SMINC.

3.2.13 A draft Edmonton EcoPark Planning Brief (2013) gives detailed, site specific guidance on how to achieve the Local Plan objectives.

### **Emerging development plan policy**

3.2.14 The seven North London Boroughs of Barnet, Camden, Enfield, Hackney, Islington, and Waltham Forest<sup>22</sup> are waste planning authorities and are preparing a joint North London Waste Plan (NLWP) to cover the period 2017 to 2032. Once adopted, it will form part of the statutory development plan for these areas. The draft NLWP was published for consultation in July 2015, and submission is expected in the winter of 2016/17, looking to adoption by the end of 2017.

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<sup>21</sup> Mayor of London, Upper Lee Valley Opportunity Area Planning Framework (OAPF), July 2013

<sup>22</sup> the "constituent Boroughs" of the NLWA

- 3.2.15 It sets out an aim of “*achieving net self-sufficiency in the management of North London’s waste*” and identifies sites for waste management use. The EcoPark is safeguarded as an existing waste management site in draft Policy 1, and is identified in draft Policy 3 as suitable all types of waste management facilities and new developments.
- 3.2.16 Although only limited weight can be placed upon the draft NLWP given the stage of preparation it has reached, the data base for the NLWP is essentially the same as that used by the NLWA for the waste projections underlying the application for development consent, and the application for the NLHPP is broadly consistent with the policies and strategies of the emerging NLWP (REP3-005).

### **Other policy contexts**

- 3.2.17 In addition to the London Plan, a number of other local documents have been taken into consideration in the development of this application<sup>23</sup>. These include:
- the Joint Waste Management Strategy which covers the period 2004 to 2020; it sets out the need to reduce the amount of waste sent from the north London area to landfill, and provides targets for increasing recycling in the area to 50% by 2020;
  - the Proposed Submission Central Leaside Area Action Plan (CLAAP<sup>24</sup>) published for consultation January 2015, within which the EcoPark is recognised as a preferred location for the management of north London’s municipal waste and a potential energy from waste hub;
  - the Meridian Water Masterplan which covers the area of land to the south of the application site, as noted in paragraph 2.3.3.
- 3.2.18 Whilst the application does not include land within any adjoining boroughs, the site is located close to the border with both the London Boroughs of Haringey and Waltham Forest. The local plan visions, objectives and policies in both adjoining boroughs are broadly consistent with the policy context outlined by LBE.<sup>25</sup>

## **3.3 ALTERNATIVES**

- 3.3.1 Paragraph 4.4.1 of NPS EN-1 advises that from a policy perspective there is no general requirement to consider

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<sup>23</sup> see paragraph 5.2.11 of the Planning Statement (APP-018)

<sup>24</sup> LB Enfield (2015) Proposed Submission Central Leaside Area Action Plan, 2015

<sup>25</sup> see paragraph 5.2.23 of the Planning Statement (APP-018)

alternatives or to establish whether the proposed project represents the best option. Nevertheless, wherever possible potential alternatives to a proposed development should be identified before an application is submitted. The application complies with this by including an Alternatives Assessment Report (APP-019) which sets out the overall approach to technology and site selection.

3.3.2 There are three basic processes for thermal treatment of residual solid waste:

- combustion – complete oxidation with surplus oxygen; the combustion process does not require an external energy source (such as gas or electricity) because it releases heat and is self-supporting; combustion type processes can be split into advanced moving grate technology and fluidised bed technology;
- pyrolysis – thermal breakdown of waste in the absence of oxygen; waste is heated to high temperatures by an external energy source, without adding steam or oxygen;
- gasification – thermal breakdown/partial oxidation of waste under a controlled oxygen atmosphere; the process requires, as for pyrolysis, an external heat energy source.

3.3.3 The combustion process was evaluated by the applicant as the best in both technical and cost terms, and advanced moving grate as the most well proven, reliable and cost effective technology.

3.3.4 The criteria used for site selection were:

- a site located in north London, in order to meet policy requirements for management of waste within the sub-region, and to reduce the impact and cost of transport of waste;
- land ownership or access to the use of the land by the applicant;
- sufficient land availability for the required footprint of facilities;
- a site with established waste use, in order to reduce the planning risk associated with the development of new facilities;
- an accessible location, with good road transport links for the delivery of waste from the seven north London Boroughs; and

- sufficient site infrastructure, services and utilities for the required facilities and ongoing operations, including availability of a grid connection for electricity off-take.

3.3.5 As there is limited suitable available land in north London, only two possible sites were identified: the EcoPark and one further west at Pinkham Way in Muswell Hill, Haringey. This latter site could only accommodate about half the waste handled by the applicant, does not have an established waste use, and there is no established grid connection.

3.3.6 The EcoPark meets the criteria for a suitable site for waste management for north London as it is:

- available to the applicant for use for waste management purposes;
- an existing waste management site of sufficient size to accommodate new facilities while ensuring continuity of waste treatment during the construction period;
- well located with good strategic road access; and
- supported in planning policy terms.

3.3.7 Overall, I consider the applicant's assessment of alternatives satisfies the requirements of NPS EN-1.

### **3.4 REPRESENTATIONS CONCERNING THE PRINCIPLE OF DEVELOPMENT**

3.4.1 The GLA, London Boroughs of Enfield, Haringey and Barnet support the proposed development in principle as set out in their representations and LIRs (REP2-008 and 012, REP3-001, 002, 003 and 022). In addition, several other bodies registered no objection whilst seeking specific changes to aspects of the proposal: Canal & River Trust (CRT), EA and LVRPA.



## **4 FINDINGS AND CONCLUSIONS ON THE MAIN ISSUES**

### **4.1 INTRODUCTION**

- 4.1.1 Prior to holding the PM on 24 February 2016, I identified a number of principal issues for the examination having regard to the application documents submitted by the applicant, and RRs submitted by IPs (PD-005). As noted in paragraphs 1.1.14 and 1.1.15, I expanded upon these matters in my first and second written questions, and the responses in subsequent stages of the examination provide an important element of my assessment of the application.
- 4.1.2 I set out in this Chapter my findings and conclusions in respect of the issues and any other matters I consider important and relevant which were raised during the examination, except CA and related matters which are contained in Chapter 6, and the draft DCO in Chapter 7.
- 4.1.3 This Chapter is structured to deal with the policy justification for the development first, which is relevant to the compelling case that must be made out for the grant of CA powers. It then systematically covers the assessment topics identified in NPSs EN-1 and 3 together with the principal issues identified at the outset of the examination, and so deals with (in no order of importance):
- Habitats and Species Regulations;
  - combined heat and power (CHP);
  - grid connection;
  - design;
  - cumulative impacts with other development proposals;
  - transportation;
  - land use, including open space, green infrastructure and Green Belt;
  - landscape and visual impacts;
  - historic environment;
  - noise and vibration;
  - biodiversity, ecology and nature conservation;
  - climate change adaption;

- 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.

## **4.2 THE POLICY JUSTIFICATION FOR THE DEVELOPMENT**

4.2.1 Paragraph 2.3.12 of the Planning Statement (APP-018) reviews the policy support for the application from national, regional and local planning frameworks and studies. The Need Assessment (APP-020) looks at the policy context for energy generation and waste management, including the targets for handling waste for the constituent Boroughs which are a key driver for the project.

4.2.2 NPS EN-1 notes that the Government believes it is prudent to plan for a minimum need of 59 gigawatts of new electricity capacity by 2025 (paragraph 3.3.23). The ES for the proposed development has been carried out on the basis that it would generate around 70MWe gross (though this would reduce according to the amount of heat the proposal might supply). It would therefore contribute to the national electricity generation target, and approximately 30MWe above the output of the existing EfW plant it would replace. Moreover, paragraph 3.4.3 of NPS EN-1 confirms that electricity generation from waste is regarded as one of the future large scale renewable energy generation sources. This is supported by the London Plan.

4.2.3 NPS EN-3 expects a proposed waste combustion electricity generating station should be in accordance with the waste hierarchy, and of an appropriate type and scale so as not to prejudice the achievement of waste management targets (paragraphs 2.5.66 to 2.5.70).

- 4.2.4 The waste forecasting model set out in detail in the Need Assessment (APP-020) provides an estimate of the amount of residual household, commercial and industrial (C&I), and other waste collected by the constituent Boroughs that will require treatment in the proposed ERF over the period to 2050/51, and examines a range of recycling rates. A target of 50% of all domestic waste to be recycled or composted by 2020 and a static level thereafter is then assumed, compared with 23% actually achieved in 2006/07 and 32% in 2012/13. This is slightly less ambitious than London Plan policy 5.16, which seeks 50% of domestic waste to be recycled by 2020, but rising to 60% by 2031.
- 4.2.5 In addition to forecasts of residual waste, other factors taken into consideration in determining the capacity of the proposed ERF are:
- seasonal fluctuations in waste volumes to be handled;
  - the need to have sufficient capacity to store waste prior to combustion;
  - the energy content of the waste; and
  - the need for sufficient capacity to cope with maintenance shutdowns.
- 4.2.6 In the light of these considerations, the ERF has been designed to cater for a maximum waste input of 700,000 tpa of residual LACW, which is the upper end of the volume of residual waste predicted by the waste forecasting model. Should lower waste arisings occur than forecast and/or higher rates of reuse, recycling and composting be achieved, then other sources of residual waste could be available both from within the NLWA area and beyond to take up any spare capacity in the ERF (APP-018). The applicant's view is that using any spare capacity in this way would not act as a barrier to continued efforts by the applicant and the constituent Boroughs to move the management of LACW further up the waste hierarchy. This is supported by both the GLA and LBE in their SoCGs (REP3-012 and 021).
- 4.2.7 I conclude that the design capacity of the proposed ERF is reasonable taking the forecasts into account, and particularly the very substantial uncertainties involved in looking over 35 years into the future. I also accept the applicant's contention that this capacity is consistent with the definition of a recovery operation in the WFD, and with the objective of diverting residual waste away from landfill in line with local, regional and national policy and the waste hierarchy (1Q 2.1, REP3-016).

- 4.2.8 Turning to locational matters, the EcoPark site is safeguarded by policy 5.17 of the London Plan as an existing waste site, with potential to provide heat and power to neighbouring development. The Upper Lee Valley OAPF<sup>26</sup> safeguards the EcoPark for continued industrial employment use and states it is a preferred location for a supply hub for the LVHN.
- 4.2.9 Policy 22 of the Enfield Core Strategy supports the use of the EcoPark as a strategic waste site, and aims to maximise its use with more sustainable and efficient waste management processes, including the future decommissioning of the current incinerator. The draft Edmonton EcoPark Planning Brief provides support for the development of new waste management and other facilities on the site. Policy CL22 of the Proposed Submission CLAAP also supports the redevelopment of the EcoPark site through a design led approach.
- 4.2.10 As noted in paragraph 3.2.16, the draft NLWP uses the same forecasts for future waste quantities as NLWA in preparing this application. It supports the ongoing use of the EcoPark as a waste management facility and references a new ERF at the EcoPark as a strategic facility for north London. However, at the OFH, Dr Temple-Pediani suggested that the application for development consent for the NLHPP was premature pending the adoption of the NLWP (EV-012).
- 4.2.11 The proposed NLHPP is strongly supported in strategic terms by the GLA (REP2-008) and by LBE as the local planning authority (REP2-012). I therefore conclude that application is consistent with NPSs EN-1 and EN-3, and regional and local policies which seek to maintain and enhance the role of this strategic waste site in north London.

### **4.3 HABITATS AND SPECIES REGULATIONS**

- 4.3.1 NPS EN-1 requires that consideration must be given to whether the proposed project may have a significant effect on a European site, or on any site to which the same protection is applied as a matter of policy, either alone or in combination with other plans or projects (paragraph 4.3.1).
- 4.3.2 A HRA No Significant Effects Report (NSER) was submitted with the application (APP-037) which identified the following European sites located within 10km of the application site (in accordance with advice provided by NE):
- Lee Valley Special SPA and Ramsar site located approximately 1.5km to the south and designated because they both support populations of bird species of

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<sup>26</sup> see paragraph 3.2.9

European importance, as well as scarce plant and invertebrate species; and

- Epping Forest Special Area of Conservation (SAC) located approximately 2.8km to the east and designated because of the presence of habitats of European importance, as well as stag beetle and great crested newt.

4.3.3 The NSER concludes that in the view of the applicant, the proposed project would not result in any likely significant effects on European sites, either alone or in-combination with other plans or projects. The applicant therefore considers that no further stages in the HRA process are required. Appendix A4 of the NSER outlines NE's agreement to the approach and methodology used, the identification of the relevant European sites for consideration, and the conclusions of no likely significant effects either alone or in combination with other plans or projects (APP-037).

4.3.4 No responses were received to a question I posed to all IPs seeking comments on these conclusions (1Q 5.1, PD-008), and NE confirmed its earlier representation (RR-008) and its agreement with the findings of the NSER in a SoCG (REP3-014). Accordingly, I decided there was no need to prepare a RIES.

### **Conclusions**

4.3.5 I am satisfied that such information has been provided as is reasonably necessary for the Secretary of State to determine that an appropriate assessment is not required. I also conclude that there are no HRA matters which would prevent the Secretary of State from making the DCO.

## **4.4 COMBINED HEAT AND POWER**

4.4.1 NPS EN-1 underlines the importance of considering the potential for new electricity generating stations to also supply heat to suitable industrial and domestic customers in the locality (section 4.6). Accordingly, applications must either include CHP or if not, contain evidence that the possibilities for CHP have been fully explored (paragraphs 4.6.6 and 4.6.8).

4.4.2 The application includes a Combined Heat and Power Development Strategy (APP-022). This explains that the NLHPP does not include specific CHP proposals because of an absence of current actual demand locally, but the ERF would be enabled to supply heat to neighbouring residential schemes when appropriate and if the commercial circumstances are suitable. The most significant potential scheme is Meridian Water, for which a large scale district heating scheme is intended to be supplied by the NHLPP. However, this scheme is at an early

stage of implementation such that detailed design of heat supply is premature.

- 4.4.3 In the meantime, the applicant and the LVHN, a local authority controlled company, are currently in negotiation about the supply of heat from the existing EfW by the end of 2017 to a District Heating Energy Centre (DHEC) for which space is being reserved at the southern end of the application site. This centre is not part of the current application for development consent, and would be brought forward by a planning application in due course. If these current plans materialise, the supply of heat from the existing EfW would continue until 2025 when the proposed ERF is commissioned and would take over (APP-018).
- 4.4.4 There is a direct relationship between the electricity generation output of the proposed development and the amount of heat which can be supplied. Put simply, there is a finite output of energy which can supply electricity and heat, so that the more heat is supplied the lower the electricity supply to the grid. As noted in paragraph 2.4.10, the balance struck in this application is that the maximum heat output would be 35MWth when schemes such as Meridian Water are fully operational, meaning that 63MWe gross would be electricity generation (APP-022).
- 4.4.5 Both the GLA and LBE, supported by LB Haringey, stressed the importance of the proposed NLHPP for its potential to supply heat. The GLA noted in its WR and LIR that the application is consistent with the Upper Lee Valley OAPF (REP2-008 and REP3-022), and has agreed in its SoCG with the applicant a mechanism for deciding the type of heat off-take for the ERF as detailed design progresses (REP3-012). LBE also noted the consistency of the application with the Local Plan and the Edmonton EcoPark Planning Brief (REP2-012), but sought in its LIR a firmer commitment to providing a heat supply to the LVHN and making adequate provision in the DCO for associated infrastructure within the site (REP3-003).
- 4.4.6 LB Haringey sought a commitment to go further than the application proposals by the provision of external heat connections beyond the application site itself (REP3-002). At the OFH, Dr Temple-Pediani was critical of the project for not embracing CHP opportunities in the area more fully, particularly the proposed Meridian Water scheme. He suggested that as it stood, the application was just a traditional waste disposal incinerator (EV-012).
- 4.4.7 The applicant's response is that the application contains a detailed appraisal of the potential for CHP, reviewing the likely commercial and residential customers in the immediate vicinity, and explaining why it is not feasible for the proposal to include CHP at the present time. Nonetheless, provision is made for heat output connections to be made by reserving space for pipework

within the EcoPark to both the northern and southern boundaries of the site (REP4-001 and 002).

- 4.4.8 I tested the robustness of the applicant's case by questions in both the first and second rounds, to be sure that the potential for supplying heat had been thoroughly explored, and that whilst the application itself does not include CHP, the proposed development would do so as soon as the opportunity arises (1Q 1.1, PD-008, and 2Q 1.3, PD-009).
- 4.4.9 Whilst I accept that detailed design of pipe runs with the site is not possible until the precise requirements of customers is specified, I was anxious to ensure that there is space specifically reserved for them within the Order land. This is now confirmed by the applicant's response, and is provided for within the draft DCO at requirement 18 (REP8-003). The Development Consent Obligation (DCOb) also contains a commitment to LBE to provide heat to the LVHN, including a heat off-take agreement being entered into<sup>27</sup> (REP8-009).

### **Conclusions**

- 4.4.10 I conclude that whilst the application does not include CHP, the applicant has made serious efforts to explore the potential and demonstrate that the ERF would be CHP ready. This would enable the opportunity for CHP to be taken when circumstances are more propitious (APP-022). For these reasons, I consider that the application meets the requirements of NPS EN-1.

## **4.5 GRID CONNECTION**

- 4.5.1 Plainly, an electricity generating station needs to connect to the grid, and NPS EN-1 makes it clear that it is the applicant's responsibility to secure a grid connection, or if not to demonstrate that there is no obvious reason why this would not be possible (paragraph 4.9.1). This is endorsed in NPS EN-3 (paragraph 2.5.23).
- 4.5.2 The ERF would generate electricity at 11kV, which would be increased to 33kV from UKPN transformers to be located in a new compound shown indicatively on plan D\_0005 of the Design Code Principles (REP8-002). A Grid Connection Statement submitted as part of the application explains the intention to connect the NLHPP to the Tottenham Grid Substation approximately 2km to the south of the EcoPark, involving an upgrade of the existing UKPN 33kV connection (APP-027).
- 4.5.3 At the applicant's request, UKPN carried out a feasibility study issued in February 2015, and this is included with the Grid

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<sup>27</sup> see paragraph 7.3.1

Connection Statement (APP-027). The study investigated the options for upgrading this existing connection from the EfW plant to the Tottenham Grid Substation, and concluded that the preferred option was to install new cables parallel to the existing two circuits which would themselves be upgraded. UKPN would make use of its statutory undertaker's rights to install such new cabling under the provisions of easements and wayleaves obtained for previous work along the circuit routes. These works are not included in the application for the NLHPP and indeed would not appear to require a further planning permission.

- 4.5.4 The 33kV/132kV transformers at the Tottenham Grid Substation itself would not need upgrading, nor would any works be required to upgrade the connection to the grid.

### **Conclusions**

- 4.5.5 I sought assurance from the applicant in the first round of questions to confirm the position of UKPN (1Q 1.2 and 1.3, PD-008). The response was that all options are feasible but that it is for the applicant to determine which one to take forward. UKPN also confirmed that the option described above is the preferred one, and had therefore provided an indicative budget estimate for the works (1Q 1.3, REP3-016). I conclude therefore that there would be no obvious difficulty in obtaining a connection from the proposed development to the grid.

## **4.6 DESIGN**

- 4.6.1 Whilst recognising the limitations imposed by functionality, section 4.5 of NPS EN-1 encourages good design of energy infrastructure. In so doing, applicants are expected to show how the design process was conducted in preparing the application.

- 4.6.2 Accordingly, the application includes a comprehensive Design and Access Statement (DAS) (APP-023 to 026) which sets out:

- the existing site characteristics, drawing attention to the way in which the EcoPark site has been developed for waste management purposes over the past 50 years or so, which has led to a piecemeal and incoherent appearance;
- the predominately industrial immediate context, but with the LVRP to the east and the proposed Meridian Water mixed use and residential development to the south;
- a number of constraints upon design of the proposed new development including topography, geology, the floodplain, landscape features and ecology;



- the design objectives leading to the location of operational uses including the stack on the western part of the EcoPark and landscaping on the eastern side facing the LVRP;
- the approach to establishing the appropriate scale, height and massing of the of the proposed new buildings on the EcoPark, and including the iterative approach followed during the consultation stages prior to submission of the application; and
- appearance and materials proposed for the three main structures (ERF, RRF and EcoPark House).

4.6.3 Having explored the design options and reached preferred solutions in the DAS, the Design Code Principles document sets out 47 principles covering:

- the main building components;
- signage and way finding;
- materials;
- landscape and ecology;
- use of colour; and
- lighting.

4.6.4 There are some aspects of the proposed project that require design flexibility and cannot be finalised in advance of the detailed design. Each stage of the proposed development would require detailed design approval by LBE under requirement 4 of the draft DCO, but such details must in accordance with the Design Code Principles as a certified document under article 34 of the draft DCO. This mechanism would ensure that the proposed development is implemented consistently and in accordance with the design objectives established in the DAS.

4.6.5 LBE was supportive of this approach, but commented in some detail about design matters in its WR (REP2-012). The Council supports the layout of uses on the EcoPark, the height and massing of buildings, including the stack and stepping down of the ERF towards the eastern boundary of the application site to respond to the sensitivities of the LVRP. But LBE expressed three main concerns.

4.6.6 First, it does not consider that the Design Code Principles are sufficiently robust to secure materials with high visual quality and appropriate architectural detailing. This is important given the scale of development. Whilst the emphasis in the Design

Code Principles for durable, low maintenance materials commensurate with operational requirements is noted, it is not considered that this should be the single determining factor.

- 4.6.7 Second, the Council considers the proposed viewing platform at the south eastern corner of the ERF building would constitute an incongruous and overly dominant feature. Taking into account also the proposed signage and its relationship to the wider area, it would add to the significant presence of this development when viewed from the east along the River Lee corridor, and contrary to the objective of minimising the impact of the built form to the east of the site. The need for visitor facilities on top of the ERF is questioned, given the provision of EcoPark House which would also serve as a visitor centre.
- 4.6.8 Third, the approach to limits of deviation in article 4 and the parameters set out in requirement 5 of the draft DCO, covering the maximum length, height and width of buildings. LBE's principal concern is about generous parameters, particularly controlling Works No. 1b, which include a wide range of essentially supporting building and infrastructure. The request is for a more detailed range of parameters to control individual buildings more precisely.
- 4.6.9 These matters are reflected in the LIR submitted by LBE (paragraph 6.106 onwards, REP3-003) and its response to my second written questions (REP5-003). The applicant responded in detail (REP4-001 and 002, and REP6-005) and reached agreement in a SoCG with LBE about all matters, except the proposed viewing platform (REP6-017).

### **Conclusions**

- 4.6.10 In my view, the design approach does not start from a blank canvas as the site is already developed and has been used for waste management purposes for many years. The proposed development would result in the complete redevelopment of the existing EcoPark site, and therefore the opportunity would arise to design a scheme which is much more attuned to the local context with greater attention paid to a coherent approach to appearance and materials. That being said, the proposed ERF would be of considerably greater bulk (20m higher) than the EfW and associated buildings it would replace.
- 4.6.11 I conclude however that the applicant has carried out a comprehensive and systematic appraisal of the design challenges posed by the proposed development. The resulting approach of the Design Code Principles secured by requirement 4 of the draft DCO offers the prospect of achieving an outcome of high design standard.

4.6.12 In relation to the outstanding matter of the proposed viewing platform objected to by LBE, I accept the applicant's view that a structure is needed in this location in any event to house the lift core required to provide level access by staff to the offices and control room. The provision of a viewing platform would offer visitors new views over the Lee Valley and towards central London. In terms of scale, the size of the proposed viewing platform would be 17m by 13m and up to 6m above the height of the tipping hall. From the photomontages and illustrations supplied as part of the application, I conclude that this would not be a dominant feature, and in my judgement its potential benefits outweigh the concerns raised by LBE.

#### **4.7 CUMULATIVE IMPACTS WITH OTHER DEVELOPMENT PROPOSALS**

4.7.1 As required by the EIA Regulations and paragraph 4.2.5 of NPS EN-1, an assessment of potential cumulative impacts of the proposed development with other significant development proposals has been carried out and is summarised in paragraphs 5.3.18 to 5.3.31 of Vol.1 of the ES (REP8-015). The developments considered are shown on an accompanying plan Figure 5.1 and set out in detail in Appendix 5.2, Vol.1 of the ES (REP8-016). The assessment of cumulative impacts is considered as appropriate in each of the topic chapters in Vol.2 of the ES (REP8-017). Paragraph 5.3.28 of Vol.1 of the ES also explains that the approach to the cumulative effects assessment has been consulted upon with key stakeholders including LBE, the London Boroughs of Waltham Forest and Haringey, GLA, TfL and the Planning Inspectorate (REP8-015).

4.7.2 The position at July 2015 was that 15 development proposals were included in the assessment with the conclusion that no significant adverse cumulative effects would result. In my first written questions I asked for an update of the schedule, and particularly relating to two of the projects which I considered of significance: the proposed Meridian Water regeneration project, and the NG DCO which partly overlaps with the application site. In addition, I pursued the position relating to the operations carried out by Camden Plant Ltd to the north of the proposed temporary laydown area (PD-008).

4.7.3 The applicant supplied a schedule updated to March 2016, and a review of the assessment which concluded that there was no change to the conclusions reached in the ES (REP3-016).

#### **Meridian Water**

4.7.4 In relation to Meridian Water, the applicant responded that a planning application has been submitted for the first phase, proposing up to 725 homes. The application does not provide further detail on when the remainder of the Meridian Water site

will be brought forward and therefore the assumptions set out in the applicant's ES regarding implementation remain valid, as does the approach to assessing cumulative effects (REP3-016).

4.7.5 However, from representations submitted by LBE (REP2-012), CRT (REP3-009) and LVRPA (REP2-011) it appeared to me that the main issues concern:

- the relationship between the land required for the temporary laydown area, and its proposed use for compensatory flood storage purposes in connection with the Meridian Water scheme; and
- the future role of the temporary laydown area in adding to the open space provision of the Regional Park, a long held aim of the LVRPA.

4.7.6 LBE initially sought powers in the DCO to control reinstatement of the temporary laydown area site after its construction use has concluded in order to fulfil these objectives (REP3-003), generally supported by CRT and LVRPA.

4.7.7 TWUL as the owner of the site expressed the view that it had not agreed to the use of its land for either of these purposes, and these were matters outside the current application (REP4-004). In view of the responses from LBE and TWUL to my second written questions (REP5-003 and 004), I am satisfied that the timescales in relation to the use of the temporary laydown area site for the construction of the NLHPP appear unlikely to conflict with whatever uses other organisations may have in mind for this site, whether or not they are agreed with TWUL as the landowner.

#### **NG DCO**

4.7.8 The position concerning the relationship between the proposed NHLPP and the confirmed NG DCO is rather more complex. The representations from NG indicated that there are potential conflicts between the application and the NG DCO (REP2-013 and REP3-006). I therefore asked for this to be set out in some detail by the applicant and NG, which was supplied as part of the responses to the second written questions (2Q 1.5, and Appendix 1.5, REP5-001).

4.7.9 The NG DCO is for the uprating one of the existing 275kV lines which run parallel to the River Lee Navigation to 400kV. The powers in the NG DCO confirmed in 2014 overlap the eastern side of the application site for the NHLPP, particularly land required for the temporary laydown area, and formally involve 15 plots in the application site. The NG DCO grants general powers to:

- compulsorily acquire and create rights and take temporary possession, particularly for access to enable the work to be carried out;
  - carry out street works and alterations;
  - discharge water, carry out alterations to public sewers, or drains;
  - maintain the authorised development.
- 4.7.10 In principle, confirming the draft DCO for the proposed NLHPP would override those relevant powers in the NG DCO to the extent the two proposals overlap. Construction work to implement the NG DCO has yet to start, and therefore the issue is how powers in an existing DCO could be maintained in a situation where the proposed application intends to override existing interests. This matter is returned to in Chapter 7 dealing with CA.
- 4.7.11 The joint response by the applicant and NG explains that the potential for any interaction between the NG DCO and the NLHPP in practice will depend on the timings and detailed design of both developments. It is the intention of the applicant and NG to manage potential interactions in a private agreement and, where appropriate, through protective provisions within the NLHPP DCO (Appendix 1.5, REP5-001).
- 4.7.12 In presenting a detailed and systematic analysis of each potential interaction, the applicant and NG confirmed that with sufficient co-operation and forward planning, any conflicts can be identified and resolved to enable both projects to proceed simultaneously if necessary. Following a discussion at the second ISH held on 5 July 2016 (REP7-019), a further detailed paper was submitted by the applicant setting out some of the practical issues which would arise during construction of both projects, and how they would be overcome (REP7-016).
- 4.7.13 Both parties have addressed the potential difficulties and reached a common understanding about the practical arrangements. I conclude therefore that the joint response submitted by the applicant and NG (Appendix 1.5, REP5-001) and the subsequent note prepared by the applicant (REP7-016) should be relied upon to demonstrate that there is no overriding issue concerning the interrelationship between these two projects in the context of cumulative impacts. This was confirmed by NG at the end of the examination (REP8-036) and in a joint statement with the applicant (REP8-032).

## **Camden Plant Ltd**

- 4.7.14 The position relating to Camden Plant Ltd was set out by the applicant in conjunction with LBE (REP3-016). Camden Plant Ltd is located immediately to the north of the proposed temporary laydown area, operating a construction, demolition and utilities waste recycling facility which it is understood benefits from a waste permit. The use of the site has developed over time and planning permission for the crushing, screening and stockpiling of concrete and other recyclable materials was granted in 1997 for a limited period of three years.
- 4.7.15 There is currently no planning permission for the use of the site, and LBE served an enforcement notice in June 2010 requiring the use to cease, all plant, buildings etc to be removed and the site reinstated. The enforcement notice has yet to be complied with. Matters relating to the use of this site within the MGB and continuing access across the temporary laydown area are covered in the following two sections of this Chapter.
- 4.7.16 But the main matter in relation to cumulative impacts concerns traffic generation. In this regard, the applicant has taken the prudent approach of including the trips associated with this use in the baseline flows in the Transport Assessment (TA) (APP-030), whether or not the enforcement notice is complied with before the likely start of construction of the proposed development. In this way, I am satisfied that a worst case approach has been adopted in assessing the cumulative impact of the application with the existing Camden Plant Ltd operation.

## **Conclusions**

- 4.7.17 I conclude that the implementation programme for the proposed Meridian Water regeneration project is unlikely to conflict with the NLHPP project, and there is no overriding issue concerning the interrelationship with the confirmed NG DCO.

## **4.8 TRANSPORTATION**

- 4.8.1 NPS EN-1 recognises that a new energy NSIP may give rise to substantial impacts on the surrounding transport infrastructure, and an application for a project likely to have significant transport implications should include a transport assessment as part of the ES. Public transport, walking and cycling access should be considered, and where appropriate, a travel plan should be provided, including demand management measures to mitigate transport impacts. In view of the volumes of waste needing to be transported to plants such as the subject of this application, NPS EN-3 encourages water-borne or rail transport over road transport at all stages of the project, where it is cost-effective.

4.8.2 Accordingly, the application includes a TA setting out the implications of the application for transport during construction and operation and providing framework travel plans (APP-030 and 031). Vol.2 of the ES also contains a transport section which describes the likely significant environmental effects of the proposed development on transport (REP8-017, 018 and 021)

### **Current transport position**

4.8.3 The application site lies just to the north of the A406 North Circular Road, and is well connected to it and to the Strategic Road Network. LBE is the local highway authority and responsible for all roads in the vicinity with the exception of the A406 North Circular Road which is the responsibility of TfL. The EcoPark currently has a low level of public transport access with Tottenham Hale (Victoria Line) as the closest London Underground station over 3km (straight line distance) to the south.

4.8.4 There is no rail connection to the application site and no railway lines run directly adjacent to it. National rail services are available at Angel Road station, located approximately 600m to the west of the EcoPark, but with limited peak hour only services.

4.8.5 London Bus routes 34 and 444 run close to the EcoPark, served by bus stops at the junction of the A406 North Circular Road and Advent Way. Two additional routes 192 and 341 are accessible on Glover Drive, some 800m to the south of the application site.

4.8.6 Footways are provided along the main routes leading to and from the application site and public transport stops and stations. In particular, there is a continuous footway on the north side of Advent Way, although on the approach to the roundabout where the A406 North Circular Road on/off slips meet Advent Way, the footway widths are narrow and are overgrown with vegetation in places. There are no crossing facilities at this junction.

4.8.7 The pedestrian environment is generally poor and dominated by noise associated with high traffic flows on the A406 North Circular Road. This road also acts as a barrier to pedestrian movements in the vicinity of the EcoPark. A footbridge is, however, provided over the North Circular Road dual carriageway some 600m to the west of the EcoPark.

4.8.8 A number of cycle routes are available, in particular:

- Lee Park Way connects with Advent Way via the bridge over the River Lee Navigation at its southern end, and forms part of NCN Route 1;

- a north to south route along the eastern side of the River Lee Navigation, and also forms part of NCN Route 1 to the south of the A406 North Circular Road;
- an east to west off-carriageway route along Lower Hall Lane, connecting with NCN Route 1 at Lee Park Way and to the LVRP to the north; and
- an off-carriageway route along A1055 Meridian Way both to the north and south of the A406 North Circular Road.

4.8.9 Lee Park Way is wide enough to accommodate both cyclists and equestrians and the road surface is of sufficient quality to enable comfortable use by equestrians. This is the only equestrian route within the vicinity of the application site, but usage is observed to be very low.

#### **Proposed accesses**

4.8.10 The proposed development would be served by three vehicle access points:

- the existing access into the EcoPark from Advent Way which would be widened;
- a new access to the eastern side of the EcoPark via the existing Lee Park Way, again from Advent Way;
- a new northern site access via Deephams Farm Road and Ardra Road, connecting with the wider highway network at the junction of the A1055 Meridian Way and Ardra Road.

4.8.11 In addition, a temporary access during the construction stage would be provided from Walthamstow Avenue to the proposed temporary laydown area, in practice making use of an existing access serving the Camden Plant Ltd site (see paragraph 6.4.16 et seq).

4.8.12 The primary access for pedestrians and cyclists would be a footway and dedicated cycle lane provided along Lee Park Way between Advent Way to the new eastern entrance to the EcoPark.

4.8.13 Some changes to the public rights of way (PRoW) network would be needed both on a temporary basis during construction, and permanent diversions. The Works Plans C\_0012, 13 and 14 (REP8-001) set out the proposed changes to the local highway and PRoW network. These are given effect by articles 12 and 13 of the draft DCO and supplemented by DCO Schedules 6-8 Explanatory Diagrams (REP8-003 and 011).



## **The Transport Assessment**

- 4.8.14 The TA is a straightforward approach to examining the capacity of relevant local transport infrastructure to accommodate the proposed development. The methodology and approach is described in detail in the TA (APP-030 and 031), and Appendix 10.1, Vol.2 of the ES (REP8-021). The assessment has been carried out by establishing base year traffic flows, future year traffic flows and the potential impacts of the proposed development. Locations where predicted changes might cause significant adverse impacts have been assessed, namely the Cooks Ferry Roundabout (which is how traffic to and from the EcoPark would access the A406 North Circular Road via Advent Way), and the traffic signal controlled junction of Ardra Road with A1055 Meridian Way.
- 4.8.15 Consideration was also given to the effect of the proposed development on the A406 North Circular Road junctions with Montagu Road, A1010 Fore Street, A10 Great Cambridge Road, and the A1055 Meridian Way junction with Conduit Lane.
- 4.8.16 Baseline traffic surveys were carried out in May 2013 and October 2014 at the main junctions on the local highway network, agreed with TfL and LBE. The assessment took into account background traffic growth from the base year of 2013 derived from TEMPRO<sup>28</sup> and was carried out for the following scenarios:
- stage 1d, which represents the busiest case scenario (as a result of the number of construction employee trips) for stage 1 of the construction period, on a future baseline of 2024;
  - stage 2 on a future baseline of 2025;
  - stage 3 on a future baseline of 2027; and
  - stage 4 (the completed and operational project) on a future baseline of 2028.

### ***Trip generation and mode split***

- 4.8.17 As the EcoPark is currently used for the treatment and disposal of waste, the trip generation assessment considers the trips generated by the proposed development against the existing situation. The TA estimates that the project would generate 1,176 net additional two-way vehicle trips during stage 1d, the peak construction stage when both construction and operational

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<sup>28</sup> Trip End Model Presentation Program predicting growth factors for future years

activities would be undertaken. This would include approximately 550 two-way daily construction employee vehicle trips which would typically be undertaken before 08:00 and after 18:00. In addition, there would be approximately 100 public transport trips per day during this stage. During all other stages of construction, the additional trips generated on the local highway and public transport networks would be lower than stage 1d.

- 4.8.18 During the operational stage, stage 4, it is estimated that the proposed development would generate 175 two-way net additional vehicle trips. The largest increase in trips would be experienced between 11:00 and 12:00 (52 trips) when the site activity would be at its peak. However, due to the lower number of employees when compared with the existing operation, the number of vehicle trips would decrease during some periods of the day, including the pm peak hour (between 17:00 and 18:00). In addition to the above, there would be approximately 10 public transport trips per day during this stage.

### ***Transport impacts***

- 4.8.19 A detailed assessment of the junctions in the immediate vicinity of the application site shows that for all stages of the project, the additional traffic generated would not result in any significant increases on the local highway network. Indeed, in some time periods, decreases are forecast in traffic flows on the A406 North Circular Road and other key routes. More significant increases in traffic flows would be experienced on Advent Way which provides the direct connection to the application site from the A406 North Circular Road. However, these increases could be accommodated on the local highway network given that existing baseline traffic flows are low.
- 4.8.20 The assessment shows that for all stages of the project, there would be a negligible effect on capacity at the Cooks Ferry Roundabout and the junction of Ardra Road with A1055 Meridian Way.
- 4.8.21 As employee trips to the proposed development would continue to be overwhelmingly by car, the additional public transport trips generated by the project would be limited and therefore could be accommodated without affecting capacity of public transport services. Walking and cycle trips would not have any effect on the existing pedestrian and cycle networks.
- 4.8.22 A cumulative assessment of the project has been undertaken as part of the TA, with the proposed Meridian Water development as much the most significant scheme in the vicinity. For all stages, including the Meridian Water scheme suggests the largest increase in traffic flows would be experienced on Advent Way, leading to and from the southern site access, as well as for

public and employee traffic using Lee Park Way. However, this increase in traffic flows would be less than 10% and would have a negligible effect on the operation of Advent Way. The increase in traffic would be significantly less than 10% on a number of links including the A406 North Circular Road both to the east and to the west of the Cooks Ferry Roundabout.

- 4.8.23 Whilst the cumulative assessment suggests the effects would be not significant, the assumption in the TA is that construction of the NG DCO would be completed prior to commencement of the proposed NHLPP, which appears now to be unlikely. However, the electricity line project would not in any event generate any operational traffic.

### ***Parking***

- 4.8.24 The EcoPark currently has 212 car parking spaces distributed across the site. There are no public car parks or on-street car parking in the immediate vicinity of the application site.

- 4.8.25 Parking for construction employees would be provided on the temporary laydown area. At the peak of construction (during stage 1d), approximately 225 parking spaces are proposed with additional parking for 45 large vehicles, including employee shuttle buses. Cycle parking would also be provided for construction employees at the temporary laydown area.

- 4.8.26 It is proposed that 132 car parking spaces would be provided for the completed EcoPark, nearly all in the proposed central car park. The operational parking provision has been considered with respect to the parking standards set out as part of the London Plan, which indicate only 105 car parking spaces should be provided. The applicant acknowledges that proposed provision of 132 spaces exceeds the London Plan requirements, but notes:

- the total provision represents a reduction of 80 spaces (38%) on the existing parking provision;
- 14 accessible spaces would be provided and 26 spaces equipped with electric vehicle charging points, equating to 20% of the total provision;
- the limited public transport services available in the vicinity of the EcoPark and the distance (approximately 3km) to a frequent rail service (at Tottenham Hale);
- the shift working patterns that will be associated with 24 hour operation and the fact that public transport services will not be operating when some shifts start or finish; and

- the limited walking and cycling routes available in the vicinity of the EcoPark as well as the inhospitable environment for pedestrians and cyclists due to the presence of the A406 North Circular Road.

4.8.27 If accessibility to the EcoPark by public transport is improved through service and/or frequency enhancements associated with other development or infrastructure schemes in the local area, the applicant states that consideration will be given to reducing the number of car parking spaces provided. However, the overriding consideration is not compromising the efficient operation of the project or introducing any additional impacts on the wider local area.

### ***Water transport***

4.8.28 As part of the application, a detailed water transport study was submitted examining the viability of transporting IBA from and municipal solid waste (MSW) to the proposed development (Appendix I, APP-031).

4.8.29 Since it was assessed that IBA would not be treated north of Edmonton, only options on the Thames were included in the study. Two locations, Rainham Landfill and Greenwich Aggregate Zone were selected as they offer a real prospect of facilities to process IBA. The water route for these scenarios would require navigating the River Lee Navigation, the tidal River Lea (Bow Creek) and the River Thames.

4.8.30 Effectively, a new transport system would need to be set up to include not only the operational costs of handling and transporting IBA by water, but also the refurbishment of the locks on the waterway, installing a suitable wharf at Edmonton, and the provision of tugs and barges.

4.8.31 At least three of the four locks on the River Lee Navigation would need to be upgraded (from hand-pumped to hydraulic operations), to ensure commercial freight is kept separate from leisure traffic, and to enable barges to pass through the gates in a timely manner. Throughout the life of the completed project, regular monitoring and maintenance of the canals and locks would be necessary in order to mitigate the effects of increased usage.

4.8.32 At the EcoPark itself, an upgrade of Ash Wharf would be necessary, likely to include replacing the existing wharf wall, resurfacing the wharf area and possible extension, and the installation of a gantry crane. Using the wharf for waste handling purposes would require the relocation of the Edmonton Sea Cadets.

4.8.33 However, practically this is ruled out as the wharf area is the site of the proposed EcoPark House. Its purpose is to provide the

EcoPark reception, location for some administration staff, accommodation for the Edmonton Sea Cadets and serve as a visitor, community and education centre.

- 4.8.34 Operationally, the water transport operation between Edmonton and Rainham or Greenwich is quite complex and would involve the use of three barging operations. Critical to the operation is the use of barges that can navigate the three different sections of waterway which comprise a complete journey in either direction.
- 4.8.35 Overall, the potential to transport IBA from Edmonton is considered to be technically feasible, and the River Lee Navigation has the capacity except for scenarios with the highest quantities of MSW from East London. This limitation would arise because of the number of containers and rapidity with which they can be handled, turned round and if necessary stored. This operation would also have to extend into a double shift pattern and require running barges on the River Lee Navigation between 07.00 and 23.00 hours.
- 4.8.36 Water transport would enable reductions in carbon dioxide (CO<sub>2</sub>) emissions, but the study concludes these would be minimal in the context of the wider project.
- 4.8.37 The total costs of transporting IBA and/or MSW via the waterways would be between 2.2 and 3.0 times more expensive than the equivalent road transport scenario. The two key reasons for this are:
- the set up costs of a water transport operation, whereas road transport does not have to bear the costs of the highway infrastructure; and
  - the potential number of tug operations needed to move barges on the three waterways.

### ***Travel Plans***

- 4.8.38 Framework operational and construction travel plans have been prepared and submitted as part of the DCOb (REP8-009). Both travel plans aim to promote the use of sustainable modes of transport through a range of soft measures including the provision of public transport shuttle services (for construction), cycle parking and the promotion of car sharing.

### ***Conclusion of the Transport Assessment***

- 4.8.39 In conclusion, the TA demonstrates that the construction and operation of the proposed development can be accommodated within the existing traffic and transport infrastructure surrounding the application site. Indeed, during certain periods of the day including the pm peak period, there would be a

reduction in the number of trips undertaken to and from the application site over the current operation, as a consequence of larger Heavy Goods Vehicles (HGVs) and a different pattern of trips during the day. More significant increases in traffic flows would be experienced on Advent Way, because this is the road providing a direct connection to the application site. However, these increases can be accommodated on the local highway network given that the baseline traffic flows are low.

### **Transport issues**

- 4.8.40 LBE set out its appraisal of the TA and concluded that the trip generation and forecast of impacts on the local highway network and junctions are reliable (REP2-013 and REP6-017). This was endorsed by TfL confirming that the TA is generally in accordance with the TfL specific advice and guidance, with agreement to the proposed access improvements, and car parking provision. This is subject to TfL having an oversight of detailed design and mitigation of construction impacts (REP2-003 and REP3-008) through the Code of Construction Practice (CoCP) (REP8-13). TfL's comments were repeated as part of the GLA's LIR (REP3-022) and reinforced in the SoCG with the applicant (REP3-015).
- 4.8.41 CRT challenged the rejection of movement of waste by water using the River Lee Navigation (RR-012), arguing that:
- the public benefit of freight being carried on barges on the River Lee Navigation, rather than by HGVs through north east London's congested roads, is considerable;
  - the proximity to the River Lee Navigation of the proposed development presents an opportunity to establish a wharf facility to allow for the transfer of waste to and from the site; and
  - investment in a wharf by the applicant will future-proof the development for the transport of waste by water (REP2-009).
- 4.8.42 The provision of a new wharf area on this part of the application site is not agreed by the applicant because as noted above, it is the proposed location for EcoPark House (REP4-001). TfL and LBE accepted that the use of the River Lee Navigation for transporting material is not a practical option in the particular circumstances of this application (REP2-003 and 012).
- 4.8.43 The applicant proposes to use Ardra Road for the new northern access to the proposed development for construction purposes and a permanent secondary access. Biffa Waste Services operate the materials recovery facility immediately to the north of the application site, and raised significant concerns about

congestion on the private Ardra Road as this provides access to the site from A1055 Meridian Way (RR-009). These views were shared by Bestway Cash and Carry Ltd, also operating from premises on Ardra Road (REP2-006).

- 4.8.44 The applicant responded in detail to the points raised by Biffa and Bestway (REP4-001), generally drawing attention to the control measures in the CoCP and Environmental Commitments and Mitigation Schedule (ECMS) (REP8-024), and having commissioned a detailed study of additional traffic flows on Ardra Road during each stage of the project (Appendix 6.2, REP3-016). No further response was received from Bestway, but the analysis of the numbers of vehicles likely to use Ardra Road was accepted by Biffa, who went on to propose additional measures in the CoCP to control vehicles (REP2-005, REP5-006). These were accepted by the applicant in a revision to the CoCP (REP8-013), which satisfied Biffa (REP7-040).
- 4.8.45 E Roberts Timber, a business occupying premises between the River Lee Navigation and the south-east corner of the existing EcoPark, raised concerns about possible disruption during construction of the proposed development and once completed, involving potential road closures of Advent Way (RR-003). Similar points about the proposed works not impeding businesses were made more generally by:
- the Eley Estate Company concerning the industrial estate located to the immediate west of the existing EcoPark (REP1-005);
  - the River Lea Anglers Club in relation to construction traffic using the west side of the River Lee Navigation (REP 2-001), and
  - Royal Mail in terms of potential disruption to mail collection transport and delivery (REP1-007, REP5-005).
- 4.8.46 The applicant's response was that no alterations to the access to E Roberts Timber are proposed, and there would not be any long-term road closures or diversions that would impact on businesses occupying the Eley Industrial Estate. While works are likely to be required on Advent Way to upgrade the existing entrance to the EcoPark, the TA concludes that there would be no adverse impact on Advent Way (REP1-003), and construction works would be suitably managed in accordance with the CoCP.
- 4.8.47 The response to Royal Mail and the River Lea Anglers Club was to rely on the provisions of the CoCP (REP6-005 and REP4-001), though Royal Mail's concerns remained outstanding at the end of the examination (REP8-037).

## Conclusions

- 4.8.48 I am satisfied that the applicant has met the requirements of the NPSs in the assessment of transport impacts of the proposed development. Given that this is essentially the replacement of an existing established facility, the experience of traffic generation and flows at particular times of the day enables the likely consequences to be predicted with some confidence. In the light of the representations from TfL and LBE there is a consensus about the robustness of the TA. There would be no significant traffic impacts arising from the proposed development on the surrounding highway network, including the particularly important Cooks Ferry Roundabout junction on the A406 North Circular Road, which require mitigation.
- 4.8.49 Representations about particular access issues have been adequately responded to by the applicant in my view. These rely heavily on the successful implementation of the CoCP, a matter which is returned to in section 4.18. The specialist study commissioned by the applicant examining the potential for transport of IBA and MSW by water using the River Lee Navigation is thorough and the conclusions are difficult to refute.
- 4.8.50 However, I have some sympathy with the views of CRT that if water-borne transport cannot be made to work economically at this location physically adjacent to the waterway, it is difficult to see where there would be better circumstances. In this regard, the applicant's response that it will continue to work with TfL and LBE to promote future possibilities for water transport is welcome, although it is noted that such commitment is outside of the scope of the draft DCO (REP4-001).
- 4.8.51 There is no rail connection to the application site and for a direct rail connection to be provided, a new railway spur and associated loading and unloading infrastructure would be needed. The construction of any such spur would require significant investment and land take, if an appropriate alignment could be found. While waste or construction materials could be moved to a local rail transfer station, if one were available, they would still need to be transferred to the application site via road so this would not provide any benefits for the local highway network.
- 4.8.52 Measures to provide alternatives to private car usage are set out in the framework construction and operational travel plans included in the DCOb. A range of travel and traffic management plans are required by the CoCP to be prepared in consultation with LBE and TfL (REP8-013).
- 4.8.53 The Secretary of State may only include in the DCO a provision extinguishing PRowS if he is satisfied either that there will be an alternative right of way provided or that an alternative right of



way is not required<sup>29</sup>. I conclude that the proposed changes to local access and rights of way would deal adequately with the consequences of constructing the NLHPP.

- 4.8.54 The main outstanding request from TfL at the end of examination was a practical one that it should be specifically named in the draft DCO as a consultee concerning works which may affect its functions as highway and traffic authority, and also in requirement 16 as a consultee during revisions to the CoCP (REP8-038). This is a matter I return to in Chapter 7 dealing with the draft DCO.

## **4.9 LAND USE**

- 4.9.1 As set out in Chapter 2, the existing EcoPark occupies a site of approximately 16ha. The future operational site would be almost congruent with it, but with some small areas of additional land:

- Deephams Farm Road;
- part of Ardra Road embracing a new pumping station; and
- land to the east of the EcoPark for the new Lee Park Way entrance and landscaping along the eastern boundary.

- 4.9.2 The application site however extends to some 22ha as the Order land includes the proposed temporary laydown area needed for construction purposes. This lies to the immediate north of Advent Way between the River Lee Navigation and Lower Hall Lane.

- 4.9.3 These various sites are shown on drawings A\_0003 and A\_0004 (REP8-001).

- 4.9.4 The replacement of the existing EfW and associated activities by the proposed ERF and RRF is a complex undertaking over several construction stages resulting in the internal reorganisation of the uses within the site<sup>30</sup>. But in principle, there are no major issues in land use terms as this is the redevelopment of an existing long established waste management site for the same purposes. The two main matters which do arise are firstly, the proposed use of land for temporary construction purposes as this is within the MGB, and secondly, the future use of a site in the centre of the existing EcoPark currently occupied by the EfW plant when this facility is eventually demolished.

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<sup>29</sup> s136 PA 2008

<sup>30</sup> see paragraphs 2.4.7 and 2.4.8 above

## **The temporary laydown area**

- 4.9.5 The designated MGB abuts the eastern edge of the EcoPark site, embracing the William Girling reservoir and the open land to the south, and decreasing in width as it crosses the A406 North Circular Road straddling the River Lee Navigation. This is shown on the extract from the adopted Enfield Local Plan in Figure 5.2 of the Planning Statement (APP-018). This area is also subject to environmental designations, principally an Area of Special Character (Site of Landscape Importance) and partly a SMINC as shown on drawing C\_0015 (REP8-001).
- 4.9.6 Immediately to the north of the proposed temporary laydown area, and therefore also within the MGB, is the construction waste recycling facility operated by Camden Plant Ltd as explained in paragraphs 4.7.14 and 4.7.15.
- 4.9.7 The proposed new site access from Walthamstow Avenue, landscape enhancement works and the temporary laydown area are wholly within the MGB. As this site is undeveloped open space (consisting of unused scrubland) the considerations set out in NPSs EN-1 and 3 apply: when located in the MGB many elements of proposed energy infrastructure development will constitute inappropriate development, and the applicant will need to demonstrate very special circumstances that clearly outweigh any harm by reason of inappropriateness (paragraphs 5.10.10 of NPS EN-1 and 2.5.35 of NPS EN-3).
- 4.9.8 The applicant does not argue that the proposed works fall within any of the exceptions in paragraphs 89 and 90 of the NPPF where development in Green Belt is not considered to be inappropriate development. The reasons for proposing the temporary laydown area on this site are therefore important considerations in deciding whether they outweigh harm to the MGB (to which I return in Chapter 5).
- 4.9.9 The justification is explained in paragraphs 6.10.11 to 17 of the Planning Statement (APP-018) as follows :
- the existing EfW must remain operational throughout the construction period of the proposed ERF; this means that there is not sufficient space within the EcoPark to accommodate a construction compound of sufficient size, and it is therefore necessary to find a site for a temporary laydown area beyond it;
  - the key criteria for the temporary laydown area are sufficient size, proximity to the EcoPark and reasonable accessibility for construction staff and traffic;
  - the proposed site of the temporary laydown area is the only suitable site within reasonable proximity; it is

currently inaccessible to the public and surveys have not identified any ecological features of note;

- the temporary laydown area would be operational for the duration of construction and demolition of the existing EfW only, a period of approximately five years<sup>31</sup>; when construction and demolition is complete the draft DCO requires the temporary laydown area to be reinstated to the reasonable satisfaction of the landowner;
- the proposed new eastern access from Lee Park Way to the EcoPark is necessary for members of the public visiting the RRF; and
- all works are either temporary or comprise works to existing infrastructure and no new buildings are proposed in the MGB.

4.9.10 In my first and second written questions, I asked for an illustrative masterplan showing the intended uses to take place. The applicant provided this as drawing E\_0010 (REP3-016) and it shows the areas and scale of hardstanding, vehicle parking, buildings for offices and staff welfare and areas for storage of building materials.

4.9.11 I also sought further details of the alternatives to a location within the MGB the applicant had considered for the temporary laydown area, and the views of the LVRPA and LBE.

#### ***Alternatives considered***

4.9.12 The criteria the applicant adopted for the temporary laydown area were: -

- ease of access;
- distance from the EcoPark;
- layout and size (3.3ha);
- ability to connect to utilities;
- site security; and
- site availability.

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<sup>31</sup> however, the indicative construction programme (paragraph 3.5.6 et seq, APP-039) shows that the temporary laydown area would actually be required between approximately mid 2019 and mid 2028, i.e. 9 years, with the provision for restoration of the site up to two years after that, meaning up to 11 years in total

- 4.9.13 Four sites were considered against these criteria:
- Eley Industrial Estate (to the west);
  - IKEA car park (to the south);
  - Deephams STW (to the north); and
  - TWUL land (to the east).
- 4.9.14 Only the last one satisfied the site criteria (1Q 4.2, REP3-016). The applicant also set out its views in response to how implementation of the development could proceed if the temporary lay down area is denied for any reason: essentially there is no other option other than abandoning the project (2Q 7.3, REP5-001).

### ***Representations***

- 4.9.15 LVRPA and LBE accepted that there is insufficient space within the EcoPark site for construction purposes, and together with CRT made representations about reinstatement proposals for the temporary laydown area and how these fit into wider ambitions for the future use of this site (REP3-010, 004 and 009). For the LVRPA, restoration of this site is an important component in the continuity of the Regional Park and maintaining its openness, given the fragmentation caused by road crossings and adjacent industrial activities and land uses. The restoration and enhancement of this area of MGB has been a long held aim of the LVRPA set out in its Park Development Framework (REP2-011).
- 4.9.16 LBE noted that the temporary lay down area is proposed on land which is identified as reconfigured open space and potential compensatory flood storage associated with the proposed Meridian Water development (REP2-012). LBE and CRT shared the views expressed by LVRPA about proper reinstatement, and requested a requirement in the draft DCO to enable LBE to control reinstatement (REP2-012 and REP3-009). This was strongly rejected by both TWUL as the majority landowner of the proposed temporary laydown area site (REP4-004) and the applicant (REP4-001).
- 4.9.17 The applicant confirmed through a revision to the Design Code Principles that this document does apply to the restoration of the temporary laydown area (secured by article 27 of the draft DCO), but not to buildings on the site during construction (REP7-025).
- 4.9.18 LBE confirmed that it "*considers that the proposed temporary laydown area is an inappropriate use within the green belt. However, this given, the use of the land to facilitate delivery of*

*the ERF and wider works covered by the DCO constitutes exceptional circumstances only where the use of the land is temporary (to cover the construction period ) and the land is appropriately and positively reinstated consistent with the provisions of NPS EN1 that seek to exploit opportunities for building-in beneficial biodiversity or geological features as part of good design and where this aligns with the use of the area for flood alleviation. A permanent use of this area would not be supported, would be inappropriate and would be contrary to the provisions of the NPPF and the Local Plan" (REP5-003).*

- 4.9.19 Sites within the EcoPark which might be available for construction purposes, such as that currently occupied by Ballast Phoenix and the existing EfW, are not possible in practice. This is because the internal rearrangement of land uses within the EcoPark at the same time as maintaining waste handling operations means all the land is needed until the final stage when the EfW itself is decommissioned. I conclude that there is no reasonable alternative to the proposed site in the MGB for the temporary lay down area, on the basis of the criteria the applicant has established.
- 4.9.20 The proposed site to the east of the River Lee Navigation is currently unused and undeveloped and therefore contributes to one of the fundamental purposes of the MGB to prevent urban sprawl by keeping land permanently open. However, I recognise that the openness of this site is somewhat compromised by the longstanding use of the land to the north by Camden Plant Ltd and the need for LBE to secure compliance with the enforcement notice issued in 2010.
- 4.9.21 Use of the proposed site for a temporary laydown area would be inappropriate development and therefore harmful to the MGB. The considerations which might outweigh such harm are set out in Chapter 5, but at this point I note that the use of this site would be essentially temporary with a requirement to reinstate to its previous condition. The various proposals to then enhance the beneficial use of this site might well be consistent with paragraph 81 of the NPPF, but are outside the content of this particular application.

#### **Use of the EfW site**

- 4.9.22 Implementing the proposed development requires the construction of the RRF and ERF continuing to operate alongside the existing EfW for a transitional period before demolition of the EfW. This would then leave a cleared site which is referred to in several places in the application documents as becoming available for future waste-related development at the end of implementation in 2027. Until such firm proposals arise, this site would be temporary hardstanding. Both the LVRPA and LBE raised concerns about the intentions for this open space within

the heart of the future EcoPark as it would be a significant feature clearly visible from the elevated section of the A406 North Circular Road (REP2-011 and 012).

- 4.9.23 LBE asked the Design Code Principles document should be amended to provide for a better outcome for this large expanse (REP3-003). The outcome is an agreement reflected in the SoCG with LBE that the site would be temporarily landscaped by trees in planters around the boundary to improve the visual appearance and reduce the prospect of it becoming an unused site and therefore potentially an eyesore (REP3-021). Given that eventual development proposals for this site would be a matter for LBE to consider (1Q 1.13, REP3-016), I conclude that this is a reasonable situation.

### **Conclusions**

- 4.9.24 I conclude there are no major issues in land use terms with the operational site as this is the redevelopment of an existing long established waste management site for the same purposes. However, use of the site outside the existing EcoPark for a temporary laydown area would be inappropriate development and therefore harmful to the MGB.

## **4.10 LANDSCAPE AND VISUAL IMPACTS**

- 4.10.1 NPS EN-1 identifies that the landscape and visual effects of new energy infrastructure plants will vary according to the type of development, its location and the landscape setting surrounding the proposal site. Sufficient consideration should also be given to the overall visibility of the development and the related visual amenity. NPS EN-3 requires an assessment of the landscape and visual effects of the proposed infrastructure. Accordingly, a landscape and visual impact assessment is set out in Vol.3 of the ES (REP8-022 and 023) and the DAS (APP-023 to 026).

### **Physical impacts**

- 4.10.2 The existing landscape context is described in the DAS, with industrial development surrounding the application site to the north and west, whilst to the east is the LVRP containing the major reservoirs and the line of 275kV electricity pylons following the River Lee Navigation. To the south, the landscape is dominated by the elevated A406 North Circular Road and several retail parks, and the proposed Meridian Water mixed use development.
- 4.10.3 The maximum height of the existing EfW is approximately 31.5m and the building has white and pale blue metal facades. The maximum height of the proposed ERF would be 56.5m (controlled by the parameters set out in requirement 5 of the draft DCO), and on the basis of the Design Code Principles would be lighter in colour to reduce its visibility.

- 4.10.4 The existing stack is in the centre of the EcoPark site, approximately 100m high and 10m wide and circular in shape. It is mostly beige in colour except at the top which is light blue where two flues extend above the single stack. The proposed new stack would be at the northern end of the site, up to 105m high, but rectangular in shape (12m x 5m), with the narrower sides facing visual receptors to the east and west.
- 4.10.5 Depending on operational and atmospheric conditions, a white plume above the existing stack can be visible, generally between 20m and 60m in length but may be in excess of 300m long. Visible plume formation is most prevalent during winter months, and currently occurs approximately 8 days a year. The stack serving the proposed ERF is predicted to have a visible plume for over 50 days a year and plainly would therefore be much more frequently visible.
- 4.10.6 Permanent hard and soft landscaping is proposed within the operational site, including utilisation of areas of cut and fill to create new landform, and native and ornamental tree planting and shrub planting along the eastern side of the proposed development adjoining the LVRP.
- 4.10.7 The existing EcoPark site operates 24 hours a day and is therefore lit. This would continue with the proposed development, albeit with much more modern lighting equipment. Lighting would also be provided for the new Lee Park Way access for vehicles, pedestrian and cycle paths and for operational vehicles entering from the new Deephams Farm Road access.

### **Visual impacts**

- 4.10.8 The main design measures incorporated to minimise visual impacts are:
- the massing of the proposed ERF building, stepping down towards the LVRP to minimise the scale of the new facility visible in views from the east;
  - an earth bank along the eastern side of the proposed ERF to visually reduce the height of the proposed building and enabling tree planting to screen it; and
  - use of contrasting materials and colours to help break up the mass of buildings, including a lighter colour material of the stack to help it to blend in with the sky.
- 4.10.9 The main content of Vol.3 of the ES is a series of 20 representative viewpoints agreed with LBE and LVRP showing the existing situation in both the winter and summer (REP8-022). The majority of the viewpoints represent the view from

recreational and residential receptors in publically accessible locations, and the sensitivity of these visual receptors to change is considered to be high. These viewpoints provide the baseline for the visual assessment and the production of wire frames showing an assumed outline of the proposed development with and without the existing EfW. It is assumed that all cumulative development, with the exception of the Meridian Water scheme, would be completed by the time construction of the proposed development commences, and therefore these form part of the future baseline.

- 4.10.10 In response to a first written question (1Q 8.1, PD-008), the applicant provided additional photomontages of the proposed development on completion, with the existing EfW demolished and with an assumed visual profile for the proposed Meridian Water development. This was for four of the existing viewpoints and for four additional ones, so that the total number of photo montages provided is 24 (REP3-016).
- 4.10.11 A detailed assessment is then presented for each of the viewpoints at each stage of construction, operation and decommissioning of the project. Construction activities would be controlled by the CoCP, but the main visual effects are likely to be the permanent loss of trees and shrubs along the eastern boundary of the application site, pending landscaping and tree planting at the end of the construction programme. The worst case would occur during stage 2 of the construction programme when both the existing EfW and the proposed ERF buildings would be present on the site, both stacks would be operational and plumes apparent against a blue cloud free sky during winter months (REP8-022).
- 4.10.12 Whilst there would be some significant temporary adverse effects during construction of the ERF and during the demolition of the existing EfW, the conclusion of the assessment of the operational stages is that there would be no significant residual effect. Removal of the proposed development when it is eventually decommissioned would result in a significant beneficial visual effect.

### **Representations**

- 4.10.13 CRT sought additional powers in the draft DCO to approve the landscaping along the eastern edge of the proposed development adjacent to the River Lee Navigation (REP2-009). This was echoed by the LVRPA, seeking consultation concerning discharge of those requirements in the draft DCO dealing with design and appearance, landscaping and ecological commitments (REP2-011). The applicant's response was to highlight the proposed consultation provisions in paragraph 2(2) of Schedule 3 of the draft DCO (REP4-001).



4.10.14 Apart from the representations concerning the Design Code Principles referred to in section 4.6, LBE supported the general disposition of the buildings on the proposed development, the stack in terms of height and function, and the landscaping treatment proposed for the eastern side of the proposed development (REP2-012). In its LIR, LBE agreed with the conclusions of the ES assessment that the construction and decommissioning activities would result in some adverse impacts but that these would be temporary, and that the impacts of the scheme when in operation would not be significant overall. LBE concluded therefore that the proposed development would not cause visual harm to the wider area (REP3-003). This was endorsed in the SoCGs agreed with the GLA, LVRPA and LBE (REP3-012 and 013, REP6-017).

### **Assessment**

4.10.15 The viewpoint photographs in the ES show very well that much the most prominent feature of the existing EfW is the stack, indeed in many instances it the only visible feature. This changes for views close to the existing development and particularly on the eastern side alongside the River Lee Navigation where the size and scale of the buildings are more noticeable. An impression of the changes to the massing and scale of buildings on the EcoPark site is contained in Figures 6.30 and 31 of the DAS, underlining that the most bulky of the new buildings (the ERF) and the stack would be to the north of the site.

4.10.16 As part of the examination I undertook two accompanied site inspections<sup>32</sup> which enabled me to understand the existing topography, visually assess the elements of the proposed development, and view key features within the local and wider landscape that could be affected, such as the main buildings and viewpoints.

4.10.17 As this proposal would be the redevelopment of an existing facility, the issues to my mind are around whether the proposed development when complete would be significantly different and result in better or worse visual effects. In terms of the broader landscape, the existing EfW is set within largely industrial surroundings, which are unlikely to change much apart from the proposed Meridian Water development to the south. The main visual differences between the existing and proposed development on the EcoPark would be:

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<sup>32</sup> on 17 March 2016 and 17 August 2016

- a much higher and more bulky appearance of the proposed ERF compared with the EfW, and on a different part of the EcoPark site;
- a new stack of similar height to the existing one but again in a different position within the EcoPark site, and of different design; and
- the clearance of existing trees and vegetation, particularly around the eastern edge of the site with replanting and landscaping in due course.

## **Conclusions**

- 4.10.18 I conclude that the landscape and visual assessment has been carried out in full compliance with the requirements of the NPSs. It demonstrates that the main impacts would occur during construction, and these would be subject to the controls provided by the CoCP.
- 4.10.19 Once completed, the buildings would be larger and more prominent than the existing EfW plant, particularly the proposed ERF. The scale and mass of the building would be reduced as far as possible through the approaches to design, and the use of colours and materials as set out in the Design Code Principles. The visual impact of the ERF would be reduced when viewed from the LVRP by stepping back the massing and through landscaping.
- 4.10.20 Arguably, the existing stack is a well-established feature of the immediate locality and provides a point of reference in what is a busy and complicated surrounding industrial landscape. This would continue with the proposed new stack of similar height, but a determinedly different approach to design and appearance which in my view would result in a more attractive outcome.
- 4.10.21 Overall, the systematic design approaches contained in the DAS and Design Code Principles offer the prospect of a significant improvement in the quality and appearance of the proposed development over that of the existing EfW plant.

## **4.11 HISTORIC ENVIRONMENT**

- 4.11.1 Impacts on heritage assets and the historic environment are often a substantial element of the assessment of energy infrastructure proposals, and NPS EN-1 provides detailed guidance about these matters. However, in the case of this application, there are no heritage assets on the application site itself and very few in the vicinity. Drawing no C\_0017 (REP8-001) shows that the nearest listed buildings are the late Victorian Grade II listed Chingford Mill Pumping Station, Turbine Hall and Railings to the east of the temporary laydown area.

- 4.11.2 Accordingly, built heritage was scoped out of the EIA as no potentially significant effects on built heritage assets were identified during desk-based assessment within the application site or the wider study area. This was agreed with Historic England (HE), as recorded at paragraph 3.1.3, Vol.2 of the ES (REP8-017).
- 4.11.3 However, some potential impacts on archaeology may exist during the construction stages and would require further assessment. Section 3, Vol.2 of the ES sets out in the current position concerning the range of archaeological interests surrounding the application site (REP8-017). Twenty-four archaeological investigations were carried out in the assessment area, although none on the application site itself. Six of these were undertaken at the Deephams STW site between 2001 and 2010.
- 4.11.4 The assessment concludes that construction would not have a significant effect on archaeological deposits, but that a programme of archaeological investigation should be carried out to ensure that any future archaeology is properly recorded. This is provided for within the CoCP submitted as part of the application. HE considered that this fell short and requested a more proactive approach (RR-017). The applicant proposed amendments to paragraph 6.2.1 of the CoCP, which have been agreed with HE.

### **Conclusions**

- 4.11.5 Accordingly, I consider there are no historic environment issues concerning the proposed development. I do not consider that the setting of the three listed buildings to the east of the temporary laydown area site would be affected by the development proposals and consequently Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010 (as amended) is not engaged.

## **4.12 NOISE AND VIBRATION**

- 4.12.1 NPS EN-1 recognises that excessive noise can have wide-ranging impacts on the quality of human life and health, and wildlife and biodiversity. Where noise impacts are likely to arise from the proposed development, a noise assessment should be carried out identifying the effect of predicted changes on any noise sensitive premises and areas, and mitigating measures. The noise impact of ancillary activities associated with the development, such as increased road and rail traffic movements, or other forms of transportation, should also be considered. NPS EN-3 adds specific considerations relating to EfW generating stations such as delivery and movement of fuel and materials and operational noise from generating plant.

- 4.12.2 A full noise and vibration assessment has been undertaken and is set out in section 8, Vol.2 of the ES (REP8-017 and 021). This covers noise arising from:
- road traffic, vibration and from the temporary laydown area during construction; and
  - the proposed development when the plant is operational.
- 4.12.3 Seven noise monitoring locations, shown on Figure 8.1, Vol.2 of the ES (REP8-018), were agreed with the EA and LBE and their SoCGs indicate general agreement with the methodology (REP5-002, and REP6-017). Some discussion took place with the EA about the adequacy of baseline noise data prior to submission of the application, but no representations were received from the EA about these matters.
- 4.12.4 Background noise is dominated by road noise from the A406 North Circular Road. No vibration effects are likely to occur during construction because residential receptors that could be affected by vibration are more than 400 metres from the EcoPark site. The conclusion of the assessment is that the potential noise and vibration effects of the proposed development would not be significant during construction or operation, and this is agreed by LBE in its LIR (REP3-003).
- 4.12.5 During construction, noise and vibration effects would be managed through the CoCP which is secured by requirement 16 in the draft DCO. The CoCP includes measures to implement the recommendations of BS 5228, and requires the contractor to prepare a Construction Environmental Management Plan which would set out the management and monitoring processes covering noise and vibration.
- 4.12.6 Operational noise limits would be controlled by requirement 17 of the draft DCO. A written scheme for noise management including monitoring and attenuation and an implementation timetable must be approved by LBE. It must also replicate any noise levels set out in the environmental permit to be approved by the EA. From the ES, it is understood that operational noise limits would comply with BS 4142, and so meet the requirements of the EA expressed during consultation stages.

### **Conclusions**

- 4.12.7 The nearest residential areas are a considerable distance from the proposed development, and the noise consequences are forecast to be not significant during the construction stage nor significantly different to the existing EfW when operational. For these reasons, there are no major noise and vibration issues arising from the proposed development. To my mind, the provisions in the draft DCO to control noise during both the

construction and operational stages provide a sufficiently robust framework involving both LBE and the EA at appropriate points in the process.

#### **4.13 BIODIVERSITY, ECOLOGY AND NATURE CONSERVATION**

4.13.1 The application includes a Report on Natural Features which contains at Appendix A a plan showing the location of statutory and non-statutory sites in the vicinity of the application site (APP-036). In accordance with NPS EN-1, section 5, Vol.2 of the ES assesses any effects on internationally, nationally and locally designated sites of ecological or geological conservation importance, on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity (REP8-017, 018 and 019). No requirement for licences from NE in connection with European Protected Species was identified during the survey work undertaken by the applicant and submitted as part of the ES<sup>33</sup>.

4.13.2 Impacts during the construction phases of the proposed project would be subject to detailed measures in the CoCP designed to protect biodiversity such as:

- pre-construction surveys to determine the current status and distribution of protected and notable species and to inform requirements for any mitigation;
- the production of method statements for specific species;
- construction lighting to be at the minimum luminosity necessary and the use of low energy consumption fittings;
- appropriate treatment and control of invasive non-native species; and
- management of noise and vibration, dust, air pollution and exhaust emission in accordance with best practicable means.

4.13.3 Landscape, ecology and lighting proposals for the operational stage of the proposed development are considered in the DAS and Design Code Principles.

#### **International designations**

4.13.4 As set out in section 4.3, there are two European sites located within 10km of the application site:

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<sup>33</sup> Conservation of Habitats and Species Regulations 2010 (as amended)

- Lee Valley SPA and Ramsar Site located approximately 1.5km at the closest point to the south of the application site; and
- Epping Forest SAC located approximately 2.8km at the closest point to the east of the application site.

4.13.5 The proposed development would not result in any likely significant effects on European sites, either alone or in combination with other plans or projects and so no further stages in the Habitats Regulations assessment process are required (APP-036). However, the potential deposition on these designated sites of nitrogen compounds from emissions is considered further in the assessment. The ES though concludes that these are sufficiently far from the application site not to be affected during construction, while during operation, deposition rates for particulate matter and nitrogen from the ERF would decrease compared with the existing EfW.

### **National and local statutory designations**

4.13.6 Chingford Reservoirs SSSI is located approximately 300m to the north-east of the application site and comprises a series of drinking water storage basins. The William Girling Reservoir is the closest, with the King George's Reservoir located approximately 2.5km further north from the application site. Chingford Reservoirs are one of the major wintering grounds for wildfowl and wetland birds in the London area.

4.13.7 There are two SSSIs within Lee Valley SPA and Ramsar site. Walthamstow Reservoirs SSSI is located approximately 1.5km to the south of the EcoPark and comprises ten relatively small and shallow water storage basins. The reservoirs support one of the country's major heronries and have a large concentration of breeding wildfowl. Turnford and Cheshunt Pits SSSI is located 8.5km north of the EcoPark and comprises ten former gravel pits, of national importance for wintering birds.

4.13.8 The majority of Epping Forest SSSI is within the SAC and is one of the few remaining large-scale examples of ancient wood-pasture in lowland Britain.

4.13.9 The ES concludes there will be no significant effects on any of these sites.

4.13.10 Ainslie Wood LNR is a statutory site located approximately 1.5km east of the EcoPark. This is a locally important area of woodland. There is no potential for disturbance from noise, lighting or activity from the proposed development, and so is not considered further in the ES.

## **Non-statutory sites**

- 4.13.11 Only the Lea Valley SMINC is sensitive to impacts associated with the proposed development because part of it is located within the application site. Any other sites of nature conservation interest are at least 1km from the application site and there is no potential for disturbance from noise, lighting or activity.
- 4.13.12 The Lea Valley SMINC is shown on drawing no C\_0015 (REP8-001). It covers a small part of the east side of the EcoPark alongside the River Lee Navigation and consists of plantation woodland. The SMINC also covers all of the proposed temporary laydown area, which consists mainly of scrub and species-poor grassland. The SMINC is important for birds, of which a breeding population of linnet within the temporary laydown area is the most significant as far as the assessment is concerned.
- 4.13.13 A small part (0.11ha) of the SMINC in the north east corner of the EcoPark would be permanently lost to hardstanding as it is located under the proposed ERF ramp, new entrance or new path alongside Lee Park Way. However, the ES considers this loss to be offset by the enhancement of habitats along Lee Park Way and along Enfield Ditch.
- 4.13.14 The majority of habitat loss within the SMINC would be on the temporary laydown area, and therefore of limited duration, and subject to restoration provided for by article 27 of the draft DCO. The impacts and disturbance on the Lea Valley SMINC as a whole is considered by the ES to be not significant, but habitat loss and disturbance during construction are expected to lead to a temporary significant adverse effect concerning linnet. In response to a written question, the applicant confirmed there are no feasible measures that could be implemented to mitigate these temporary effects (2Q 5.1, REP5-001).
- 4.13.15 Within the existing EcoPark, apart from the buildings and large areas of hardstanding, there are pockets of broadleaved trees, standing open water, ruderal vegetation, introduced shrub, amenity grassland, and young broadleaved plantation woodland, all of site value only. Of possible species, only foraging bats have been recorded.

## **Representations**

- 4.13.16 The RR from NE confirmed there are no significant ecological issues arising from the proposed development concerning statutory site or protected species (RR-008). The SoCG confirmed NE's position and that the measures set out in the CoCP provide a mechanism for managing ongoing consideration for ecological effects (REP3-014). No other IPs raised any

matters in respect of potential impacts of the development on European Protected Species.

- 4.13.17 The EA welcomed the plans to improve and enhance Enfield Ditch, the incorporation of green and brown roofs into the design, an Invasive Species Management Plan and the proposed lighting strategy. This would help to minimise impact on bat communities and maintain a 'dark corridor' along the river channels. These measures would be secured by adherence to the Design Code Principles.
- 4.13.18 The EA also set out its wish to see a requirement in the draft DCO to maintain and enhance biodiversity along the along the banks of the River Lee Navigation, Salmon's Brook and Enfield Ditch (REP2-004). This was supported by LBE in its LIR (REP3-003). The applicant responded that flood risk activity permits would be required for any landscaping or other works within 8m of any main river, and the applications to the EA would be based on the Design Code Principles. This was agreed by the EA in its SoCG (REP5-002).
- 4.13.19 The GLA's representation stated the application met London Plan policy, and the impacts on the adjacent SSSI are likely to be negligible.(REP2-008)
- 4.13.20 As noted in paragraph 4.9.16, both CRT and LVRPA sought additional powers in the draft DCO to approve the landscaping and lighting along the eastern edge of the proposed development adjacent to the River Lee Navigation (REP2-009 and 011). The applicant's response was to highlight the proposed consultation provisions in paragraph 2(2) of Schedule 3 of the draft DCO (REP4-001).

### **Conclusions**

- 4.13.21 In conclusion, I consider that the applicant has carried out a thorough assessment of ecological matters in compliance with the requirements of NPS EN-1. There are two adverse impacts:
- the clearance of scrub, grassland and tall ruderal vegetation and use of the temporary laydown area during stages 1 to 3 of the project would be likely to deter linnet from nesting within the application site, leading to a temporary significant adverse effect; however, the restoration of the temporary laydown area following completion of construction works would be expected to provide suitable breeding habitat, so that the effect on this species during operation is not significant; and
  - a small area of the Lea Valley SMINC in the north east of the application site would be cleared and have a footpath and maintenance access added; however, these works



would be offset by the enhancement of habitats along Lee Park Way and landscaping proposed elsewhere within the SMINC which falls within the application site.

- 4.13.22 In the light of the SoCGs agreed with NE and EA, and the arrangements provided for by the CoCP and the Design Code Principles secured by appropriate requirements in the draft DCO, these effects are not of a scale which I consider would indicate the application should be refused on biodiversity, ecology or nature conservation grounds.

#### **4.14 CLIMATE CHANGE ADAPTATION**

- 4.14.1 New energy infrastructure is expected to be sufficiently resilient against the possible impacts of climate change. NPS EN-1 therefore requires the ES to set out how the proposal will take account of the projected impacts of climate change using the latest UK Climate Projections available at the time. NPS EN-3 recognises that the practical climate change considerations for waste generating stations are likely to be increased risks from flooding, and the level of CO<sub>2</sub> emissions.
- 4.14.2 Climate change adaptation is not specifically addressed in the ES, but is covered in the chapters dealing air quality, water resources and flood risk. The implications of climate change are also touched on the Sustainability Statement (APP-033).
- 4.14.3 Accordingly, the EA considered in its WR that climate change impacts arising from the proposed development were around the flood risk assessment (REP2-004). No other representations were made about specific climate change matters.
- 4.14.4 It is apparent that although climate change adaptation has not been presented as a separate section in the ES, the applicant has considered this throughout the design of the project. The main issues relevant to climate change would be the possible increase in flood risk, water resources, air quality and emissions and these have been assessed as discussed in following sections of this Chapter.

#### **4.15 FLOOD RISK**

- 4.15.1 NPS EN-1 states that applications for energy projects of 1ha or greater in Flood Zone 1 and all proposals for energy projects located in Flood Zones 2 and 3 should be accompanied by a flood risk assessment (FRA). This should identify and assess the risks of all forms of flooding to and from the project and demonstrate how these flood risks will be managed, taking climate change into account. An appropriate FRA is therefore an important part of determining an application for development consent, together with demonstrating that:

- where appropriate, the sequential test has been applied as part of site selection;
- if it is not possible, consistent with wider sustainability objectives, for the project to be located in zones of lower probability of flooding than Flood Zone 3, the exception test has been applied;
- a sequential approach has been applied to the layout and design of the project itself, directing the most vulnerable uses to areas of lowest flood risk;
- the proposal is in line with any relevant national and local flood risk management strategy;
- priority has been given to the use of sustainable drainage systems (SuDs); and
- in flood risk areas the project is appropriately flood resilient and resistant, including safe access and escape routes where required, and that any residual risk can be safely managed over the lifetime of the development.

4.15.2 In the case of the NLHPP proposal, parts of the application site are in Flood Zone 2. These are in the centre of the EcoPark where the existing EfW facility is located, along the southwest boundary adjacent to Salmon's Brook, and on part of the wharf on the River Lee Navigation. The temporary laydown area is almost entirely within Flood Zone 2, with the exception being a narrow strip of land adjacent to the eastern boundary which is in Flood Zone 3.

4.15.3 Accordingly, a FRA (APP-034) has been undertaken for the proposed development and which presents potential flood risk to the application site from fluvial, groundwater, artificial sources (e.g. reservoirs) and surface water flows. Section 11, Vol.2 of the ES also considers flood risk together with water resources (REP8-017, 018 and 021).

### **Fluvial**

4.15.4 The FRA confirms that the application site is potentially at risk of flooding from nearby watercourses: Salmon's Brook, Enfield Ditch, River Lee Navigation and the River Lee (approximately 25m to the east of the temporary laydown area), which are main rivers under the regulation of the EA.

4.15.5 The applicant has used the guidance provided in the PPG on how to account for climate change over the development lifetime. A 20% increase on peak river flows has been applied to baseline data for the period 2025 to 2115, and a 20% increase on peak rainfall intensities for the period 2055 to 2085. Once an

allowance for climate change has been taken into account, three small areas of the EcoPark would be within the defended 1% Annual Exceedance Probability (AEP) flood extent<sup>34</sup>.

- 4.15.6 The first of these is on the wharf adjacent to the River Lee Navigation where EcoPark House is proposed. This would result in a net additional increase of building footprint within the flood extent. To mitigate the flood risk, 11.0m<sup>3</sup> flood storage compensation would be provided on-site upstream of the wharf on the west bank of Enfield Ditch. Finished floor levels for EcoPark House would be set at or above 10.97m AOD, incorporating a 300mm freeboard above the design flood level.
- 4.15.7 The second area is a small existing car park in the southern section of the application site. Part of this would be needed for the proposed southern access road from Advent Way to the EcoPark. Approximately 107m<sup>3</sup> of flood storage compensation would be provided on the northern bank of Enfield Ditch. The cross section of the new crossing over Enfield Ditch for the southern access would remain unchanged to ensure no impact elsewhere as a result of constriction of flows.
- 4.15.8 The third area is located on the western edge of the EcoPark, associated with the flood extent of Salmon's Brook.
- 4.15.9 There is a residual risk of flooding in the event of flood defence failure in the upstream Lee catchment. To mitigate this risk, an emergency flood plan would be included as part of the overall Site Emergency Plan, secured by adherence to the ECMS through requirement 6 of the draft DCO. It would include procedures for receiving flood warnings from the EA, evacuating the application site during construction and once operational, and moving vehicles and equipment to areas at lowest risk.

### **Groundwater**

- 4.15.10 The FRA concludes that groundwater does not present a flood risk. The application site is underlain by alluvium deposits overlying a relatively thin layer of London Clay at shallow depth, and the principal chalk aquifer beneath that. Perched groundwater levels (above the clay) are close to the surface in some parts of the application site, but groundwater would drain to the surrounding watercourses.

### **Reservoirs**

- 4.15.11 There are several reservoirs located in the Lee Valley: the William Girling Reservoir is located to the north-east of the application site, and the Banbury Reservoir to the south, both

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<sup>34</sup> there is a 1% probability that this flood will be equalled or exceeded in any year

owned and operated by TWUL. These reservoirs are subject to a stringent maintenance and inspection regime under the Reservoirs Act 1975 (as amended), and therefore the flood risk to the application site from them is considered to be very low.

### **Surface water flood risk**

- 4.15.12 The majority of surface water from the EcoPark discharges to Enfield Ditch via an attenuation tank, and the rest to the Chingford Sewer which runs underneath the application site. The existing surface water drainage system would continue to operate during construction. Based on topography it is assessed that flood risk from this drainage system in the event of extreme rainfall would not affect the earlier phases of development. Nevertheless, some temporary drainage may need to be in place during construction which would discharge to Salmon's Brook or Enfield Ditch.
- 4.15.13 The proposed development would include a new surface water drainage scheme, incorporating various SuDS. Once completed, only minimal areas, such as wheel washes, would drain to the Chingford Sewer. This reduction in potentially flash flows to the Chingford Sewer would reduce the risk of sewer flooding at the application site, though TWUL has confirmed that they have no record of flooding incidents at the application site as a result of surcharging public sewers.

### **Assessment**

- 4.15.14 All potential sources of flood risk have been considered in the FRA, and where a risk has been identified, sufficient mitigation in line with best practice is proposed. The proposed development, comprising waste treatment as well as offices, storage and distribution, is classed as 'Less Vulnerable' to flood risk, as classified in Table 3 of the PPG. It is therefore appropriate for Flood Zone 2. The proposed ERF is classed as 'Essential Infrastructure', and the Edmonton Sea Cadet activities classed as 'Water Compatible'<sup>35</sup>, also appropriate for Flood Zone 2.
- 4.15.15 The sequential test requiring alternative locations to be examined is deemed to be satisfied. This is because the application site is allocated in the development plan for the current and proposed uses. The EcoPark is already in use for waste processing and power generation and will continue to be used as such. As the project as a whole is appropriate for Flood Zone 2, the exception test is not engaged.

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<sup>35</sup> water based recreation; outdoor sports and recreation and essential facilities such as changing rooms", from Table 2, Flood Risk and Coastal Change, Planning Practice Guidance

- 4.15.16 A sequential approach has been taken to the layout of proposed uses on the application site, with the new development to be located in the lowest flood risk areas. The centre of the EcoPark where the existing EfW facility is located is in Flood Zone 2; the proposal is to move development from that area to other parts of the application site in Flood Zone 1, and therefore at lower risk of flooding.
- 4.15.17 The proposed layout for the temporary laydown area shown on drawing E\_0010 (REP3-016) indicates that temporary accommodation such as site offices and storage of construction materials is proposed to be located outside the areas at risk from the 1% AEP, taking into account climate change. Land within those extents would be allocated for parking, landscape, and site access.
- 4.15.18 The EA considered the FRA represents an accurate assessment of the flood risks on the application site, and that the proposed mitigation measures would be satisfactory (REP2-004). The EA also confirmed that new guidance on climate change published in February 2016<sup>36</sup> is unlikely to have a significant effect on the findings of the FRA and that it can continue to be used to support the DCO.
- 4.15.19 The proposed improvement works to the existing bridge across the River Lee Navigation from Advent Way and a new bridge across Enfield Ditch from Lee Park Way are acceptable to the EA from a flood risk perspective, subject to agreement to final designs as part of the required Flood Defence Consent.
- 4.15.20 The SoCG with the EA (REP5-002) confirms that the scope, methodology and data sources of the FRA are agreed, and that the flood risk can be adequately mitigated through detailed design of the works. A Flood Risk Activity Permit is required under the terms of the Environmental Permitting Regulations for works within 8m of Enfield Ditch, Salmon's Brook and/or the River Lee Navigation. The implementation commitments in the CoCP and the ECMS are secured by requirement 6 of the draft DCO, and the necessary approvals from the EA would be sought prior to works commencing.
- 4.15.21 LBE's main concern was around the proposals for SuDS, particularly relating to the temporary laydown area and its future use once construction is complete (REP2-012 and REP3-003). The matter of future uses of the temporary laydown area is dealt with in section 4.7 dealing with cumulative impacts. The applicant's view is that the specific SuDS proposals to be adopted are for the detailed design stage as confirmed in the

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<sup>36</sup> Flood risk assessments: climate change allowances, Environment Agency, 19 February 2016

ECMS (REP7-011), and this is agreed with LBE in their SoCG (REP6-017).

### **Conclusions**

4.15.22 In conclusion, I am satisfied there would be no significant effects on flood risk from the proposed development, subject to:

- the applicant undertaking the measures during construction committed to in the CoCP;
- the mitigation measures set out in the ES confirmed by the ECMS; and
- the requirements of the permits to be sought from the EA.

### **4.16 WATER QUALITY AND RESOURCES**

4.16.1 NPS EN-1 says that where a project is likely to have effects on the water environment, an assessment should be undertaken of the impacts on water quality and water resources. This should include the physical characteristics of the water environment and any impacts on water bodies or protected areas under the WFD and source protection zones (SPZs) around potable groundwater abstractions. NPS EN-3 sets out additional potential impacts on water quality, abstraction and discharge considerations from energy from waste plants. These issues are addressed as part of section 11, Vol.2 of the ES (REP8-017, 018 and 021).

#### **Hydrology and water features**

4.16.2 The watercourses that flow along the eastern, western and southern boundaries of the application site are shown on Figure 11.1, Vol.2 of the ES (REP8-018) and comprise:

- the River Lee Navigation immediately to the east of the EcoPark;
- the River Lee (also known as the Lee New Cut) which flows parallel to the Lee Navigation, to the west of the William Girling Reservoir;
- Enfield Ditch, a classified main river partly within and partly outside the eastern boundary of the EcoPark, running parallel with the River Lee Navigation and along the southern boundary of the application site; according to the Hydrogeological Risk Assessment contained in Appendix 7.2, Vol.2 of the ES (REP8-020), it is ephemeral and often dry, but discharges to Salmon's Brook;

- Salmon's Brook immediately west of the EcoPark, flowing in an easterly direction, and then south along the western boundary of the application site;
- Pymmes Brook south of the A406 North Circular Road; and
- the Deephams STW outflow channel which flows into Salmon's Brook immediately north of the application site.

4.16.3 Under the WFD, all these water bodies are designated as having moderate potential quality, with the William Girling Reservoir having good potential.

### **Hydrogeology**

4.16.4 The superficial deposits across the application site are designated by the EA as a secondary aquifer, capable of supporting water supplies at a local rather than strategic scale, and in some cases can form an important source of base flow to rivers. The bedrock geology is formed of London clay, which by its nature has low permeability and is of negligible importance to water supply.

4.16.5 As shown on Figure 7.4, Vol.2 of the ES (REP8-018), nearly all the application site is located in the inner zone (Zone 1)<sup>37</sup> of an EA designated SPZ for groundwater sources, with the chalk as a principal aquifer. A small north-western part of the site falls within the outer zone (Zone 2)<sup>38</sup>. The low permeability layers in the Lambeth Group and the London Clay provide protection to the underlying chalk by limiting downward movement of groundwater from the surface as shown on Figure 7.2, Vol.2 of the ES (REP8-018).

### **Water abstractions and discharges**

4.16.6 As shown on Figure 11.2, Vol.2 of the ES (REP8-018), the existing operation abstracts water from Deephams STW outflow channel (therefore not requiring a licence) upstream of the confluence with Salmon's Brook. There are no licensed groundwater or surface water abstractions within the application site.

4.16.7 However, one licensed public water supply borehole abstraction is located within 100m of the south-easternmost point of the application site. There are four abstraction points to the north-east, one to the south-west and three to the west of the application site.

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<sup>37</sup> Zone 1: 50 day travel time from any point below the water table to the source

<sup>38</sup> Zone 2: 400 day travel time from any point below the water table to the source

- 4.16.8 The potable water supply to the application site is taken from the local TWUL distribution network.
- 4.16.9 Foul drainage (including process effluent from the existing EfW and surface water and domestic flows) is discharged to the Chingford Sewer. This crosses the application site from the south-east corner to Deephams Farm Road at the north-west corner of the application site.
- 4.16.10 There is also an operational outfall that collects rainwater run-off from building roofs, roads and car parks. Passing through an oil and grease interceptor and an attenuation tank, this then discharges to Enfield Ditch. There is discharge consent on the north-west boundary of the application site and is for site drainage to Salmon's Brook.

### **Assessment**

- 4.16.11 Any changes arising from future developments in the vicinity of the application site are likely to be small. The most significant would be water resource requirements for the proposed Meridian Water development or possible capacity changes at Deephams STW.
- 4.16.12 During construction, there would be the potential for an increase in sediments in run-off from bridge construction to watercourses and contamination from spillage/pollution incidents infiltrating to groundwater. These might cause localised changes in water quality of groundwaters and watercourses at the application site as well as downstream, at environmentally designated sites and within the SPZ. The risk of incidents occurring would be controlled through the CoCP.
- 4.16.13 The area of hardstanding within the proposed operational site is anticipated to increase by 10% or 1.6ha, and this would have the potential to increase run-off to watercourses. The quantity of water discharged to the Chingford Sewer and Enfield Ditch during the operational stages might increase, while the quantity of water abstracted from the channel downstream of the Deephams STW might decrease. To manage these possible changes:
- surface water site drainage would pass through oil interceptors and attenuation tanks;
  - rainwater harvesting would be implemented to reduce pressure on potable water supply;
  - water demand would be managed by incorporating water efficient appliances; and



- consents and approvals from the relevant authorities would be gained for water discharged to the Deephams STW via the Chingford Sewer.
- 4.16.14 In the light of these proposed mitigation measures, the ES concludes that there would be no significant effects on water resources during any stage of construction, operation or decommissioning of the proposed development. Nor would there be any degradation of the existing status for the WFD surface water bodies within the vicinity of the application site.
- 4.16.15 The EA confirmed its agreement to the Hydrogeological Risk Assessment, the foul and surface water aspects of the proposal during the operational stages (given requirement 13 of the draft DCO), and with the principles of the remedial options to deal with the risks of contamination to groundwater (REP5-002). However, the EA also argued that requirement 14 of the draft DCO did not address all its concerns.
- 4.16.16 I pursued these points during the examination including at the two ISH, and the applicant revised the draft DCO accordingly (REP7-012 and REP8-028). The version of requirement 14 in the final draft DCO, including the provision of a verification plan, a verification report, long term monitoring and maintenance plans and procedures for remediation of contamination not previously identified, is acceptable to both the EA and the applicant (REP5-002).
- 4.16.17 LBE supported the representations of the EA (REP3-003) and agreed in its SoCG with the applicant that SuDS would be used to manage surface water runoff (REP6-017). CRT stated that its consent would be required through protective provisions in the draft DCO for any surface water discharge from the temporary laydown area to the River Lee Navigation (REP2-009). The River Lea Anglers Club expressed its concern as to the possibility of pollutants entering the River Lee Navigation (REP2-001).
- 4.16.18 The applicant responded that article 16 of the draft DCO contains an obligation on the undertaker not to discharge water into any watercourse except with the consent of the person to whom it belongs. In this way, any terms and conditions CRT wishes to impose in relation to the nature and volume of discharges to the River Lee Navigation would be covered (REP4-001). This position was accepted by CRT in its SoCG (REP6-016).

### **Conclusions**

- 4.16.19 I conclude that the mitigation measures set out in the ES are confirmed in the ECMS which also details the delivery mechanism to ensure that they are undertaken. All construction mitigation would be secured through compliance with the CoCP

and requirement 16 in the draft DCO, and through consultation with the EA. Operational mitigation would be secured through compliance with requirements 13 and 14 in the draft DCO, the environmental permit, or in consultation with the EA. I am satisfied therefore that there are no issues relating to water quality and resources that would argue against the approval of the application.

#### **4.17 SOCIO-ECONOMIC IMPACTS**

- 4.17.1 The application is for the replacement of an existing EfW plant but nonetheless changes to employment and other socio economic matters, particularly during the construction stages, have been considered as part of the ES, as required by NPS EN-1.

##### **Current situation**

- 4.17.2 The current operation runs 24 hours a day, seven days a week and would continue to do so. There are approximately 193 FTE jobs, with approximately 96 of these directly related to the existing EfW. The remaining employees are responsible for other site operations and/or the management of LWL and the EcoPark site as a whole.
- 4.17.3 The wharf on the River Lee Navigation is currently leased to the Edmonton Sea Cadets and is typically used two evenings per week. These facilities are run by volunteers and there is no direct employment associated with the wharf.
- 4.17.4 The application site is adjacent to several employment areas, the nearest being the Eley Industrial Estate. The 2011 Census shows that the economically active population in the neighbourhood area surrounding the application site, as shown on Figure 9.1, Vol.2 of the ES (REP-8-018), was 64% and of that population, around 7% were unemployed.
- 4.17.5 According to the 2011 Census, 29% of residents in the neighbourhood area held no qualifications, and fewer residents in the neighbourhood area were employed in managerial, professional and technical occupations (30%) than in London as a whole (50%).
- 4.17.6 Measured by the proportion of claimants, Edmonton Green, where the EcoPark is located, was the fourth most deprived ward in London in 2011.

##### **Construction**

- 4.17.7 For the purposes of the assessment, the estimated capital expenditure for the construction of the proposed ERF alone is £475 million. This is expected to generate approximately 2,623 FTE net additional jobs across the UK of which 1,311 would be

local. The CoCP would require the contractor to employ an appropriately qualified and suitably experienced workforce. There would be significant temporary beneficial effects therefore from the construction of the proposed development as described at Table 9.2, Vol.2 of the ES (REP8-017).

- 4.17.8 During the construction stage, the Edmonton Sea Cadets would be relocated to meeting rooms and equipment storage elsewhere on site for a temporary period of approximately two years. The operating hours of the Edmonton Sea Cadets would not be altered although some activities would be curtailed, and so the effect on the Edmonton Sea Cadets from construction is considered to be minor adverse.
- 4.17.9 On completion of the project, the Edmonton Sea Cadets would partly occupy EcoPark House, which would include facilities to launch into the River Lee Navigation. EcoPark House would also be available for other community activities, visitor and project information and LWL office requirements.

### **Operation**

- 4.17.10 The estimated FTE employment at the proposed development would be approximately 153 jobs, of which about 49 would be at the ERF, a reduction of about 50 jobs from the current EcoPark level of employment. This is because the ERF would be more efficient than the EfW plant it would replace so requiring fewer jobs, combined with the closure of IBA operations and the IVC facility. The range of skills required is expected to be similar to the present.
- 4.17.11 The effect of this net reduction of on-site employment would be adverse, but it is unlikely to substantially change the level of employment in the local area from baseline conditions and therefore the effect would be not significant.

### **Representations**

- 4.17.12 The Eley Estate Company commented that the works should not impede businesses on the industrial estate located to the west of the EcoPark (REP1-005). This was echoed by Royal Mail concerning possible disruption to the highway network in particular (REP1-007), and Biffa and Bestway regarding impact on trading from their premises at Ardra Road (REP2-005 and 006). As they relate particularly to traffic and access considerations, these matters are dealt with in section 4.8 assessing transport issues.
- 4.17.13 CRT expressed support for the improvement of facilities for the Edmonton Sea Cadets (REP2-009), although no representations were received from the Sea Cadets directly. LBE in its LIR (REP3-003) confirmed that job creation during construction would be significant and would benefit the local economy. It

would, however, be temporary and therefore its effects tempered by this. The net reduction in permanent jobs would have a negative impact for those employees affected and for the local economy, but is not considered to have a negative effect overall.

4.17.14 LBE judged the overall socio-economic impact to be neutral, subject to employment and training opportunities being secured through legal agreements. The executed DCOB sets out the agreements between the applicant and LBE covering employment and skills matters (REP8-009) and is therefore an important element in concluding this issue:

- preparation of an employment and skills training strategy;
- provision of 100 twelve month apprenticeships;
- local business information relating to contract opportunities from the proposed development; and
- onsite skills and training.

### **Conclusions**

4.17.15 Overall, the project would create additional employment opportunities during construction, but result in a net overall loss of jobs at the EcoPark. The proposed development would not create any direct impact on the existing population, or lead to increased demand for housing or infrastructure provision such as school places or health care needs. The temporary relocation of the Edmonton Sea Cadets would cause some disruption, but the provision of a modern and improved facility as part of EcoPark House means the proposed development would result in a net benefit to them. The project would also provide benefits to the community through the potential for community activities to take place in EcoPark House. I conclude there would be no significant socio-economic impacts arising from the proposed development

## **4.18 CONSTRUCTION**

4.18.1 Construction impacts are dealt with on a topic by topic basis in the ES. Representations about construction issues were mainly around traffic and transport concerns, flood risk and the proposed temporary laydown area and are therefore considered in the appropriate sections of this Chapter. The applicant's response is generally to point to the CoCP as the mechanism by which adverse impacts during construction of the proposed development would be identified and dealt with. I therefore examined the content and operation of the CoCP in some detail.

## **The CoCP**

- 4.18.2 In the applicant's view, the purpose of the CoCP (REP8-013) is to outline minimum control measures and standards of construction practices required of the contractor as they affect the environment, amenity and safety of local residents, businesses, the general public and the surroundings in the vicinity of the application site (1Q 10.4, REP3-016).
- 4.18.3 The CoCP covers, inter alia, general site requirements, noise and vibration, air quality and odour, transport, water resources and waste. The applicant will ensure that the provisions of the CoCP are contained in and will be enforceable through the works contracts, including preparation, demolition, materials delivery and removal, and related engineering and construction activities.
- 4.18.4 I sought an explanation as to why in the case of this application, matters normally covered as requirements in a DCO such as construction traffic, noise, working hours and external lighting are contained instead in the CoCP.
- 4.18.5 The applicant helpfully provided a table showing how these matters identified in the Model Provisions<sup>39</sup> are addressed in the CoCP (1Q 10.4, REP3-016). Paragraph 6.77 of the EM similarly sets out where matters contained in the Model Provisions can be found in the CoCP (REP8-008).
- 4.18.6 Adherence to the CoCP would be achieved through both article 34 of the draft DCO, which lists the CoCP as a document for certification by the Secretary of State, and requirement 16 which states that the CoCP must be complied with for each stage of the authorised development, including the enabling works. As such, the applicant argues it is not necessary to include specific requirements within the draft DCO if they are properly covered in the CoCP (1Q 10.4, REP3-016).
- 4.18.7 However, as originally drafted, the intention to update the CoCP as necessary was a statement in the CoCP itself, rather than being included in requirement 16 of the draft DCO. I therefore requested that requirement 16 should be amended to embrace updating of the CoCP before commencing any stage of the authorised development (1Q 5.2, REP3-016), and the applicant agreed to this.

## **Representations**

- 4.18.8 I sought the views of several statutory consultees about whether the measures proposed for environmental mitigation in the draft CoCP were satisfactory (1Q 5.3, PD-008). Those that expressed

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<sup>39</sup> Infrastructure Planning (Model Provisions) (England and Wales) Order 2009

a view confirmed they were generally content, but argued for further assurances about consultation.

- 4.18.9 TfL in particular supported the approach set out in the CoCP which requires traffic management plans to be produced and agreed with themselves, LBE, and the emergency services. However, TfL was concerned that it is not named (in the DCOb) as a consultee in the drafting of the operational travel plan and urged the CoCP to be amended to include this requirement (REP7-032). In my view, the CoCP is not the appropriate place to deal with an operational travel plan as it is post construction, and therefore no such change to the CoCP is required.
- 4.18.10 In addition, TfL argued that its oversight of the process relies on TfL being consulted at specific stages of the project by the applicant or the contractor, and they being willing and able to follow TfL's advice. These matters are part of a broader concern expressed by TfL that it wished to be specifically named as a consultee in those requirements in which it has an interest, especially the updating of the CoCP provided for in requirement 16. Otherwise TfL argued it has to rely on the paragraphs in the CoCP where it is mentioned, or the general obligation upon LBE under article 38 and paragraph 2(2) of Schedule 3 of the draft DCO (REP2-003).
- 4.18.11 LBE agreed in their SoCG that the CoCP covers the relevant topics for the construction phase and the measures and standards provide a suitable level of control to provide mitigation and management of the construction process (REP6-017). During the course of the examination, the applicant offered amendments to the CoCP to meet representations by, amongst others, Historic England (REP1-003) and Biffa (REP4-001), and the final version of the CoCP includes these.

### **Conclusions**

- 4.18.12 In my view, the proposed CoCP in its final form (REP8-013) is a credible and workable approach to handling detailed construction issues as they arise during the implementation of the proposed development. The CoCP is a certified document under article 34 of the draft DCO and compliance with it is secured by requirement 16. In turn, the applicant would ensure its provisions are enforceable through the works contracts.
- 4.18.13 I appreciate the concern of some statutory bodies, particularly TfL, that they are not specifically named in requirement 16, or indeed other requirements, as needing to be consulted by LBE. However, I consider that the mechanism established in article 38 and Schedule 3 which places the obligation on all discharging authorities, including LBE, to consult all relevant and appropriate statutory consultees provides sufficient reassurance. If any

statutory body considers it is not being adequately consulted it can readily point to this specific provision in the draft DCO.

#### **4.19 GROUND CONDITIONS AND CONTAMINATION**

4.19.1 Section 7, Vol.2 of the ES describes the likely significant effects of the proposed development on ground conditions and contamination, in particular on groundwater quality (REP8-017). This overlaps to some extent with the sections above covering water resources and flood risk, but the particular focus of this section is whether there are issues for construction deriving from the geological conditions at the application site.

##### **Topography**

4.19.2 The area around the application site is generally between 10m and 20m above sea level, and is relatively flat with the exception of the William Girling and Banbury Reservoirs which are enclosed by raised bunds.

4.19.3 Levels are highest across the north-eastern part of the site at 18m AOD, and fall generally towards the south. The Lee Park Way bridge is a high point in the southern part of the site at 14.7m AOD. Low points are located in the north-west of the site adjacent to the proposed effluent treatment plant.

##### **Geology**

4.19.4 In addition to existing borehole data, soils and geotechnical data from 13 bore holes sunk in 2014 were analysed to confirm the geology in the north of the application site, and especially to establish the thickness of the London Clay. There is no data to determine the base of the Lambeth Group or the depth to Thanet Sand or underlying chalk. However, the depth to the chalk has been recorded at nearby boreholes at approximately 32m below ground level.

4.19.5 The geological sequence at the application site is shown on the cross sections in Figures 7.2 and 7.3, Vol.2 of the ES (REP8-018) and comprises Made Ground, Alluvium, Kempton Park Gravels, London Clay, Lambeth Group, Thanet Sand and White Chalk. The striking difference in thickness of the London Clay between the north and south of the application site is shown on Figure 7.5, Vol.2 of the ES (REP8-018), with the borehole positions to relate to the cross sections. The London Clay thins from the north to the south of the EcoPark and is absent around the existing EfW bunker, where an excavation was undertaken and subsequently backfilled with lower permeability sand and gravel. This underlines the decision to locate the proposed ERF in the north-east of the application site where the London Clay is at its thickest.

## **Construction matters**

- 4.19.6 Piling would be required for new building foundations of the proposed development, which has the potential to introduce groundwater pathways between aquifers, especially where the low permeability layers are punctured. Details of potential piling methodologies are included in the Piling Risk Assessment in Appendix 7.3, Vol.2 of the ES (REP8-020).
- 4.19.7 The CoCP would require method statements to be prepared by the contractor prior to work commencing. These would contain detailed instructions regarding the techniques and methods to prevent and reduce the environmental impacts of demolition and construction. All contractors would be required to comply with good construction practice, such as that detailed in the EA Pollution Prevention Guidelines, notably Working at Construction and Demolition Sites.
- 4.19.8 The assessment concludes that with controlled piling design and methodology, the effects of constructing the ERF, RRF and EcoPark House and the bridge at Advent Way on groundwater pathways and groundwater quality in sensitive ground water receptors would not be significant. With the implementation of CoCP measures, these impacts would not be significant for the construction of the pumping station on Ardra Road, underground services and pipework, excavations and dewatering and demolition of the EfW.

## **Representations**

- 4.19.9 However, the EA's position was that piling or any other foundation designs using penetrative methods must not be permitted other than with the express written consent of LBE, in consultation with the EA. This may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. In addition, the EA requested that article 4 of the draft DCO should contain a proviso that no downwards vertical deviation can take place unless approved by the EA following submission of a risk assessment and method statement showing that there is no increased risk to groundwater (REP2-004). LBE supported the EA's representation (REP2-012).
- 4.19.10 The applicant's response was that the application does not provide for specific downwards limits of deviation. This is because the precise depth of the works cannot be determined until any necessary further ground investigations have been carried out. The exception is the below ground bunkers of the ERF, Works Nos. 1a(i)(b) and (i)(d) for which the limits are set out on Works Plan C\_0003 (REP8-001) as 2.5m and 3.5m respectively below AOD.



- 4.19.11 The exact nature of piles including length, diameter, and method of installation would form part of the detailed piling design which would be developed in consultation with the EA and approved by LBE prior to the commencement of piling. The applicant stated that article 4 of the draft DCO would be amended so that reference is made to the approved lateral and vertical limits of deviation contained in the approved piling risk assessments and method statements for the ERF, RRF, and EcoPark House (2Q 10.4, REP5-001).
- 4.19.12 The SoCG with the EA acknowledges that requirement 14 of the draft DCO stipulates that before any stage of development commences, the applicant must submit an investigation and assessment report to LBE for approval, who must in turn consult with the EA before reaching a decision. Consultation by the applicant with the EA would be undertaken on the piling risk assessments, designs and method statements for the ERF, RRF and EcoPark House even before the submissions to LBE for approval. Lateral and vertical limits of deviation to piling depths would not exceed the elevations and extents identified within the piling risk assessments and piling method statements, again to be approved by LBE as part of the detailed design in consultation with the EA (REP5-002).

### **Conclusions**

- 4.19.13 In the light of these commitments, the applicant provided revisions to article 4 and requirements 4, 5 and 14 of the draft DCO during the examination. Following discussion at the second ISH the final version of the draft DCO contains agreed versions of these provisions (REP8-003). The approval structure would be therefore:
- article 4 of the draft DCO makes the lateral and vertical limits of deviation subject to the requirements, and therefore to the limits which would be fixed in the piling risk assessments and method statements for the ERF, RRF and EcoPark House; these must be approved before work commences;
  - the CoCP requires a piling risk assessment and method statement for these works;
  - requirement 4 states that the piling risk assessments and method statements for the ERF, RRF and EcoPark House must include lateral and vertical limits of deviation relating to piling, with the limits to not exceed those lines and situations shown on the Works Plans; in the case of the RRF, the downward vertical limit of deviation is fixed on Works Plan C\_0003 (REP8-001);

- the applicant must consult the EA about these risk assessments and method statements before submitting them to LBE for approval, pursuant to requirement 14 (7);
- the piling risk assessments and method statements must be approved by LBE, who must consult the EA in reaching its decision; and
- LBE must only approve the piling risk assessments and method statements where the approved investigation and assessment report pursuant to requirement 14(2) has concluded that there is no unacceptable risk to groundwater in the relevant part of the Order land.

4.19.14 The main ground conditions issue is providing sufficient assurance to the EA that the risks to contamination of groundwater supplies through piling of various elements of the proposed development can be properly identified and controlled. In my view, the mechanism established in the draft DCO at the end of the examination does provide this, and the EA has indicated its satisfaction in its SoCG with the applicant.

## **4.20 AIR QUALITY**

4.20.1 NPS EN-1 requires that where a project is likely to have adverse effects on air quality an assessment of the impacts is submitted. Design of the exhaust stack, particularly height, is the primary driver for the optimal dispersion of emissions in relation to impact on air quality. According to NPS EN-3, emissions of CO<sub>2</sub>, nitrogen oxides (NO<sub>x</sub>), sulphur oxides (SO<sub>x</sub>), heavy metals, dioxins and furans may be a significant adverse impact applying to waste combustion plants. The Waste Incineration Directive (WID) sets out specific emission limit values for waste combustion plants. Compliance with the WID is enforced through the environmental permitting regime operated by the EA.

4.20.2 Section 2, Vol.2 of the ES contains a substantial assessment of the likely significant effects of the proposed development on air quality (REP8-017, 018 and 019). The monitoring sites for various aspects of air quality within 10km of the application sites are shown on Figure 2.2, Vol.2 of the ES, and beyond 10km on Figure 2.3, Vol.2 of the ES (REP8-018). The London Boroughs of Enfield, Waltham Forest and Haringey have declared their whole areas as AQMAs in 2001 for exceedences of the annual mean nitrogen dioxide (NO<sub>2</sub>) standard and 24-hour mean fine particulate matter (PM<sub>10</sub>) standard, shown on Figure 2.1, Vol.2 of the ES (REP8-018).

4.20.3 The proposed ERF would include flue gas treatment (FGT) before emissions are released from the stack to the atmosphere. Waste combustion results in the production of gases consisting mainly

of water vapour, CO<sub>2</sub> and excess air. This mixture of flue gases carries components including acid gases, organic substances, heavy metals and fly ash particles. Although these components represent a very small part of the flue gases, they would be treated to mitigate the impact of such pollutants.

- 4.20.4 Flue gas technologies would be used that offer the minimum emissions into the atmosphere. Either a wet or combined FGT system would be used, together with selective catalytic reduction abatement of nitric oxide (NO) and NO<sub>2</sub>. Both systems would achieve the same emissions performance which is far below emission limits set by the Industrial Emissions Directive.
- 4.20.5 In a wet FGT system the gases pass through various scrubber stages from which waste water and a solid residue is produced. The waste water would be treated prior to discharge to the drainage system while the residue would be managed as hazardous waste.
- 4.20.6 The technical arrangement of a combined FGT system is very similar, with an additional process that enables the waste water to be reused. The combined FGT system would produce solid air pollution control residue which would require treatment or disposal outside the EcoPark.
- 4.20.7 The treated flue gas would be discharged to the atmosphere via the stack up to 105m tall, consisting of two separate flues.

### **Construction**

- 4.20.8 The main emissions during construction would be dust and the potential impact on air quality as a result of road traffic exhaust emissions. These emissions include NO<sub>2</sub> and PM<sub>10</sub> associated with goods vehicles travelling to and from the application site.
- 4.20.9 The assessment concludes that with the application of the appropriate embedded mitigation measures in the CoCP, the impact of dust emissions would not be significant. Potential air quality impacts from construction and operational traffic emissions are predicted to be negligible, and therefore not significant.
- 4.20.10 Table 2.2, Vol.2 of the ES notes that emissions from all traffic associated with site activity are assessed. Traffic emissions during construction and operation are discussed in paragraphs 2.7.27 to 2.7.39, Vol.2 of the ES (REP8-018), the conclusion of which is that changes in road traffic associated with all stages are predicted to be not significant.

### **Operation**

- 4.20.11 The main significant sources of atmospheric emissions in the operational stage would be from the stack of the proposed ERF,

the stack of the existing EfW, and to a lesser extent from diesel generators.

- 4.20.12 Cooling towers do not emit any harmful pollutants and no air quality assessment of plumes from the cooling technology is required as the proposed technology is an enclosed system (Air Cooled Condenser).
- 4.20.13 Compared with the existing emissions from the EfW, the magnitude of change for all pollutants would be small or imperceptible for emissions from the EfW and ERF stacks, when both are in operation during the transition stage. When the ERF only is in operation following the decommissioning of the existing EfW, the magnitude of change for all pollutants would similarly be small or imperceptible. With the appropriate mitigation measures as specified in the ECMS, there would be a low risk of harmful emissions.
- 4.20.14 The ES concludes that the proposed development would not result in any significant effects in terms of air quality during construction or operation. The EA confirmed that the applicant had started the process of obtaining an environmental permit<sup>40</sup> but otherwise submitted no representations on air quality matters (REP2-004). Public Health England (PHE) noted that the methodology and scope of the air quality assessment had been agreed with the environmental health officers at the London Boroughs of Enfield, Waltham Forest and Haringey, and that as PHE would be formally consulted by the EA as part of the environmental permitting process, its detailed comments would be provided at that stage (RR-020).
- 4.20.15 The GLA noted that the proposed FGT system is used elsewhere in Europe but not so far in the UK. It would exceed the minimum emissions targets and is therefore supported (REP3-022). LBE confirmed its agreement with the assessment and that there are no air quality issues arising from the proposed development in its view, as did LB Haringey (RR-016, REP3-003 and REP3-002).

### **Conclusions**

- 4.20.16 During the construction stage, detailed management of air quality matters would be the responsibility of the contractor under the provisions of the CoCP, secured by requirement 16 of the draft DCO. These would cover:
- measures to limit dust and emissions from vehicles, plant and equipment;

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<sup>40</sup> submitted in November 2015, and reached the "duly made" stage in March 2016

- measures to limit pollution arising from the transport and storage of materials;
- dust control from demolition activities, excavations and earthworks; and
- dust pollution from processing, crushing, cutting and grinding activities.

4.20.17 The environmental commitments stated in the ES to mitigate adverse impacts on air quality during operation are set out in the ECMS, and would be secured by requirement 6 of the draft DCO and the environmental permit to be sought from the EA.

4.20.18 I am satisfied therefore that there are no air quality issues arising from the assessment contained in the ES, coupled with the proposed machinery to control adverse impacts during the construction and operational stages of the proposed development.

#### **4.21 DUST, ODOUR AND OTHER NUISANCES**

4.21.1 The potential impact on amenity from dust, emissions and insect infestation during the construction, operation and decommissioning of energy infrastructure is identified in NPS EN-1 for consideration during the examination. Insect and vermin infestation may be a particular issue with regard to storage and processing of waste where it is a fuel for electricity generating plants according to NPS EN-3, which goes on to suggest particular measures for mitigation.

4.21.2 The main matters considered in sections 2, 4 and 6, Vol.2 of the ES are potential dust emissions from demolition and construction-related activities. Once operational, emissions from the stack, odour and the wind effects of the project on the comfort and safety of pedestrians on the EcoPark are possible issues.

##### **Construction**

4.21.3 The IVC would be removed during stage 1 of the project. This may result in unpleasant odour, but its removal would be a one-off event and short in duration, and is therefore considered in the ES to be low risk. A benefit would be the potential to improve odour conditions in the vicinity of the application site.

4.21.4 The closest residential properties to the application site are Badma Close, approximately 60m to the west, Zambezie Drive approximately 125m to the west and Lower Hall Lane approximately 150m to the east of the temporary laydown area (approximately 470m from the operational site boundary). New residential development is proposed at the Meridian Water scheme to the south, assumed to be within 300m of the

application site boundary, and the Pumping Station House approximately 110m to the east of the application site boundary.

- 4.21.5 No representations were received from any of these residential areas concerning dust, odour and related nuisance matters. LBE was content with the dust risk assessment for the construction phase agreeing that this is not a significant issue, subject to the CoCP as the mechanism to manage potential impacts on this and similar construction-related activities (REP2-012 and REP3-004).

### **Operation**

- 4.21.6 The ERF and RRF would have design features in place to control odour, such as:

- the tipping hall being under negative pressure;
- fast acting roller shutters at the tipping hall entrance and exit doors;
- shutter doors on the tipping bays from the tipping hall to the bunker; and
- managed ventilation within the tipping hall to provide air intake through louvre openings and exhaust air flowing into the bunker.

- 4.21.7 A water mist spray system would be used in the waste storage bunker to suppress dust and odour. Additionally, air from the bunker would be drawn for use as primary and secondary air as part of the waste combustion process. This would maintain negative pressure in the bunker, thus mitigating dust and odour escape to the wider environment.

- 4.21.8 The RFPF as part of the RRF would handle and shred residual waste, creating the potential for dust and odour. Food and gully wastes could be particular sources of odour. Control systems would be likely to include a combination of dust suppression misting, a de-duster unit and odour control such as carbon filters.

- 4.21.9 The proposed physical layout of the buildings on the site and their massing has given rise to a range of issues considered in section 4, Vol.2 of the ES. This explores daylight, sunlight and overshadowing effects of the proposed development. The closest part of the application site (Ardra Road) to the nearest residential area (Badma Close) is actually the proposed northern access rather than any built development which might create adverse daylight, sunlight and overshadowing effects. Daylight availability at EcoPark House would be good on all unobstructed elevations, and so there are no significant effects forecast on daylight and sunlight availability (REP8-017).

- 4.21.10 What the ES does not assess however, in LBE's view, is the impact of the proposed development on the amenity of the towpath to the east of the River Lee Navigation. A small part of the towpath would be affected by both the height of the stack, and impacts on daylight, sunlight and overshadowing from the buildings (REP3-003).
- 4.21.11 The applicant's response was that the morning sunlight and some of the afternoon sunlight along the towpath would be unaffected by the proposed massing (REP4-002).
- 4.21.12 The second issue is environmental wind, set out in section 6, Vol. 2 of the ES. South-west winds are the most frequent and strongest winds at all times of the year, and there is the potential for significant wind effects within the EcoPark which could cause difficulties for the users of the buildings. The layout, massing and orientation of the proposed buildings are therefore major determinants of how significant these effects could be.
- 4.21.13 The proposed ERF would be taller than its surroundings and due to its geometry, would promote a number of wind effects such as funnelling and down drafting. The distance between the tallest section of the ERF and the cooling condensers would be approximately 10-15m and this space would be used as a pedestrian route for employees. The prevailing winds from the south-west would be funnelled through this passage and this has been assessed as a significant adverse effect. Local down drafting would be likely to result in increased windiness at ground level, especially around the north-western and south-eastern corners of the ERF building where the winds would be likely to accelerate. This has also been assessed as a significant adverse effect.
- 4.21.14 The RRF would not be significantly tall compared to the surroundings to the south and west. It is therefore not expected to lead to significantly increased windiness at the EcoPark, and wind conditions around the RRF site would remain suitable for pedestrians.
- 4.21.15 Wind conditions along Lee Park Way (facing the River Lee Navigation) are anticipated to be acceptable for pedestrians using this footpath. The River Lee Navigation would continue to be used by the Edmonton Sea Cadets for rowing or kayaking activities. Windiness along the canal is considered suitable for these activities, and adverse effects are therefore not expected to be significant.
- 4.21.16 These effects would be considered as the detailed designs are worked up in delivery of the project. Depending on the final building arrangement, including locations of pedestrian

entrances and pedestrian paths, mitigation such as screens or canopies may be required.

- 4.21.17 No representations were received about potential environmental wind nuisance matters during the operation of the proposed development. However, the CRT identified in its WR (REP2-009) that the River Lee Navigation suffers from wind-blown litter and other waste from the existing EfW, and this could increase significantly from vehicles carrying waste across the River Lee Navigation via the bridge.
- 4.21.18 The applicant accepted that wind-blown litter has not been assessed in the ES, but agreement in principle has been reached with the LVRPA to extend the existing managed area for litter, graffiti, and fly tipping to include the areas on either side of the River Lee Navigation under a management agreement (REP4-001).

### **Conclusions**

- 4.21.19 The mechanism to achieve mitigation of adverse effects during construction, including the enabling works and demolition, is the CoCP. Adverse operational impacts would be controlled by a combination of the Design Code Principles and the environmental permit to be sought from the EA. Both construction and operational matters are contained within the ECMS which is secured by requirement 6.
- 4.21.20 My conclusion is that for the construction stage, appropriate mitigation measures are included within the CoCP with resultant effects being not significant. No significant effects are predicted with regard to the operational stages. Given the proposed controls provided by the CoCP, Design Code Principles and environmental permit, in my view there are no issues arising from dust, odour and other nuisances which would argue against approval of the application.

## **4.22 POLLUTION CONTROL AND OTHER ENVIRONMENTAL REGULATORY REGIMES**

- 4.22.1 Section 4.10 of NPS EN-1 explains that projects which are applications for development consent may also be subject to separate regulation under the pollution control framework or other consenting and licensing regimes. The assumption is that such regimes will be properly applied and enforced by the relevant regulator rather than being duplicated by the DCO.
- 4.22.2 The existing EfW at the EcoPark is subject to an environmental permit issued by the EA. As noted in paragraph 4.20.14, an application for new environmental permit(s) for the proposed ERF has been submitted to the EA in parallel with the DCO



process, consistent with the advice in NPS EN-1 (RR-011, REP5-002 and REP8-15,).

- 4.22.3 In its SoCG with the applicant, the EA expressed some concerns about the applicant's single bunker design and that it was unable to confirm whether this design would be acceptable for the purposes of the environmental permit application (REP5-002). The EA confirmed at the second ISH that there was no in-principle objection to the design of the bunker, but that the concerns related to the continuous operation of a single bunker which would need to be controlled by the environmental permit. The applicant confirmed that the size and output of the proposed ERF would not change depending on whether there is a single or double bunker, and so this issue does not require any amendment to the draft DCO (REP7-012).
- 4.22.4 No specific issues have been raised in relation to pollution control matters. I conclude therefore that these would be satisfactorily handled through the environmental permitting regime.

#### **4.23 HEALTH**

- 4.23.1 Section 4.13 of NPS EN-1 recognises that energy generation may have negative impacts on the health and wellbeing of the population. This is a separate matter from the direct impacts of traffic, air or water pollution and noise for example, which are subject to specific regulation, and are covered in appropriate sections of this Chapter.
- 4.23.2 A Sustainability Statement was produced which covers the themes of design, energy, water, waste management, procurement, health and well-being, ecology and travel. It sets out key objectives, targets and commitments to deliver a sustainable development project (APP-033).
- 4.23.3 A specific Health Impact Assessment (HIA) was submitted as part of the application. HIA is a multi-disciplinary activity that cuts across the traditional boundaries of health, public health, social sciences and environmental sciences (APP-028).
- 4.23.4 An extensive review of policy and guidance covering health matters informed the development of the HIA. An assessment of potential health impacts was made from information available in the DAS, the ES and the CoCP.
- 4.23.5 The majority of negative effects would be experienced by existing local communities during the construction stages. These would affect older people, children and young people, those with disabilities and those with young children in particular. Such negative effects would relate primarily to the loss of residential amenity arising from air quality, noise, traffic and visual

impacts. There would be limited loss of publically accessible open space. Some permanent loss of space for pedestrian, cyclists and horse riders along Lee Park Way would occur, but the route would gain a new improved route surface and formal footway.

4.23.6 During operation, there would be a permanent loss of some jobs from the existing EfW facility as the proposed ERF would require a smaller operational workforce. A benefit would be improved community facilities including for the Edmonton Sea Cadets.

4.23.7 The HIA concludes that overall, the proposed development is likely to have beneficial health effects at regional and local levels. Several measures are suggested in the HIA as a way of promoting health and wellbeing during construction, and these are included in the CoCP. A number of potential health issues identified in the HIA have been partially or fully mitigated through measures incorporated into the design and as reported in the ES.

4.23.8 Although PHE confirmed in its RR that it was generally satisfied with the environmental assessment and the provisions of the CoCP, it raised a concern about possible risks from electro-magnetic fields (EMF) arising from electricity generation (RR-020). However, in response to a question I put to the applicant about this (1Q 1.4, PD-008), PHE agreed with the applicant's conclusion that there would be no significant effects relating to EMF because the proposed grid connection would be underground cables. Accordingly, PHE confirmed that it did not wish to raise any further concern or objection regarding EMF (1Q 1.4, REP3-016).

### **Conclusions**

4.23.9 In the light of the outcomes of the comprehensive HIA submitted as part of the application, and the mitigation measures proposed particularly in the CoCP, I conclude that there would be no impacts on public health arising from the proposed development.

## **4.24 WASTE MANAGEMENT**

4.24.1 The purpose of the proposed development is to provide a facility for handling LACW and C&I waste, and putting it to a productive use by generating electricity through combustion. However, as with the EfW plant it would replace, the project itself would create waste which needs to be managed, both during the construction and operational stages. Waste management is covered in the environmental permit for operation of waste generating stations to be sought from the EA.

4.24.2 According to NPS EN-3, generating stations that burn waste produce two types of residues:

- combustion residue is inert material from the combustion chamber; the quantity of residue produced is dependent on the technology process and fuel type but might be as much as 30% (in terms of weight) of the fuel throughput of the generating station; and
  - fly ash, a residue from the FGT, and usually 3-4% (in terms of weight) of the fuel throughput of the generating station; fly ash is classified as a hazardous waste material.
- 4.24.3 NPS EN-1 advises that a Site Waste Management Plan (SWMP) should be prepared to include information on the proposed waste recovery and disposal system for all waste generated by the development. It should also contain an assessment of the impact of the waste generated on the capacity of waste management facilities in the area for at least five years of operation. The applicant should seek to minimise the volume of waste produced and sent for disposal unless it can be demonstrated that this is the best overall environmental outcome.
- 4.24.4 A SWMP was not submitted as part of the application documents, but section 13 of the CoCP incorporates requirements for a SWMP to be prepared by the contractor for the construction stage of the proposed development. This would include the classification, type and quantities of waste to be produced and measures for reducing waste generation and for recycling and/or reuse.
- 4.24.5 The Sustainability Statement (APP-033) reviews the content of the CoCP in some detail as it relates to waste management, noting that it requires the contractor to develop and implement an Environmental Management System that follows the principles of BS EN ISO 14001 and would include the contractor's environmental policy, operational, monitoring and auditing procedures. The SWMP would include measures that aim to divert a minimum of 85% of non-hazardous waste by weight or volume from landfill.
- 4.24.6 The anticipated post-combustion residues from the operational stage of the proposed development are considered in the Fuel Management Assessment (APP-021) and are set out in the following paragraphs.

#### **Incinerator bottom ash**

- 4.24.7 An inert material, namely IBA, is produced as part of the combustion process. After complete burn-out of the waste the IBA would fall from the grate into a discharger comprising a water bath to quench the ash and make it possible to remove the IBA without dust or odour issues. Ferrous and non-ferrous

metals would be removed off-site for recycling. Small volumes of boiler ash from the boiler outlet (excluding boiler fly ash from boiler hoppers) would be combined with the IBA as part of the process. The IBA would be conveyed to a covered storage area and transported to dedicated bunkers for removal from the site. The remaining material would be processed into aggregate for road building and construction.

- 4.24.8 Currently, IBA is processed on-site by Ballast Phoenix. The proposed development would lead to IBA processing off-site, although the final location of this plant is not identified. The transport consequences are considered in section 4.8 above.
- 4.24.9 Based on a residual waste input of 700,000 tpa, approximately 20% by weight (140,000 tpa) of IBA would need to be recycled by a specialist contractor of offsite, and around 14,000 tpa of metal would be removed from the IBA which may be sold for recycling.

### **Boiler fly ash**

- 4.24.10 Fly ash from the boiler hoppers would be removed from the flue gas by electrostatic precipitation or by a fabric filter. The fine particles of fly ash would be combined with the air pollution control residues and managed accordingly. By 2050, around 14,000 tpa of fly ash would be produced (approximately 2% of input tonnage).

### **Air pollution control**

- 4.24.11 As discussed in section 4.20 above dealing with air quality, a wet or combined FGT system would be installed to remove pollutants from the flue gas. A combined FGT system would result in the production of around 14,000 tpa of solid residues. These residues are a hazardous material and would be stored on site in sealed silos prior to removal in enclosed bulk powder tankers by specialist contractors. This is the current arrangement for handling such residues produced at the existing EfW.

### **Other outputs**

- 4.24.12 If a wet FGT system is used, the residues discussed in the previous paragraph would not be produced, but instead small quantities of other residues would arise, such as around 1,700 tpa of gypsum (a non-hazardous output), and less than 1,000 tpa of hydroxide sludge. This sludge contains high amounts of heavy metals in its precipitated form, and it would be managed as a hazardous waste.

### **Conclusions**

- 4.24.13 Based on 700,000 tpa of residual waste to be handled, the proposed development would generate about 168,000 tpa of

residues to be disposed of, of which IBA would be much the largest component at 140,000 tpa.

- 4.24.14 Waste management is a topic scoped out of the environmental assessment, so it is not surprising that no specific representation from the EA was received concerning these matters, beyond confirmation of the requirement for an environmental permit.
- 4.24.15 I am satisfied that management plans would be prepared under the provisions of the CoCP to minimise waste generation during construction, and that the operational stage of the proposed development would minimise the amount of residue that cannot be used for commercial purposes, in line with NPS EN-3.

## **4.25 UTILITIES**

- 4.25.1 The Utility Strategy (APP-029) provides an assessment of existing and new utility requirements within the application site covering electricity, gas, potable water, surface water, waste water and telecommunications.

### **Existing utility supplies**

- 4.25.2 The EcoPark has a current electricity demand of 6.6MVA, the main consumers being the EfW, the boilers and the cooling system, effluent treatment plant, FPP, bulky waste and IBA recycling facilities. None of the electricity consumers (including the cables and apparatus supplying these consumers) would remain once the proposed ERF is in operation and the EfW demolished. In addition, other electricity cables owned by LWL may be removed, relocated, or replaced.
- 4.25.3 There are two existing gas mains, one medium pressure and one low pressure, connecting the EcoPark to the local distribution network at Advent Way. The low pressure gas main feeds the offices and the contractors' compound, while the medium pressure gas main feeds the turbine hall of the EfW. Both pipes follow the route of the internal access road.
- 4.25.4 The current surface and foul water arrangements are complex due to the various expansions the site has undergone. There are two drainage systems both owned by LWL. The first is a combined drainage system discharging treated effluent from the existing waste water treatment plant on the site. Contaminated surface water and domestic flows discharge into the TWUL public Chingford Sewer which crosses the site. The second system collects rainwater runoff and discharges into Salmon's Brook or Enfield Ditch via an oil and grease separator and attenuation tank.
- 4.25.5 Cooling water is required to condense the exhaust steam raised from heat produced in the EfW to drive the turbine generating electricity. This cooling water is drawn from the Deephams STW

outflow channel close to where it joins Salmon's Brook, via the water pumping station located off Ardra Road. The cooling water pumping station and pipes are owned by Kennet Properties Ltd, but managed and maintained by LWL as leaseholder.

- 4.25.6 The potable water supply is taken from the local distribution network which is owned and operated by TWUL. Potable water pipes run from Advent Way and into the EcoPark, which then connect to LWL-owned potable water pipes. Potable water is used for human consumption, washing plant, equipment and hard surfaces, dust suppression, fire suppression, and producing demineralised water. The used potable water is passed through an interceptor and oil separator before it discharges through the foul water sewer system to the Chingford Sewer.
- 4.25.7 A wide variety of electricity, water mains, sewers, gas pipes, data and telecom cables surround the application site, as described in the Utility Strategy. In particular, the two 275kV overhead transmission lines run to the immediate east of the application site along the River Lee Navigation, one of which is intended for upgrading to 400kV under the NG DCO. Agreement between the applicant and NG has been reached on the interaction between this confirmed DCO and the proposed development the subject of the application as is explained in section 4.7 and confirmed by NG (REP8-036).
- 4.25.8 In addition, as discussed in section 4.4, two routes are safeguarded across the EcoPark for pipework to enable the transmission of heat from the proposed ERF to a district heating network or heat user should this materialise. Two new underground cables would be needed to connect the NLHPP to the existing grid at the Tottenham Grid Substation, as set out in section 4.5.

### **Future utility requirements**

- 4.25.9 It is anticipated that the existing EfW and the proposed ERF would operate together for up to 12 months during the commissioning stage of the ERF, but not at full capacity at the same time. During the proposed ERF's commissioning stage, the electricity load drawn by the EcoPark (in the absence of any generation) could potentially amount to 17.7MVA: 6.6MVA for the existing EfW and 10.1MVA for the proposed ERF and other electrical consumers.
- 4.25.10 Sufficient gas would be needed to cover both the existing and new plant during the transition period, and this would require the installation of a new gas main into the application site. The current low and medium pressure gas mains would be decommissioned and may be removed subsequently if required.

- 4.25.11 There would be two new drainage systems, one for domestic foul waste water and the other for surface water. A new waste water treatment plant would be constructed and the waste water would be transferred by gravity or pumping into the existing Chingford Sewer. Surface water drainage would be discharged to Enfield Ditch after flows have passed through oil interceptors and attenuation tanks to be located within the EcoPark. Surface and foul water drainage arrangements would be simpler because the discharge effluents would be separated and not combined. This would reduce the costs associated with treating effluent water as the volume of highly contaminated effluent streams would be reduced.
- 4.25.12 Water supply for the EcoPark would come from two sources: TWUL mains for potable water and the Deephams STW outflow channel for the raw water required for the ERF. The existing pumping station on Ardra Road would be demolished and a new raw water pumping station and connecting pipes would be constructed to serve the ERF.
- 4.25.13 Appendix F of the Utility Strategy states that a new discharge effluent consent was issued by TWUL stipulating the consented limits into the Chingford Sewer and the maximum flow which may be discharged (APP-029).
- 4.25.14 The temporary laydown area has a number of live and disused overhead UKPN electricity cables crossing the site. It would require temporary utility connections, such as electricity, potable water, waste water, surface water drainage and telecommunications during the construction period. Most of the connection points would be from existing connections as far as possible.

### **Conclusions**

- 4.25.15 The existing utilities within the application site are complex and would be substantially affected through diversions and new installations during the construction works and once the proposed development is operational, as set out in Tables 6.3 to 6.5 of the Utility Strategy (APP-029). Whilst a number of agreements in principle have been obtained from utility providers, substantive objections to the application have come from NG, anxious to protect its interests and safeguard the integrity of apparatus it owns and for which it is responsible. These have materialised in the form of objections to proposed CA (REP2-013), and are therefore dealt with in Chapter 7 below. These considerations apart, my conclusion is that there are no particular issues relating to the provision of new utility supplies that would prevent the implementation of the proposed development.

## 5 OVERALL CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

5.1.1 The statutory framework for deciding NSIP applications where there is a relevant designated NPS is set out in s104 PA 2008. With exceptions, the Secretary of State must decide the application in accordance with any relevant NPS, which in the case of this application are NPSs EN-1 and EN-3. Paragraph 3.1.3 of NPS EN-1 states that:

*"The [IPC] should therefore assess all applications for development consent for the types of infrastructure covered by the energy NPSs on the basis that the Government has demonstrated that there is a need for those types of infrastructure and that the scale and urgency of that need is as described for each of them in this Part."*

5.1.2 Paragraph 4.1.3 of NPS EN-1 states that:

*"In considering any proposed development, and in particular, when weighing its adverse impacts against its benefits, the [IPC] should take into account:*

- its potential benefits including its contribution to meeting the need for energy infrastructure, job creation and any long-term or wider benefits; and*
- its potential adverse impacts, including any longer-term and cumulative adverse impacts, as well as any measures to avoid, reduce or compensate for any adverse impacts".*

5.1.3 My conclusions on the case for granting development consent for this application are based on an assessment of those matters which I consider are both important and relevant to the decision, as well as the LIRs submitted to the examination as required by s104 PA 2008.

5.1.4 I set out the reasons for my conclusions on each of the matters in Chapter 4, and these are summarised in the following paragraphs.

### **Policy justification for the development**

5.1.5 The proposed NLHPP is strongly supported in strategic terms by the GLA and by the local planning authority LBE. I conclude that the application is consistent with NPSs EN-1 and EN-3, and regional and local policies which seek to maintain and enhance the role of this strategic waste site in north London.



## **Habitats and Species Regulations**

- 5.1.6 I conclude that the proposed project would not result in any likely significant effects on European sites, either alone or in combination with other plans or projects. I therefore conclude that no further stages in the Habitats Regulations assessment process are required.

## **Combined heat and power**

- 5.1.7 I conclude that whilst the application does not include CHP, the applicant has made serious efforts to explore the potential and demonstrate that the ERF would be CHP ready so that the opportunity for CHP is taken when circumstances are more propitious. For these reasons, I conclude that the application meets the requirements of NPS EN-1.

## **Grid connection**

- 5.1.8 I conclude that there would be no obvious difficulty in obtaining an electricity connection from the proposed development to the grid at the Tottenham Grid Substation, approximately 2km to the south of the application site.

## **Design**

- 5.1.9 I conclude that the approach of the Design Code Principles secured by requirement 4 of the draft DCO offers the prospect of achieving an outcome of high design standard.

## **Cumulative impacts with other development proposals**

- 5.1.10 I conclude that the implementation programme for the proposed Meridian Water regeneration project is unlikely to conflict with the NLHPP project, and there is no overriding issue concerning the interrelationship with the confirmed NG DCO.

## **Transportation**

- 5.1.11 I conclude there are no significant traffic impacts arising from the proposed development on the surrounding highway network, including the Cooks Ferry Roundabout junction on the A406 North Circular Road, and the junction of Ardra Road with A1055 Meridian Way. The proposals for access to the site, changes to PRow and parking provision are all satisfactory, and I agree that water transport of waste materials using the River Lee Navigation is not feasible.

## **Land use**

- 5.1.12 I conclude there are no major issues in land use terms with the operational site as this is the redevelopment of an existing long established waste management site for the same purposes.

However, use of the site outside the existing EcoPark for a temporary laydown area would be inappropriate development and therefore harmful to the MGB.

### **Landscape and visual impacts**

- 5.1.13 I conclude that the landscape and visual assessment demonstrates that there would be some significant temporary adverse effects during construction of the ERF and during the demolition of the existing EfW. These impacts would be subject to the controls provided by the CoCP. Once completed, the buildings would be larger and more prominent than the existing EfW plant, particularly the proposed ERF.

### **Historic environment**

- 5.1.14 I conclude there are no historic environment issues concerning the proposed development.

### **Noise and vibration**

- 5.1.15 The nearest residential areas are a considerable distance from the proposed development. I conclude there are no major noise and vibration issues arising from the proposed development.

### **Biodiversity, ecology and nature conservation**

- 5.1.16 I conclude there are two adverse impacts: the clearance and use of the temporary laydown area which would be likely to deter linnet from nesting within the application site, leading to a temporary significant adverse effect on species during operation; and the loss of a small area of the Lea Valley SMINC in the north east of the application site, which is not significant.

### **Climate change adaption**

- 5.1.17 Climate change adaptation is covered in the sections dealing with air quality, water resources and flood risk.

### **Flood risk**

- 5.1.18 I conclude there would be no significant effects on flood risk from the proposed development, subject to the measures in the CoCP during construction, the requirements of the ECMS and permits to be sought from the EA to cover the operational stage.

### **Water quality and resources**

- 5.1.19 I conclude that there are no issues relating to water quality and resources, subject to the measures in the CoCP during construction, the requirements of the ECMS and permits to be sought from the EA to cover the operational stage. The project does not conflict with the Water Framework Directive.

### **Socio-economic impacts**

- 5.1.20 Overall, the project would create additional employment opportunities during construction, result in a net overall loss of jobs for the EcoPark site itself, but otherwise I conclude it would have no significant socio-economic impacts.

### **Construction**

- 5.1.21 I conclude that the proposed CoCP is an appropriate and workable approach to handling detailed construction issues as they arise during the implementation of the proposed development.

### **Ground conditions and contamination**

- 5.1.22 I conclude that the mechanism established in the draft DCO provides sufficient assurance that the risks to contamination of groundwater supplies through piling of various elements of the proposed development can be properly identified and controlled.

### **Air quality and emissions**

- 5.1.23 I conclude that there are no air quality issues arising from the proposed development, subject to the proposed machinery to control adverse impacts during the construction and operational stages.

### **Dust, odour, and other nuisances**

- 5.1.24 I conclude that given the proposed controls provided by the CoCP, Design Code Principles and environmental permit there are no issues arising from dust and odour nuisances.
- 5.1.25 However, the layout, massing and orientation of the proposed buildings are likely to lead to significant adverse wind effects at ground level around the proposed ERF. Depending on the final building arrangement including locations of pedestrian entrances and pedestrian paths, mitigation such as screens or canopies may be required.

### **Pollution control and other environmental regulatory regimes**

- 5.1.26 I conclude that pollution control matters would be satisfactorily handled through the environmental permitting regime.

### **Health**

- 5.1.27 In the light of a comprehensive Health Impact Assessment, and the mitigation measures proposed particularly in the CoCP, I conclude that there would be no impacts on public health.

## **Waste management**

- 5.1.28 I conclude that management plans would be prepared under the provisions of the CoCP to minimise waste generation during construction, and that the operational stage of the proposed development would minimise the amount of residue that cannot be used for commercial purposes.

## **Utilities**

- 5.1.29 Apart from CA objections, I conclude there are no particular issues relating to the provision of new utility supplies that would prevent the implementation of the proposed development.

## **5.2 CONCLUSIONS**

- 5.2.1 From the previous paragraphs, it is clear that there is just a limited number of adverse impacts arising from the proposed development. These are:

- (1) the potential for wind effects at ground level around the proposed ERF;
- (2) a temporary visual impact during construction of the proposed ERF and demolition of the existing EfW;
- (3) the proposed ERF would be larger and more visually prominent than the EfW it replaces;
- (4) the loss of a small area of SMINC;
- (5) a temporary impact on breeding linnet during the use of the temporary laydown area;
- (6) an overall net reduction of operational jobs; and
- (7) the use of the site to the east of the River Lee Navigation for the temporary laydown area would be inappropriate development and therefore harmful to the MGB.

- 5.2.2 Some of these adverse impacts can be mitigated through the mechanism of the CoCP during construction, for example (2), whilst even if there is no feasible mitigation the adverse impact is temporary, for example (5). Others can be dealt with as designs for the permanent structures are produced, bearing in mind the application of the Design Code Principles, for example (1) and (3). The loss of a small area of SMINC (4) would be offset by the enhancement of habitats along Lee Park Way and landscaping proposed elsewhere within the SMINC which falls within the application site. The overall loss of 50 operational jobs (6) needs to be seen in the context of the scale of the local labour market, the generation of substantial employment

opportunities during the construction stages, and the measures to promote employment and training opportunities secured through the DCOB.

5.2.3 This leaves the impact of the land proposed for the temporary laydown area site on the MGB as the most significant adverse impact (7). The applicant accepts that the proposed associated development in terms of the temporary laydown area constitutes inappropriate development, which is by definition harmful to the MGB. The question then arises of the considerations which might exist to outweigh the potential harm.

5.2.4 Paragraph 6.10.9 of the Planning Statement (APP-018) states that:

*"It is considered that the associated development proposed within the Green Belt for this application constitutes 'very special circumstances' as described in NPS EN-1 and the NPPF because there is overwhelming need for the Project and the benefits provided by the Project outweigh any impacts upon the Green Belt."*

5.2.5 I sought in my first written questions an elaboration of the very special circumstances thought to be applicable in this case, and the applicant responded as follows (1Q 1.12, REP3–016):

*"The very special circumstances are:*

*a. The presumption in favour of granting consent for applications for energy NSIPs which meet the need for such infrastructure established in NPS EN-1 and NPS EN-3; the Project would meet this need. As a Project which accords with the policy and requirements of NPS EN-1 and NPS EN- 3, it would constitute sustainable development which attracts the presumption of sustainable development set out in the NPPF. Furthermore the Project will contribute to renewable energy generation which has wider environmental benefits. NPS EN-3 specifically recognises that 'such very special circumstances' that outweigh any harm by reason of inappropriateness 'may include the wider environmental benefits associated with increased production of energy from renewable sources'.*

*b. The Project will meet the need for waste management capacity in north London and contribute to London's waste management capacity. The Project would provide a long-term solution for the management of north London's waste in accordance with the waste hierarchy, ensure there is sufficient capacity to manage the forecast waste arisings once the existing EfW facility has reached the end of its operational life, divert waste from landfill and enable the Applicant to fulfil its statutory waste disposal obligations."*

- 5.2.6 Whilst these are reasonable general considerations to take into account in seeking to justify outweighing the harm to the MGB, they do not deal with the specific situation of the temporary laydown area site in question.
- 5.2.7 As a first step therefore I sought to be as clear as possible about the range of purposes and uses intended to take place on the temporary laydown area, given the description in Works No. 5 in Schedule 1 of the draft DCO. The applicant provided an illustrative masterplan E\_0010 (1Q 1.11, REP3-016) which shows the extent of hardstanding for vehicle parking, areas for storage and fabrication, office and staff welfare accommodation, fencing and hoarding. When it is in use, the temporary laydown area would be lit and active 24 hours daily.
- 5.2.8 The site proposed for the temporary laydown area performs an important Green Belt function of checking the unrestricted sprawl of large built up areas by keeping land permanently open. In my view, these uses intended to take place on the site would fail to preserve the openness of the MGB for the duration of the operation of the temporary laydown area.
- 5.2.9 But, it is also important to recognise that the land to the immediate north of this site occupied by Camden Plant Ltd is also in the MGB, and apparently has been operating without planning permission for the past 16 years. This is in the face of an enforcement notice served six years ago, and the representations by LBE about the sensitivity of land along the eastern boundary of the EcoPark to inappropriate development (REP3-003).
- 5.2.10 For that reason, I sought the views of LBE about the conflict of the temporary laydown area with Green Belt policy, with the following response:
- "the use of the land to facilitate delivery of the ERF and wider works covered by the DCO constitutes exceptional circumstances only where the use of the land is temporary (to cover the construction period ) --- A permanent use of this area would not be supported, would be inappropriate and would be contrary to the provisions of the NPPF and the Local Plan" (2Q 4.1, REP5-003).*
- 5.2.11 I do not consider that there are any impediments other than conflict with Green Belt policy that weigh against the proposed use of the site for a temporary laydown area. Conversely, the considerations which weigh in favour of it are:
- the whole project is by definition of national significance, the output of which would contribute to the renewable energy generation targets in line with NPSs EN 1 and 3;

- the proposed development cannot be implemented unless a construction site is found outside the EcoPark;
- there is no feasible alternative to the proposed site to the east of the River Lee Navigation in the MGB for the temporary lay down area, on the basis of the criteria the applicant has established; and
- the site would be used only temporarily, albeit for perhaps 11 years<sup>41</sup>, and its restoration to a cleared open site under the provisions of article 27(5) of the draft DCO would see the Green Belt function of this site re-established.

5.2.12 My conclusion is that these considerations clearly outweigh the harm to the openness of the MGB that I have identified, and that these amount to very special circumstances which justify the development of the temporary laydown area on the proposed site.

5.2.13 In coming to an overall conclusion about the case for development consent, in my view this is a thorough and well prepared application which is compliant with the policy requirements of the NPSs. Balancing those adverse impacts of the proposed development against the need for the project to be delivered and other benefits, I conclude there is a clear justification in favour of granting development consent for the NLHPP.

5.2.14 If the Secretary of State agrees that development consent should be granted, then I propose several amendments to the final version of the draft DCO (REP8-003) submitted by the applicant at the conclusion of the examination. These are discussed as they arise in the previous Chapter and consolidated in Chapter 7, and are reflected in the recommended DCO contained in Appendix D.

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<sup>41</sup> the indicative summary programme at Plate 3.4, Vol.1 of the ES (REP8-015) shows 9 years for the complete development programme, plus the permission to be granted by article 27 (4) of the draft DCO for the applicant to remain in possession for up to two years from the completion of the last works, the demolition of the existing EFW

## **6 COMPULSORY ACQUISITION AND RELATED MATTERS**

### **6.1 INTRODUCTION**

6.1.1 The draft DCO contains powers of compulsory acquisition (CA) of land and rights, and these are set out in articles 19 to 30. These articles also provide for temporary use of land for carrying out the authorised development.

6.1.2 The applicant (as undertaker for the purposes of the CA powers of the draft Order) already has the freehold ownership of most of the proposed EcoPark. This is through its wholly owned subsidiary LWL which is the operator of the existing EfW plant. The applicant is seeking CA powers in the draft Order to:

- assemble interests in the Order land;
- temporarily possess and use the Order land to facilitate the construction of the authorised development;
- acquire rights over the Order land;
- temporarily suspend rights over the Order land; and
- extinguish rights over the Order land.

6.1.3 The application was accompanied by:

- the appropriate Land Plans B\_0001 to 0006 showing the Order land containing 34 separate plots to be subject to CA and temporary use powers (REP8-001);
- a Statement of Reasons (SoR) to explain the proposed CA (REP7-006);
- a Funding Statement (APP-013,);
- a Book of Reference (BoR) containing details of the land and interests the subject of proposed CA powers (REP8-012); and
- a CA Powers Roadmap supplied for information, setting out comprehensively which CA powers would be used in relation to each plot shown on the Land Plans (REP7-008).

6.1.4 Amendments and clarifications were made to some of these Plans (REP8-026), the SoR (REP7-014), the BoR (APP-059) and the CA Powers Roadmap (REP7-026) by the applicant during the examination, principally to reflect changes to CA articles in the draft DCO. An update of the negotiations for acquisition of freehold, leasehold or temporary interests relating to each plot



identified in Tables 1, 2 and 3 and the extinguishment of rights in Table 4 of the SoR was provided during the examination (REP3-016) and again in the final version of the SoR (REP7-006).

- 6.1.5 The most significant changes were made to the BoR at the beginning of the examination to respond to advice supplied to the applicant following acceptance of the application (PD-003). This advice covered observations about how Category 3 persons had been identified and consulted on during the preparation of the application, and inconsistencies about how these interests were presented in Part 2 of the BoR. The applicant was recommended to revise Part 2 of the BOR and provide a definitive list of Category 3 persons, and did so in a comprehensive and detailed response (APP-056, 057 and 060). I then formally accepted this supplementary material as examination documents in my Rule 6 letter at the beginning of the examination (Annex D, PD-005).

#### **Proposed powers of acquisition in the draft DCO**

- 6.1.6 As can be seen from the comparison version of the draft DCO submitted at the end of the examination with the application version (REP8-005), a considerable number of changes were made to the articles dealing with CA during the examination. The detailed reasoning for these is set out in tables of revisions prepared by the applicant at successive stages, in response to my written questions and discussions at the two ISHs (REP3-017, REP6-009, REP7-012 and REP8-028). The commentary which follows does not therefore trace the detailed sequence of changes, but concentrates on the CA provisions in the final version of the draft DCO at the end of the examination.
- 6.1.7 The preamble to the draft Order contains a statement for approval that the Secretary of State is satisfied that the special category land (as identified in the BoR) satisfies the exemption set out in s132(3) PA 2008. This is so that the Order does not need to follow the special parliamentary procedure required by s132(2) PA 2008.
- 6.1.8 **Article 19** provides for the CA of land and the extinguishment of rights, leases, licences, easements, covenants and the like. The land in question is seven plots of freehold and leasehold interests covering Deephams Farm Road, the site operated by Ballast Phoenix and premises used by the Edmonton Sea Cadets. This article does not apply to land that would be used temporarily during the construction of the authorised development, nor to land over which the applicant would compulsorily acquire rights. Compensation would be payable.
- 6.1.9 **Article 20** allows the undertaker a period of seven years, rather than the usual five years, to exercise its CA powers (though

requirement 2 of the draft DCO states that the authorised development must be commenced within five years from the date the Order comes into force). The applicant argues that seven years is required because of the scale and complexity of the works, the lead-in time required for procurement and contract award, and the project programme.

- 6.1.10 **Article 21** provides powers to override easements and other rights and interests. The power on which reliance is placed by the applicant to authorise interference with rights is contained within s120(3) and (4) PA 2008 and paragraphs 2 and 3 of Schedule 5 PA 2008.
- 6.1.11 The powers provided hitherto by s194(1) PA 2008 to apply in an amended form s237 of the TCPA 1990 are replaced by sections 203 to 205 of the Housing and Planning Act 2016. However, my conclusion is that these do not apply to NLWA because it is not a statutory undertaker for the purposes of Part XI of the TCPA, and most of the Order land was acquired before the operative date of 13 July 2016.
- 6.1.12 Accordingly, I accept that the powers under Article 21 are intended to apply to every plot in the Order land, apart from those to be acquired under article 19, including rights belonging to statutory undertakers to access and maintain their apparatus within the application site (which are also covered specifically in article 29). Compensation is payable.
- 6.1.13 **Article 22** provides that for the avoidance of doubt, there is a statutory authority by virtue of s158 PA 2008 to override interests and other rights for the construction, operation or maintenance of the authorised development. Compensation is payable.
- 6.1.14 **Article 23** provides for the CA of existing rights, and the creation of new rights. The relevant rights affected are set out in Schedule 10 of the Order and apply to every plot in the Order land, apart from those to be acquired under article 19, including rights belonging to statutory undertakers (which are covered also specifically in article 29). Compensation is payable.
- 6.1.15 **Article 24** applies the provisions of the Application of the Compulsory Purchase (Vesting Declarations) Act 1981 to CA under the Order. This is to allow title in the land to pass to the undertaker more quickly than using the notice to treat method, and also allow several parcels of land to be acquired at once.
- 6.1.16 **Article 25** allows the undertaker to occupy land above or below streets, and airspace above streets within the Order limits without having to acquire the land. Compensation is payable.
- 6.1.17 **Article 26** allows the undertaker to occupy airspace above land within the Order limits and beyond to allow cranes to oversail

- 6.1.18 land and buildings during the construction and maintenance of the authorised development. The land to which this power applies extends beyond the Order limits and is shown on drawing number E\_0011 (REP7-021). Compensation is payable.
- 6.1.19 **Article 27** allows the undertaker to take temporary possession of six plots of land specified in Schedule 12 of the draft Order for the purposes of constructing the authorised development. This is principally the temporary laydown area and the access to it from Walthamstow Avenue. Provision is made for the restoration of land taken for temporary purposes to its original condition to the reasonable satisfaction of the landowners, and in accordance with the Design Code Principles.
- 6.1.20 The undertaker is prohibited from remaining in possession of such land more than one year from completion of the relevant part of the authorised development. However, in the case of the temporary laydown area (much the largest area of land subject to this article), the undertaker is permitted to remain for two years after the completion of Works No. 7 (demolition of the EfW). Compensation is payable.
- 6.1.21 **Article 28** provides that the undertaker may take temporary possession of any land within the Order limits for up to five years for the purpose of maintaining the authorised development, and constructing such temporary works and buildings on the Order land as may be reasonably necessary. For some plots (indeed covering most of the application site) this power is for the lifetime of the authorised development: the operational site, Lee Park Way, the bridge over the River Lee Navigation and the areas to be landscaped on the eastern side of the EcoPark. Provision is made for the restoration of land taken for temporary purposes to its original condition to the reasonable satisfaction of the landowners. Compensation is payable.
- 6.1.22 **Article 29** authorises the undertaker to compulsorily acquire land, suspend or extinguish rights, acquire new rights and remove or reposition apparatus over land belonging to statutory undertakers within the Order limits as described in the BoR. These powers are subject to the protective provisions in Schedule 13 of the draft DCO.
- 6.1.23 **Article 30** provides for compensation to owners and occupiers of property where statutory undertakers' apparatus is removed under the powers conferred to the undertaker by articles 21 and 23.
- What the Planning Act 2008 (as amended) requires**
- 6.1.24 CA powers can only be granted if the conditions set out in s122 and s123 PA 2008 are complied with.

- 6.1.25 Section 122(2) requires that the land must be required for the development to which the DCO relates or is required to facilitate or is incidental to the development. In respect of land required for the development, the land to be taken must be no more than is reasonably required and be proportionate.
- 6.1.26 Section 122(3) requires that there must be a compelling case in the public interest, which means that the public benefit derived from CA must outweigh the private loss which would be suffered by those whose land is affected. In balancing public interest against private loss, CA must be justified in its own right. But this does not mean that the CA proposal can be considered in isolation from the wider consideration of the merits of the proposed development, and there will be some overlap. There must be a need for the proposed development to be carried out and consistency and coherency in the decision-making process.
- 6.1.27 Section 123 requires that one of three conditions is met by the proposal, which include that the prescribed procedure has been followed in relation to the land.
- 6.1.28 A number of general considerations also have to be addressed either as a result of following applicable guidance or in accordance with legal duties on decision-makers:
- all reasonable alternatives to CA (including modifications to the proposed development) should have been explored;
  - the proposed interference with the rights of those with an interest in the land is for a legitimate purpose, is necessary and proportionate;
  - the applicant has a clear idea of how it intends to use the land which it proposes to acquire;
  - there is a reasonable prospect of the requisite funds becoming available to meet the costs of CA including compensation; and
  - the purposes for which powers of CA of land are included in the Order are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land.

## **6.2 THE APPLICANT'S JUSTIFICATION FOR SEEKING POWERS OF ACQUISITION**

### **Land required**

- 6.2.1 The existing EcoPark waste management complex is approximately 16ha. As set out in the SoR, the land required for the proposed development both temporarily for construction

purposes and when fully operational, extends to approximately 22ha. 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 and unknown interests as set out in Part 3 of the BoR. In addition, powers of temporary possession and use are sought, particularly to facilitate the temporary laydown area for the construction stages of the proposed development. No residential properties are to be acquired.

- 6.2.2 In addition to the contribution which the authorised development would make to achieving the objectives set out in the NPSs, the applicant considers it would also deliver substantial economic and other benefits. At the same time it would limit so far as practical, associated environmental and other impacts, including in particular land take and loss of property.
- 6.2.3 The applicant considers that the CA powers included in the draft Order are proportionate in relation to the benefits that the proposed development would bring. The Order land is required either for the purposes of the authorised development or to facilitate or is incidental to the authorised development (satisfying s122(2) PA 2008).

#### **Status of negotiations**

- 6.2.4 All owners, lessees, occupiers and others with an interest in the Order land have been identified through diligent enquiry and consulted on the proposals for the authorised development. Detailed discussions have been carried out between the applicant and relevant land interest holders. The applicant will continue to seek to acquire rights and interests by agreement where possible on appropriate commercial terms in parallel with seeking CA powers.
- 6.2.5 However, the applicant cannot be fully confident that all the remaining interests in the Order land will be acquired by private agreement within a reasonable timeframe. Whilst mindful of the impacts on the affected parties, the applicant believes the relevant private interests should not take precedence over the compelling public interest. While negotiations will continue, the applicant believes CA powers are justified to ensure that the proposed development can be implemented.

#### **Details of plots**

- 6.2.6 The interests affected by the proposed development, the nature of the CA powers required, the plots they affect and the purposes are set out in the BoR and shown on the Land Plans. This is to ensure that if any other minor interests are discovered (for example easements, rights of way, restrictive covenants or similar interests) over those plots that have not previously been

negotiated away, powers are available to override those interests. It also reflects that minor interests may still be outstanding and therefore have to be extinguished or overridden by statutory process.

- 6.2.7 Despite diligent enquiry by the applicant, there are some plots (12, 14, 20, 32 and 33) included in the BoR where it has not been possible to identify the relevant interests because they cover unregistered land.
- 6.2.8 The applicant states it has a clear view of how it intends to use the particular areas of land affected by the proposed CA powers. The applicant is proposing to only affect those areas of land where it is necessary to do so. The proposed powers reduce the extent of interference with rights and interests of third parties to the minimum reasonably possible. The exercise of such powers, in the absence of reaching private agreement with relevant interest holders, would be proportionate therefore.

### **Statutory bodies**

- 6.2.9 In order to undertake the proposed development, it will be necessary for the applicant to suspend rights across most of the application site (Land Plan B\_0004, REP8-001). Rights belonging to statutory undertakers to access and maintain their apparatus within the application site may be temporarily limited:
- during construction works;
  - when the applicant needs to connect any new services or utilities to a statutory undertaker's existing apparatus;
  - where the applicant needs to modify, upgrade or refurbish a statutory undertaker's existing apparatus; and
  - when the applicant needs to maintain the proposed authorised development and its associated pipework, cables and systems.
- 6.2.10 The BoR identifies the various interests which are owned by statutory undertakers, and the applicant has ascertained what agreements and/or consents are required to secure in principle approval for the necessary works.
- 6.2.11 Even though agreements are currently being obtained to allow the applicant to install its own utilities that cross under or over existing utilities, these will not be entered into until closer to the detailed design and construction phase when detailed plans and specifications become available. The provisions of articles 21, 23 and 27 of the draft Order are therefore necessary in order to secure the appropriate powers for the applicant to be able to

undertake the proposed development in the absence of, or in advance of, the finalised agreements.

- 6.2.12 The draft Order contains protective provisions that benefit the relevant statutory undertakers. In practice, the applicant believes the proposed development will cause the minimum disruption to statutory undertaker operations, and the purchase of rights can occur without serious detriment to the carrying on of the relevant undertaking. This would satisfy the requirements of s127 PA 2008.

### **Alternatives to CA**

- 6.2.13 All reasonable alternatives to the application site have been considered in the Alternatives Assessment Report, including technical feasibility, and the minimisation of land take and environmental and visual impacts (APP-019). Other sites considered did not meet the criteria, in particular by either not being in the ownership of the applicant or sufficiently accessible, or being too small. The locational criteria for the offsite construction site similarly lead to the temporary laydown area as the only feasible site that met the requirements.
- 6.2.14 The land and interests scheduled in the BoR are therefore necessary, proportionate and appropriate and there are no other suitable alternatives.

### **Special considerations affecting the Order land**

- 6.2.15 No Crown Land is proposed to be acquired or is affected, but some is defined by the applicant as "*open space*" to which s132 PA 2008 applies. Plots 14, 15, 17, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 32 (shown on the Land Plan B\_0006 and set out in the BoR) fall within the definition of open space as they are used (in whole or part) for the purposes of public recreation as cycle tracks and footpaths.
- 6.2.16 Section 132(2) PA 2008 provides that where such special category land is involved, the special parliamentary procedure does not need to be followed if the Secretary of State is satisfied that the relevant land, when burdened with the Order right, will be no less advantageous than it was before to:
- the persons in whom it is vested;
  - other persons entitled to rights of common or other rights; and
  - the public.
- 6.2.17 The applicant requests confirmation from the Secretary of State that this is the situation in relation to this application, and

accordingly he is satisfied that the exemption provided by s132(3) applies.

### **Funding**

- 6.2.18 Compensation for any loss that can be demonstrated will be available in accordance with the statutory Compensation Code. The Funding Statement (APP-013) 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, as applicable.
- 6.2.19 The applicant has obtained valuation advice which assesses the total compensation potentially payable (including professional fees) as less than £2 million. Based on this, the applicant would be able to meet any liability from available funds which would be budgeted for in the relevant years (2017 to 2019). If, as is possible under the draft DCO, land interests were to be acquired by LWL, then compensation costs would be met through available funds or through a privately arranged loan.
- 6.2.20 The applicant therefore considers that the Secretary of State can be satisfied that the requisite funds for payment of compensation will be available at the appropriate time.

### **Human Rights**

- 6.2.21 The draft Order has the potential to infringe the human rights of persons who hold interests in the Order land. Such infringement can be authorised by law provided the appropriate statutory procedures for making the Order are followed, a compelling case is made out in the public interest for CA, and the interference with Convention Rights<sup>42</sup> is proportionate.
- 6.2.22 The requirements of compensation being payable for the acquisition of any interest are met, and therefore Article 1 of the Convention is not contravened. The applicant considers that the inclusion of CA powers in the draft Order would not constitute any unlawful interference with Convention Rights.

## **6.3 OBJECTIONS**

- 6.3.1 From my analysis of the representations, I concluded that objections to the proposed CA powers had been received from seven affected persons:
- Kennet Properties Limited (Kennet Properties);

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<sup>42</sup> The European Convention on Human Rights (Convention) was incorporated into domestic law by the Human Rights Act 1998



- 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).

6.3.2 In many cases, these objections related to the way in which the interests of the affected statutory undertaker are dealt with by way of protective provisions in Schedule 13 of the draft DCO. For that reason, the following sections which deal with the substance of these objections are as much related to the draft Order as they are the specific plots.

6.3.3 Because formal requests were received at deadline 1 from NG, TWUL and CRT to hold a CA hearing, I made provision for such a hearing in the examination timetable which took place on 6 July 2016.

#### **Kennet Properties Limited**

6.3.4 Kennet Properties is a subsidiary company within the Thames Water Group, and is the freehold owner of plots 6, 7, 9, 10 and 34 (principally Ardra Road and Deephams Farm Road), with interests in plots 1, 8, 16, 30 and 31. The RR submitted on behalf of Kennet Properties Limited (RR-014) raised an objection to the CA of freehold interests and new rights in relation to plots 6 and 34.

6.3.5 These two plots are part of Deephams Farm Road, a gated private road forming part of the wider estate belonging to Kennet Properties Limited in this area. They are described in the SoR as being part of the proposed new northern access to the application site. In respect of plot 34 the SoR says that the land is required to lay pipes and services within the land.

6.3.6 Kennet Properties argues that the applicant is not seeking to acquire the freehold interest in plot 7 (Ardra Road), yet is doing so in respect of plots 6 and 34. The objection to the acquisition of the freehold in the land is that either a right of way or an easement to lay and use pipes and services is sufficient, and therefore the CA of the freehold interests goes further than is necessary and proportionate.

6.3.7 This objection was restated in the WR received from Kennet Properties (REP2-007). Although discussions took place between the applicant and Kennet Properties during the course of the

examination, no representative from Kennet Properties appeared at the CA hearing, and no response was received to my request for a statement of its final position (PD-017). I conclude therefore that the objection to CA of freehold interests and new rights in plots 6 and 34 is maintained, but no objection has been received in relation to CA of Kennet Properties' interests in any other plots.

- 6.3.8 The applicant considers that the freehold ownership of plots 6 and 34 is essential as:
- plot 6 is Deephams Farm Road which serves the EcoPark from Ardra Road, and it is reasonable therefore for it to be in the ownership of the applicant or the owner of the EcoPark to enable a new northern access to be provided during construction and to the operational site; and
  - plot 34 is needed in conjunction with the use and maintenance of plot 6 and in particular of plots 9 and 10, where the pumping station would be located; this area of land is not currently used by others (REP4-001).

6.3.9 The applicant's position at the end of the examination is that negotiations are advanced for the purchase of plots 6 and 34 from Kennet Properties. But in any event, acquisition of the freehold is essential because these two plots are directly related to the provision of the water pumping station on plots 9 and 10, and therefore the operation of the EcoPark itself. For these reasons, the applicant will require control over these two plots.

6.3.10 In the absence of any further evidence from Kennet Properties, my conclusion is that the request for CA of plots 6 and 34 is justified in order to ensure the implementation of the proposed development.

### **Thames Water Utilities Limited**

6.3.11 TWUL is the freehold owner of plots 16, 18, 19 and 22, which comprise the proposed temporary laydown area and land intended to facilitate improvements to Lee Park Way and surrounding landscaping. In addition, TWUL has interests in nearly every other plot in the Order land except plots 4, 5 and 33. Much of the RR submitted on behalf of TWUL concerned the mechanism for releasing the plots comprising the temporary laydown area from their current status as operational land, and the various proposals by others for future use once temporary uses cease<sup>43</sup>. However, I also took this representation to comprise an objection to temporary possession and acquisition

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<sup>43</sup> these matters are dealt with in section 4.7 dealing with cumulative impacts

of new rights in relation to plots 16, 18, 19 and 20, and to acquisition of new rights in relation to plot 22 (RR-015).

- 6.3.12 This objection was restated in the WR received from TWUL (REP2-007). Although discussions took place between the applicant and TWUL during the course of the examination, no representative from TWUL appeared at the CA hearing, and no response was received from TWUL to my request for a statement of its final position (PD-015). I conclude therefore that the objection is maintained to temporary possession and acquisition of new rights in relation to plots 16, 18, 19 and 20 for the purposes of the temporary laydown area, Works No. 5, and to acquisition of new rights in relation to plot 22 for the diversion of various pipes and infrastructure. But no objection has been received in relation to CA of TWUL's interests in any other plots.
- 6.3.13 The applicant's position at the end of the examination is that negotiations are advanced for a lease and option agreement with TWUL for the temporary laydown area. As this is a private agreement, no copy has been supplied to me so I am unable to judge the extent to which it would satisfy the objections of TWUL. In this circumstance, the requests for powers under article 27 of the draft DCO for temporary use of plots 16, 18, 19 and 20, and the CA of an easement under article 23 over plot 22 comprising Lee Park Way are essential to the applicant. Without them, the construction site for the proposed development cannot be provided, nor the eastern access to the operational site. I note that there are no proposals to compulsorily acquire TWUL's title to land within the Order limits.
- 6.3.14 In the absence of any further evidence from TWUL, my conclusion is that the applicant's request for CA of plots 16, 18, 19, 20, and 22 is justified in order to ensure the implementation of the proposed development.

### **Canal & River Trust**

- 6.3.15 CRT is a charity, the successor body to the British Waterways Board, with a statutory responsibility for waterways in England and Wales. CRT owns and manages the River Lee Navigation and within the Order land is the freehold owner of plots 11, 13, 17 and 23, and with interests in plots 21, 25, 26 and 27. These plots are both sides of the River Lee Navigation comprising the towpath and adjacent land, and the Lee Park Way bridge over the Navigation.
- 6.3.16 The WR submitted by CRT contained a formal objection by the Trust to *"the inclusion of any of its interests which form part of its waterway network within any compulsory purchase powers, and is of the view that the applicant has not discharged its obligation to seek to negotiate fully with the Trust, with regard*

*to such interests, prior to seeking powers of compulsory acquisition”.*

- 6.3.17 The Trust also stated that it does not oppose the principle of the application, and it is willing to reach agreement with the applicant over the grant of rights needed for the proposed development during its operational lifetime, rather than the CA of rights in perpetuity. This was coupled with a request for a different version of the protective provisions to be included in Schedule 13 of the draft DCO to provide greater protection for the Trust’s interests (REP2-009).
- 6.3.18 This objection was repeated in the response by CRT to my first written questions (1Q 9.4 and 10.2, REP3-009), but in reply the applicant confirmed it does not propose to compulsorily acquire title to any of CRT's land interests. Rather, the applicant is seeking powers to temporarily possess plots 11 and 13 and temporarily suspend CRT’s rights in plots 13, 17 and 23.
- 6.3.19 Although discussions took place between the applicant and CRT during the course of the examination, the SoCG between them restated CRT's objection (REP6-016). No representative from CRT appeared at the CA hearing, but a formal response was received to my request for a statement of the final position of CRT from solicitors acting on its behalf (REP8-034). The Trust accepts that the temporary suspension of rights concerning plots 21, 25, 26 and 27 is unlikely to directly affect the River Lee Navigation or the towpath, and as a consequence, the Trust withdrew its objection to those particular requests. The objection to acquisition of new rights concerning plots 11, 13, 17 and 23 remains, but would appear to be satisfied if the applicant accepts the protective provisions which the Trust has proposed.
- 6.3.20 The outstanding matter in relation to the CRT objection is therefore the construction of the protective provisions in Part 3 of Schedule 13 of the draft DCO. Through solicitors on its behalf, CRT raised at the outset of the examination its objection to the protective provisions included in the submission version of the draft DCO (REP1-001). Essentially, the request was for a version of the protective provisions based on those included in The Knottingley Power Plant Order 2015. The principal reason for this approach, as set out in the Trust’s WR, concerns the manner in which a third party undertakes working on or in close proximity to a waterway, and these concerns were repeated in the SoCG with the applicant (REP6-016).
- 6.3.21 CRT submitted its preferred form of protective provisions towards the end of the examination (REP6-014), and whilst the applicant would prefer to rely upon the version included in the final draft DCO, it also set out its detailed comments on the CRT preferred protective provisions (REP8-025).

- 6.3.22 On the basis of its reasoning, I consider the amendments the applicant proposes to CRT's preferred protective provisions would be an appropriate way of bringing this matter to a conclusion. This is because the protective provisions must be seen within the context of the Order as a whole, and as the applicant points out, several of the provisions proposed by CRT are already covered by a specific articles in the draft Order; they do not therefore need to be duplicated. CRT's anxiety about the applicant being required to consult CRT at various stages during the works I consider should be satisfied by the provisions of paragraph 2(2) of Schedule 3 of the draft DCO, obliging LBE to consult appropriate statutory consultees, which include CRT.
- 6.3.23 In addition, I am mindful that the specific works these protective provisions need to cover relate to the construction of EcoPark House and the boat canopy, Works No. 3. As far as CRT is concerned, these involve two small plots 11 and 12 on the western side of the River Lee Navigation. The interference with plots 17 and 23, which are the towpath and a small plot adjacent to it on the eastern side of the Navigation, is principally the construction and diversion of utilities. It is important therefore that the scope of the protective provisions is commensurate with the scale of works which the applicant actually proposes as part of the Order.
- 6.3.24 I am aware of the intention of the applicant to reach a settlement agreement with CRT which would enable the applicant to carry out the proposed development without the need for the exercise of CA powers. However, this has not been possible so far, and if this is ultimately unsuccessful, then in my view the powers of the draft Order should be sufficient to enable the proposed development to be implemented.
- 6.3.25 I therefore recommend that the protective provisions in Part 3 of Schedule 13 of the final draft DCO are replaced with those submitted by CRT as modified by the applicant, but with some further detailed modifications I propose to strengthen the relationship between these protective provisions and the rest of the Order.

### **Transport for London**

- 6.3.26 As the strategic transport authority for London, TfL is the freehold owner of some land at the southern end of the site. This is proposed to be used for landscaping and works associated with the improvements to Lee Park Way and the existing access to Advent Way (plots 24, 26, 27, 28, 29 and 31). TfL also has rights listed in the BoR over another 12 plots, in mainly the same part of the Order land, but also at Ardra Road involving the northern access. These rights are proposed to be suspended, extinguished or compulsorily acquired for the same purposes, and also in connection with construction of the

temporary laydown area (plots 7, 8, 11, 13, 17, 18, 19, 22, 23, 25, 30 and 34).

6.3.27 TfL objects to its land being compulsorily acquired. Although the land in question is outside TfL's current highway boundary, its need for this land to fulfil its duty as a transport and highway authority in the future is unknown. Additionally, TfL has a wider interest in how construction may impact on the highway network. TfL wishes to exclude its land from the Order limits and instead transfer the land or rights required, or make the land available temporarily for construction by agreement in accordance with TfL's and the applicant's requirements (REP2-003). This was endorsed in the LIR submitted by the GLA (REP3-022).

6.3.28 The applicant's intention, however, is not to compulsorily acquire TfL's freehold title to plots 24, 26, 27, 28, 29 and 31, but it will not be possible to exclude these plots from the Order land for the following reasons:

- plots 24, 26 and 27 form part of the land to the east of the River Lee Navigation and it is proposed to carry out and maintain landscaping works over them; these plots would be subject to compulsorily extinguishment of rights in order to preserve and maintain the landscaping works;
- plots 28 and 29 form part of the footway on either side of the junction between Lee Park Way and Advent Way, and TfL's rights would only be temporarily interfered with whilst works are carried out; and
- plot 31 forms part of Advent Way and is required for part of the works proposed to the existing southern entrance to the EcoPark and over Enfield Ditch; this plot may need to be temporarily stopped up to allow construction equipment (such as cranes) to be placed on the land.

6.3.29 According to its SoCG, the applicant is in discussions with TfL about the use of CA powers over land in which TfL has an interest (REP3-015). If a private agreement is not reached however, the applicant would need the ability to extinguish or temporarily suspend any rights belonging to TfL.

6.3.30 Representatives from TfL appeared at the CA hearing and there was some disagreement between the applicant and TfL about the extent of discussions which had taken place between the two parties (REP7-020 and 032, and REP8-025). A formal response was received from solicitors acting for TfL to my request for a statement of its final position (REP8-038).

6.3.31 Whilst TfL does not object in principle to the proposed development, its concerns about the impact it would have on its

land and interests have not been resolved, and for this reason TfL maintains its objection. As it stands, the draft settlement agreement apparently does not address TfL concerns, which are:

- TfL should not be exposed to any additional financial or administrative burden as a result of the applicant carrying out landscaping works on land owned by TfL;
- there is currently no adequate mechanism in the draft DCO to ensure that the applicant remains liable for the maintenance of these landscaping works during the operational lifetime of the project; and
- to rectify this, TfL considers that the applicant should take a leasehold interest in the plots of land on which landscaping works are required, similar to the mechanism which appears to have been agreed in principle with LVRPA.

6.3.32 I consider that the powers the applicant is seeking over plots in the ownership of TfL and in which TfL has an interest are justified in order to secure the implementation of the proposed development. Nonetheless, I conclude that TfL makes a reasonable point in relation to the future commitment of the applicant to maintain landscaping it has provided, and accordingly I consider that requirement 11 should be modified to give effect to this end. This matter is dealt with in the following Chapter.

### **National Grid**

6.3.33 NG has the freehold ownership of plot 4, which houses a gas distribution governor (pressure reduction station) situated on Advent Way at the existing entrance to the EcoPark. It has rights concerning gas pipes and electricity cables over nearly every plot in the Order land apart from plots 3, 5 and 33. NG submitted RR and WR seeking to protect its position concerning its apparatus, land and any other equipment within or in close proximity to the Order land. NG set out its rights to retain its apparatus in situ, and rights of access to inspect, maintain, renew and repair such apparatus within or in close proximity to the Order limits at all times (RR-007 and REP2-013).

6.3.34 There are two issues concerning NG's apparatus and land interests. The first is how these are covered through protective provisions, the second is the relationship between the proposed development and the existing NG DCO. The latter is dealt with in section 7 of Chapter 4, and the conclusion reached that there is agreement between the applicant and NG, which is confirmed in the joint statement submitted at the end of the examination (REP8-032). I consider therefore that this particular matter is resolved and requires no further discussion.

- 6.3.35 This leaves the representations from NG concerning the way its interests are proposed to be safeguarded through the protective provisions in Schedule 13 of the draft Order. The submission version of the draft DCO contained at Part 2 of what was originally Schedule 16, protective provisions to deal comprehensively with electricity, gas, water and sewerage undertakers, given that there are other statutory utilities responsible for these matters in the Order land in addition to NG.
- 6.3.36 My observation at the first ISH dealing with the draft DCO was that protective provisions, including this Part, need to sit firmly within the range of powers provided for in the articles of the draft DCO, rather than being inserted as standard provisions, some of which do not relate to the application in question.
- 6.3.37 In my first written questions, I asked statutory undertakers to confirm their acceptance of articles 21 to 23 of the draft DCO, dealing with the powers to override existing rights and compulsorily acquire new ones. NG responded that it objects to these articles insofar as they authorise the interference with or extinguishment of NG's rights concerning its apparatus within and in close proximity to the Order land. The applicant's proposed protective provisions were inadequate in NG's view, who submitted a version of its own standard protective provisions to be substituted (REP3-006).
- 6.3.38 The applicant and NG could not agree a redraft of the protective provisions, and in the light of:
- the comments made by the applicant about its proposed approach to dealing with the matter through a private agreement alongside the protective provisions, with which I was uncomfortable (REP4-003); and
  - the response of the applicant setting out which elements of NG's draft it could not accept (REP5-001),
- my advice at the second ISH at which NG was present was to consider a separate Part of Schedule 13 to deal solely with the protective provisions for NG.
- 6.3.39 In response, NG provided the applicant with a revised version of its protective provisions, but stated that if it is not possible for the parties to reach an agreement NG reserves its right to submit the form that it considers should be included in the draft DCO, together with its reasoning (REP7-035).
- 6.3.40 NG did not appear at the CA hearing, but at the end of the examination submitted a response to my request for a final statement of its position concerning CA matters, including its preferred draft of the protective provisions (REP8-036). At the



same time, the applicant set out in detail its views about the protective provisions previously submitted by NG, together with a version it would prefer (REP8–025).

6.3.41 The position therefore is that there is no agreement between NG and the applicant about the protective provisions for NG to be included as what would become Part 5 of Schedule 13 of the final draft DCO. Both have submitted versions for consideration with their detailed reasoning (REP8-025 and 036); the version included in the final draft DCO (REP8-003) is the applicant's.

6.3.42 The BoR and SoR set out the proposed interferences with NG's interests and apparatus on the Order land together with the applicant's justifications. NG's interests in each plot, the proposed authorised development affecting them and the CA powers involved are also set out in a detailed note prepared by the applicant (REP7-015). In summary, the applicant proposes to:

- construct a new medium pressure gas supply for the proposed ERF, and then decommission and remove two existing NG gas mains situated within plots 1, 2, 30 and 31;
- temporarily limit access to NG gas pipes that run mainly under Ardra Road shown as plot 7, and which supply the industrial units to the north of the Order limits, whilst resurfacing works are carried out on Ardra Road (if needed); no works are proposed to these gas pipes themselves;
- carry out protective works to the gas chamber located within plot 4 owned by NG near the south western boundary of the EcoPark, together with utilities works in the vicinity, which may mean that NG access to the gas chamber may need to be temporarily restricted; there is no intended interference with the gas chamber itself; and
- reposition a NG underground electricity cable beneath the proposed temporary laydown area, plot numbers 16 and 21.

6.3.43 I am very much aware of NG's imperative as a statutory undertaker to retain rights to its apparatus in situ and its rights of access to inspect, maintain, renew and repair such apparatus located within or in close proximity to the Order land. In order to accommodate development proposals, NG stipulates to third party promoters a range of guidelines, regulations and specifications for safe working within the vicinity of its assets.

6.3.44 I raised a specific question on this point at the second ISH as to why paragraph 6(1) of NG's standard protective provisions

(REP3-006) was justified, given it effectively emasculates the powers of CA which would be granted by the Order in relation to NG. The response from NG is that all DCOs that affect its interests require the exercise to be subject to its approval, and it provides the means for the applicant to realise the same through the protective provisions. Paragraph 6(1) of the standard NG protective provisions therefore modifies the otherwise unfettered CA powers and requires NG's consent to acquire any land, interests or rights (REP8-036).

6.3.45 Whilst I appreciate this as a general position on NG's behalf, I am also conscious of the actual interference with NG's interests in relation to this specific application, and as set out in paragraph 6.3.42, these are limited to four particular locations:

- in relation to the new gas supply, I cannot see that the applicant would have any reason to remove the existing gas pipes until the new supply it is constructing is in place and fully operational; to do otherwise would prevent it from operating the existing EfW;
- access to the gas pipes under Ardra Road seems to me to be a straightforward street works operation which is capable of being managed, if indeed the circumstances requiring it actually arise;
- similarly, proposed protective works to the existing gas chamber and utilities works in the surrounding area seem to me to be capable of being managed, with sufficient notice and discussion of the detailed proposals between the parties; and
- repositioning the electricity cables under the temporary laydown area would need to be done to the standards which NG approves, but otherwise it does not involve acquisition or any other interference.

6.3.46 My conclusion therefore is to base the appropriate protective provisions in favour of NG on the version submitted by the applicant. This is because I am persuaded that if the negotiations between the parties to achieve a joint agreement fail, then without recourse to effective CA powers the applicant would be prevented from implementing the proposed development. This means that the provision NG makes at paragraph 6.1 in its standard form of protective provisions as discussed in paragraph 6.3.44 I consider is not justified in this particular circumstance.

6.3.47 Accordingly, I propose that the protective provisions set out in Part 5 of Schedule 13 of the final draft DCO for the protection of NG should be adopted for the reasons set out in the applicant's

statement (REP8-025). However, I also propose some modifications to deal with particular points:

- paragraph 4 - this is the circumstance which would arise with the resurfacing of Ardra Road, and if this does need to go ahead, then it seems to me appropriate that the applicant should be required to give NG notice of its intention; I consider 14 days would be sufficient;
- paragraph 5 - as redrafted by the applicant, this deals specifically with plot 4, requiring the prior written consent etc of NG, and I consider therefore meets the concern raised by NG;
- paragraphs 8 and 9 - whilst NG argue strongly against deletion of paragraph 6.1 in their standard protective provisions, in my view in the light of the particular NG interests involved in this application, such as the decommissioning and removal of gas pipes and repositioning of electricity cables, the obligations under these two paragraphs to provide plans in advance for the specific approval by NG should provide NG with sufficient reassurance; in addition, I propose to strengthen NG's powers by deleting the qualification in paragraphs 8(3) and 9(4) that such approval should only be withheld if the works would pose a risk to safety or integrity of any apparatus, and the conditions and modifications which it may make;
- paragraph 10 - it seems to me that the payment of reasonable expenses incurred by NG in approving plans submitted under paragraph 8 and 9 is legitimate, and I therefore propose to reinstate this item contained in NG's standard protective provisions;
- paragraph 10(3), (4) and (5) - these sub paragraphs contained in NG's standard protective provisions deal with circumstances where betterment of existing NG apparatus might arise through the applicant's proposed works; whilst the applicant does not foresee this circumstance arising, this does not seem to me unreasonable, as it is also contained in Part 2 of Schedule 13 of the draft DCO, and I therefore propose these sub paragraphs are reinstated;
- paragraph 14 - I consider the reference to paragraph 6(1) is not required in this paragraph; in any event, this covers a very similar point to paragraph 4, given my proposal to broaden the application of this to all apparatus owned by the statutory undertaker, and not just the those items in stopped up streets; and

- paragraph 16 - I propose that this is simplified by placing the obligation on NG to notify the applicant of the appropriate address for receipt of plans.

6.3.48 With these modifications, I am satisfied that the requirements of s127(5) and (6) and s138 PA 2008 would be met.

### **Lee Valley Regional Park Authority**

6.3.49 LVRPA has the freehold ownership of plots 15 and 21 which comprise Lee Park Way and the bridge over the River Lee Navigation. The applicant proposes to acquire rights in these plots in order to create the new eastern access to the proposed development from Advent Way, together with landscaping. LVRPA also has rights concerning plots 11, 12, 13, 16, 17, 22, 23, and 24 which are proposed to be temporarily suspended to enable proposed new utilities works to be implemented.

6.3.50 Although no specific mention was made in the representations submitted by the LVRPA to CA matters, I took a statement in the SoCG agreed between the applicant and LVRPA concerning property negotiations to constitute a possible objection to the proposed CA of the LVRPA's land interests (REP3-013).

6.3.51 A representative of the LVRPA attended the CA ISH, and confirmed that negotiations with the applicant concerning the granting of a lease for its land interests were well advanced, and that it was optimistic an agreement would be reached. A joint statement between the LVRPA and the applicant submitted at the end of the examination confirmed that a 60 year lease for those parts of Lee Park Way in LVRPA's ownership has been provisionally agreed. This requires approval by Members of the LVRPA Executive Committee (which was not possible before the close of the examination), and thereafter the Secretary of State's consent under s21 of the Lee Valley Regional Park Act 1966 (REP8-032).

6.3.52 In these circumstances therefore, I consider that whilst at the end of the examination there is formally an outstanding objection from the LVRPA to CA of its interests, it is reasonable to assume that this will be withdrawn in due course. But if not, my conclusion is that the applicant's request for CA of the LVRPA's land interests is justified in order to ensure the implementation of the proposed development.

### **Zayo Group Limited**

6.3.53 Zayo is a telecommunications infrastructure provider with an interest in plot 8 where its underground cables cross Ardra Road at the junction with Meridian Way. The applicant proposes a temporary suspension of Zayo's rights in order to carry out improvements to this junction, including the resurfacing of Ardra Road, if required.

6.3.54 Solicitors acting for Zayo registered a holding objection at the beginning of the examination (REP1-006). The response of the applicant was to draw attention to the protective provisions contained in Part 1 of Schedule 13 of the draft DCO, together with the preparation of a private settlement agreement with Zayo (REP4-001). A representative of Zayo confirmed at the CA hearing that this was the position, and a joint statement submitted at the end of the examination advised of the completion of a settlement agreement leading to the withdrawal in due course of Zayo's representations (REP8-032). I conclude therefore that there is no outstanding issue in relation to plot 8.

## **6.4 OTHER MATTERS**

### **Plot 33**

6.4.1 Plot 33 is a long thin sliver of unregistered land consisting of a bank of shrubs forming the boundary between the EcoPark and the industrial developments to the immediate north. From the Land Plan and a site inspection, I was unclear why it is necessary to acquire this particular parcel and at the final accompanied site inspection on 17 August 2016 I asked the applicant to set out the reasoning.

6.4.2 The applicant believes that plot 33 should form part of the EcoPark's title as it functions as part of the operational site. The applicant is in contact with the adjoining land owners regarding rectification of the boundary and will submit an application to the Land Registry to include plot 33 within the title to the EcoPark. However, if the Land Registry application is rejected or becomes protracted, the applicant requires the CA powers to acquire plot 33 in order to accommodate the curvature of the entrance ramp to the ERF and the supporting retaining wall (REP8-029). In the light of this explanation, I am satisfied that the CA of plot 33 is justified.

### **Special Category Land**

6.4.3 A number of plots fall within the definition of open space to which s132 PA 2008 applies, requiring the Order to be subject to special parliamentary procedure unless the Secretary of State is satisfied that a dispensation applies. Plots 14, 15, 21, 22 and 32 comprise the existing Lee Park Way including the bridge over the River Lee Navigation, and plots 15, 17, 21, 22, 23, 24, 25, 26, 27, 28 and 29 form part of the LVRP. I therefore asked the applicant in both rounds of written questions for full justification for the argument that the special parliamentary procedure required by s132(2) PA 2008 does not need to be followed in relation to this land. This is because the applicant claims it meets the terms of s132(3) PA 2008, in that it will be no less advantageous than it was before to persons with interests in it, and the public (1Q 9.1, PD-008, and 2Q 9.1, PD-009).

6.4.4 Lee Park Way is not currently available to vehicles unless authorised by the LVRPA and is otherwise a non-segregated foot and cycleway only route, including the crossing of the River Lee Navigation. The LVRPA has in place a vehicle height barrier at the junction between Lee Park Way and Advent Way, as well as a vehicle barrier in the same location, and another at the northern end of Lee Park Way (close to Pickett's Lock Lane), both of which are currently locked. NG have a right of way over this stretch of Lee Park Way within the application site, and intend to use this as an access route to the NG DCO Works No. 8. As a result, other vehicles will be using Lee Park Way as part of NG's development when this commences.

6.4.5 The applicant is not seeking to extinguish any existing access rights, but seeks to acquire such rights (including vehicular access rights over the crossing), and undertake a range of improvements as follows:

- a vehicle barrier would be installed on Lee Park Way to the north of the proposed eastern access into the EcoPark to restrict vehicle access to Lee Park Way to the north, and prevent Lee Park Way being used as a vehicular thoroughfare;
- a height barrier and CCTV cameras would be installed at the junction of Lee Park Way and Advent Way to prevent large vehicles from entering the application site through Lee Park Way;
- outside the operating hours of the RRC, vehicular access to Lee Park Way would be restricted with access provided only for employees and visitors to the EcoPark; however, pedestrians and cyclists would continue to be able to access Lee Park Way at all times of the day;
- segregated routes for pedestrians and cyclists would be created, and proper signing would improve the safety and experience of those using Lee Park Way within the application site;
- the part of Lee Park Way within the application site would be resurfaced, and lighting provided between Advent Way and the proposed new eastern entrance to the EcoPark; and
- the area around the southern part of Lee Park Way would be landscaped, which would soften views of the project.

6.4.6 The applicant's conclusion is that those who can currently use Lee Park Way and the crossing of the River Lee Navigation will continue to be able to do so, and the proposed improvements would mean that the experience of vehicle users, cyclists and

pedestrians would be safer and considerably more pleasant. These proposals would therefore be "*no less advantageous*" for existing pedestrian and cyclists using this part of Lee Park Way for the purposes of s132(3) PA 2008 (1Q 9.1, REP3-016 and 2Q 9.1, REP5-001).

- 6.4.7 My conclusion is that these arguments are convincing and accordingly I recommend the Secretary of State should be satisfied that the circumstances set out in s132(3) PA 2008 should apply to plots 14, 15, 17, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 32, meaning that the Order would not be subject to special parliamentary procedure.

### **Statutory undertakers' interests**

- 6.4.8 Section 127 PA 2008 applies to statutory undertakers' land held for the purposes of the undertaking. Such land may only be subject to CA powers in the DCO if the Secretary of State is satisfied that, inter alia, in the case of purchase of land or the acquisition of a right by the creation of a new right, it can be purchased or acquired and not replaced without serious detriment to the carrying on of the undertaking.
- 6.4.9 This is the circumstance with the proposed NLHPP, where in order to carry out the proposed works associated with the construction and/or the operation and maintenance of the authorised development, new telecommunications, electricity, water and gas infrastructure would be required. Some existing utilities and services may need to be diverted, temporarily interfered with, decommissioned or removed. It would also be necessary to create rights over statutory undertakers' land. Access to statutory undertaker apparatus within the application site could be temporarily limited whilst the authorised development is being carried out.
- 6.4.10 As noted above, objections from several statutory undertakers were made and not withdrawn at the end of the examination, so it is necessary to determine the extent of serious detriment pursuant to s127 PA 2008. The draft DCO 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 EA and NG.
- 6.4.11 All affected statutory undertakers would benefit from the following protections to their apparatus by virtue of article 37 and Schedule 13 of the draft DCO:

- a right to be notified, have input into and amend the undertaker's planned interference with the statutory undertaker's apparatus;
- a general indemnity from the undertaker in respect of damage, and responsibility on the undertaker to make good any such damage;
- in some cases, a duty on the undertaker to compensate the statutory undertaker in the event of an interruption of supply to its customers;
- responsibility on the undertaker to ensure access to statutory undertaker's apparatus; and
- a right for all disputes to be settled by arbitration.

6.4.12 For many statutory undertakers the protective provisions in Schedule 13 of the draft DCO are satisfactory and no objections to the proposed CA provisions were made. The EA confirmed that it was content with the final version of Part 4 of Schedule 13 of the draft DCO covering its interests (EV-011). Regarding Kennet Properties, TWUL, TfL, LVRPA and Zayo, I conclude that the purchase of land or the acquisition of rights can take place and not be replaced without serious detriment to the carrying on of the undertaking, taking into account the protective provisions in Parts 1 and 2 of Schedule 13.

6.4.13 However, I consider that paragraph 4 of Part 2 is unsatisfactory because it would render the implementation of proposed CA powers by the undertaker to be subject to prior agreement with the statutory undertaker in question. For the reasons set out in paragraphs 6.3.46 and 6.3.47 in relation to NG's protective provisions, I consider paragraph 4 of Part 2 of Schedule 13 should be deleted. In the case of CRT, the amendments I suggest to Part 3 of Schedule 13 would adequately cover its interests.

6.4.14 The objection from NG is more substantial, but I reach the conclusion in paragraph 6.3.45 that actual interference with NG's interests as a statutory undertaker would be quite limited in practice. In the light of the modifications I propose to Part 5 of Schedule 13, I am satisfied there would be no serious detriment to the carrying on of this undertaking.

6.4.15 I recommend therefore that the Secretary of State can be satisfied there is no conflict with the requirements of s127 or s138 PA 2008 concerning the CA of statutory undertakers' land.



## **Access to Camden Plant Ltd**

- 6.4.16 From my own site inspection, it appeared to me that Camden Plant Ltd gain access to their site to the north of the proposed temporary laydown area through what is an existing informal access from Walthamstow Avenue, crossing Lower Hall Lane and heading northwards. However, this is the same land as plots 18, 19 and 20 which would form the proposed temporary access from Walthamstow Avenue to plot 16, the proposed temporary laydown area. As no representations had been received from Camden Plant Ltd, but from the BoR it appears it has a leasehold interest in plot 16, I needed to understand the nature of any existing rights across these plots for access purposes.
- 6.4.17 The applicant believed Camden Plant Ltd's access was via Lower Hall Lane and not through plot 16. Should it be the case that Camden Plant Ltd does have access rights through plot 16, the applicant explained that the powers in article 21 would allow the undertaker to temporarily suspend any rights necessary to carry out the authorised development.
- 6.4.18 However, following perusal of the lease between TWUL and Camden Plant Ltd, the applicant concluded that Camden Plant Ltd does indeed benefit from a right of access from Lower Hall Lane across plot 16, the proposed temporary lay down area, in the position currently being used on the ground. This right is expected to expire in 2018, but notwithstanding the enforcement notice concerning Camden Plant Ltd's continuing operations on the TWUL owned land, the private property agreements being negotiated in respect of the land for the proposed temporary laydown area reserve a right for Camden Plant Ltd to continue to use the current access route across it.
- 6.4.19 Vehicles travelling to the Camden Plant Ltd site would therefore share the access from Walthamstow Avenue through plots 18, 19 and 20 and across plot 16. The exact layout of this route and the entrance to the proposed temporary laydown area from Lower Hall Lane would be determined at the detailed design stage. However, in order to handle construction traffic implementing the NG DCO with rights of access from Walthamstow Avenue across plot 16, it is anticipated that traffic marshalling and security screening points would be provided, so that only employees and permitted vehicles, including those of Camden Plant Ltd, could enter and pass through plot 16.
- 6.4.20 I conclude therefore that there is no significant issue regarding the proposed CA powers and the intended operation of the access from Walthamstow Avenue to the temporary laydown area. This access could be shared between the applicant, construction traffic involved with the implementation of the NG's DCO, and traffic accessing the Camden Plant Ltd site. This would

be a management issue for the applicant to resolve during the construction stage of the proposed development.

## **6.5 CONCLUSIONS ON THE CASE FOR POWERS OF ACQUISITION**

- 6.5.1 The applicant already has the freehold ownership of the majority of the proposed operational site, but is seeking CA powers to cover the whole application site to both complete land ownership where necessary, and acquire rights. The applicant is also seeking powers of temporary possession and use. The applicant has a clear purpose for each plot subject to proposed CA powers as set out in the SoR. Negotiations have taken place, and indeed continue, to enable the applicant to assemble its proposed interests without recourse to CA powers. If these negotiations fail, then the applicant argues such powers are necessary to enable the proposed development to be satisfactorily implemented.
- 6.5.2 In terms of the general matters to be addressed, I am satisfied that alternatives to the proposed development have been satisfactorily considered in the Alternatives Assessment Report, including technical feasibility, the minimisation of land take and environmental and visual impacts (APP-019).
- 6.5.3 Potential compensation has been assessed at less than £2million and I am satisfied that the applicant has the financial resources to meet such a liability.
- 6.5.4 The draft DCO does not propose CA powers in respect of any Crown Land, but does involve proposed rights over special category land. I conclude that the circumstances set out in s132(3) PA 2008 apply to the plots which comprise the special category land, meaning that the special parliamentary procedure required by s132(2) PA 2008 is not necessary.
- 6.5.5 Section 127 PA 2008 is engaged as several statutory undertakers made representations about their interests. I am satisfied that any interference with statutory undertakers' interests caused by the application of the proposed CA powers would not cause serious detriment. Accordingly, the s138 tests are met, i.e. that the extinguishment/interference with any right or removal of apparatus is necessary. Article 7 of the draft DCO would restrict the proposed CA powers to the undertaker only as defined as in article 2, (although the Secretary of State can consent to transfer of these powers under article 8).
- 6.5.6 I therefore return to consideration of the application documents and the proposed CA powers and related matters in the light of

s122 and s123 PA 2008, relevant guidance, the Regulations<sup>44</sup> and the Human Rights Act 1998.

- 6.5.7 In this case, s123 PA 2008 is satisfied because a request for the CA of land and rights was included in the application for development consent. Section 122 PA 2008 requires that the Secretary of State must be satisfied the land is required for the development to which the development consent relates, and that a compelling case in the public interest has been made for CA. In determining whether that compelling case exists, the public interest must be balanced against private loss.
- 6.5.8 In order to conclude that a compelling case has been made for CA, I must be of the view that development consent should be granted for the proposal because the powers are required to bring about that development. In this case, I have concluded that development consent should be granted for the reasons set out in Chapters 4 and 5, which turn on the compliance of the application with NPSs EN-1 and EN-3.
- 6.5.9 I am satisfied that all of the land subject to the proposed powers of acquisition and of rights, and proposed powers of temporary possession are required to carry out the development. This is having considered in particular the Land Plans and the Works Plans (REP8-001), the SoR (REP7-006), the BoR (REP8-012), and the description of the authorised development in Schedule 1 of the draft DCO.
- 6.5.10 Having given detailed consideration to the objections to proposed CA powers, I am satisfied that the reasons provided by the applicant outweigh such objections. Any outstanding concerns can be largely ameliorated through modifications I suggest to the range of protective provisions, in particular. I conclude therefore that the justification for the proposed CA of each of the plots as set out in the BoR and SoR is made.
- 6.5.11 I am clear that whilst private agreements between the applicant and various bodies for outstanding land and rights might be in place in due course, this does not take away the need for the CA powers in the draft Order. This is because the project must be planned and carried out without risk of one or more parties holding it up or preventing it from being delivered.
- 6.5.12 If the Secretary of State decides that development consent should be granted, I conclude therefore that the compelling case in the public interest has been made under s122 and s123 PA 2008, and so recommend that the CA powers in the draft DCO should be granted.

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<sup>44</sup> The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 and the Infrastructure Planning (Compulsory Acquisition) Regulations 2010

## **Human Rights Act considerations**

- 6.5.13 The applicant considers in the SoR that Article 1 of the First Protocol to the European Convention of Human Rights is applicable, and also Articles 6 and 8 in terms of those affected by the proposed CA and temporary use of land:
- First Protocol, Article 1 covers the rights of those whose property is to be compulsorily acquired and whose peaceful enjoyment of their property is to be interfered with;
  - Article 8 protects the rights of the individual in respect of private and family life; and
  - Article 6 entitles those affected by the project to a fair and public hearing by an independent and impartial tribunal.
- 6.5.14 The applicant is satisfied that although the Convention rights are likely to be engaged, there is a compelling case in the public interest for the proposals which outweighs in this instance any impact on individual rights. Those affected by CA may claim compensation in accordance with the statutory Compensation Code. Should the draft Order be made, aggrieved persons may also challenge the Order in the High Court if they consider that the grounds for doing so are made out pursuant to s118 PA 2008. Affected persons have the right to apply to the Upper Tribunal (Lands Chamber) if compensation is disputed.
- 6.5.15 I am satisfied that in relation to Article 1 of the First Protocol and Article 8, the proposed interference with individuals' rights would be lawful, necessary, proportionate and justified in the public interest. In relation to Article 6, I am satisfied that all objections which have been made have either been resolved by the applicant or the objectors have had the opportunity to present their cases before me during the examination, including at a CA hearing held for this purpose.

## **Recommendation on including CA powers in the Order**

- 6.5.16 For the reasons set out in this Chapter, I am satisfied that the case has been made that all of the land included in the BoR and Land Plans is required either for the development, or to facilitate it, or as incidental to it.
- 6.5.17 I have concluded that development consent should be granted for the reasons set out in Chapters 4 and 5. It follows therefore that its delivery would be jeopardised in the absence of the CA powers, and the temporary use of land intended as set out in the draft DCO. Interference with persons and affected land interests is proportionate to the benefits that would be brought about by the development. In this situation, I conclude that the

compelling case in the public interest for the grant of CA powers has been made.

- 6.5.18 In relation to the objections set out in this Chapter, I do not consider that the private losses suffered are such as to outweigh the public benefits that would accrue from the grant of the CA powers which are sought.
- 6.5.19 With regard to the incorporation of other statutory powers pursuant to s120(5)(a) PA 2008, I am satisfied that as required by s117(4) the DCO has been drafted in the form of a statutory instrument, and that no provision of the draft DCO contravenes the provisions of s126 which preclude the modification of compensation provisions.

## **7 DRAFT DEVELOPMENT CONSENT ORDER**

### **7.1 EVOLUTION OF THE DRAFT ORDER**

- 7.1.1 The application included a draft Order (APP-009), accompanying EM (APP-010), and a draft DCOb (APP-011). Following the acceptance of the application on 11 November 2015, the applicant submitted a number of documents in December 2015 and April 2016 as set out in paragraphs 2.5.1 and 2.5.2 above. These comprised some additional and amended plans, explanations to clarify matters relating to the BoR (including a revised version), updated tables to the SoR, additional SoCGs, and a revised draft DCO.
- 7.1.2 I decided to accept all these documents as part of the examination, and these were published and available to all IPs prior to the PM and subsequently as appropriate. Many of the application documents were resubmitted at deadline 8 as the final version, taking into account any amendments and redrafting during the course of the examination. Also submitted was a document showing the changes to plans during the course of the examination (REP8-031). The comprehensive list of all the examination documents is set out in the Examination Library in Appendix B of this report.
- 7.1.3 I tabled a number of questions concerning various articles and Schedules in the draft DCO with my first written questions issued on 2 March 2016 (PD-008), and these together with a number of detailed points provided in advance (EV-004) were discussed with the applicant at the first ISH dealing with the draft DCO on 18 March 2016 (EV-005 to 007). In the light of that, the applicant submitted a revised draft DCO (REP3-018) reflecting its responses to my first written questions on DCO related matters (REP3-016).
- 7.1.4 I put several further questions about this revised draft DCO in my second written questions issued on 11 May 2016 (PD-009). In the light of the applicant's responses (REP5-001), a further revised version of the draft DCO (REP6-007) and accompanying documents such as the DCOb, CoCP and ECMS, I brought these together at the second ISH on 5 July 2016 (EV-009, 011 and 012).
- 7.1.5 Following that hearing, the applicant submitted for deadline 7 a revised draft DCO (REP7-002), DCOb (REP7-004), CoCP (REP7-037), and ECMS (REP7-010). Instead of holding a third ISH as provided for provisionally in the examination programme, I wrote to the applicant on 1 August 2016 with a number of detailed comments on the draft submitted by the applicant at deadline 7, in the form of an annotated version of the draft DCO (PD-018). The applicant responded at the end of the examination with a final version of the draft DCO (REP8-003),

EM (REP8-008), DCOb (REP8-009), CoCP (REP8-013) and ECMS (REP8-024). These therefore are the final definitive versions of the applicant's draft Order and accompanying documents.

7.1.6 As requested, the applicant also submitted a comparison version of this final draft DCO at the end of the examination with the application version (REP8-005). This demonstrates a considerable number of changes made by the applicant in response to my written questions and the discussions at the ISHs, and is a testimony to the willingness of the applicant to respond to the many observations made. The sequence of these changes during the examination and the detailed reasoning is set out in tables of revisions prepared by the applicant at successive stages, in four documents (REP3-017, REP6-009, REP7-012, and REP8-028).

### **General matters**

7.1.7 In the light of the detailed attention given to the draft Order during the examination, the final version of the draft DCO (REP8-003) and the accompanying revised EM (REP8-008) represents the outcome of the of the examination process. This means that no further comment about them in this report is necessary. If I have made no mention of particular articles or other draft Order provisions in this Chapter, the Secretary of State can be clear I am satisfied they are appropriate, and the reasons for seeking the powers have been adequately explained in the version of the EM updated and submitted at the end of the examination (REP8-008).

7.1.8 However, several matters are of sufficient significance to warrant a brief explanation, and a few remaining matters such as the protective provisions in Schedule 13 require a discussion and recommendation from myself as the ExA.

7.1.9 Apart from the amendment noted in paragraph 7.2.2 below, I am satisfied that the description of the proposed authorised development in Schedule 1 of the draft DCO and in the EM is accurate in terms of the NSIP (Works Nos. 1a), associated development (Works Nos. 1b to 7) and further works constituting associated development in connection with Works Nos. 1 to 7. I conclude that the proposed associated development is legitimately subordinate to the principal development and therefore meets the tests of s115(2) PA 2008.

7.1.10 In terms of overall structure, the draft DCO consists of 38 articles which provide the principal powers for carrying out the proposed development, including CA powers. There are 13 Schedules including the range of works comprising the authorised development in Schedule 1, the requirements controlling the authorised development in Schedule 2, and

protective provisions for a range of organisations in Schedule 13.

- 7.1.11 The next general matter is the balance to be struck between providing sufficient certainty as to what is being approved by the Order, and the applicant's desire for flexibility as the details of the project are developed during implementation. The principal plans showing the works are the Regulation 5(2)<sup>45</sup> plans C\_0001 to 0011 (REP8-001). Together with article 4 and requirement 5 of the draft DCO, they provide the parameters pursuant to the "*Rochdale Envelope*" for the site, by setting out the maxima for building dimensions.
- 7.1.12 The subsequent control of detailed development would be secured through the description of the works in Schedule 1 and the requirements in Schedule 2. I conclude that the final draft of article 38(3) explicitly acknowledges that detailed approvals granted pursuant to requirements can be amended or revised (REP7-012). In my letter to the applicant towards the end of the examination, I suggested a general provision should be drafted within requirement 1 which would obviate the need for tailpiece type provisions in some requirements (PD-018). This did not find favour with the applicant (REP8-028), but I remain of the view that this is the simplest way of providing for the flexibility the applicant seeks. Where approvals given under the requirements are varied by subsequent revisions such changes must be minor or immaterial within the authorised development as assessed in the ES.
- 7.1.13 The inclusion of tailpiece type provisions in some requirements was a matter of discussion during the examination, and the applicant sets out its reasoning for including tailpiece amendments in 8 of the requirements in section 6 of the EM. I consider that in the manner drafted they provide the relevant planning authority with the opportunity to dispense with the approval of details under those requirements where they are included. But with the amendments I propose to requirement 1, I conclude such tailpieces are not then necessary and I recommend therefore that these should be removed from the draft Order.
- 7.1.14 Several representations, particularly from TfL, the LVRPA and CRT, asked for specific inclusion in several requirements such that there is an obligation on the applicant to consult named consultees as well as seeking the approval of LBE as the relevant planning authority. Even if this was carried out, some general provision would still be necessary to allow and require the discharging authority to consult other bodies not specifically

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<sup>45</sup> The Infrastructure Planning (Applications Prescribed Forms and Procedure) Regulations 2009



named in the requirements. I consider therefore that the mechanism included in paragraph 2(2) of Schedule 3 in placing this obligation on the discharging authority is sufficient.

## **7.2 SPECIFIC ELEMENTS OF THE DRAFT DCO**

### **Article 14**

- 7.2.1 The whole article is subject to the first sentence that it is for the purposes of constructing the authorised development, so this does not need to be repeated in the last line which should therefore stop after *"requires"*.

### **Schedule 1**

- 7.2.2 Together with the creation of an access from Lee Park Way to the temporary laydown area, the improvement of the existing junction between Walthamstow Avenue and Lower Hall Lane is shown on the Works Plan C\_0009 Rev 01 as an element of Works No. 5. However, this junction improvement is incorrectly listed in paragraph 2(d) of Schedule 1 as being an element of Works No. 4. I propose therefore the draft Order is amended by moving this element to the list of Works No. 5 in paragraph 2(e) of Schedule 1, and the appropriate amendments made to Works Numbers in Schedule 9.

### **Requirement 1**

- 7.2.3 For the reasons set out in paragraphs 7.1.12 and 13, I propose that this requirement is amended to read as follows:

*"Where approval of details is required under the terms of any requirement or where a document contains the wording "unless otherwise agreed" by the discharging authority, such approval of details (including any subsequent amendments or revisions) or agreement by the discharging authority is not to be given except in relation to minor or immaterial changes or deviations where it has been demonstrated to the satisfaction of the discharging authority that the subject-matter of the approval or agreement sought does not give rise to any new significant adverse environmental effects that were not assessed in the environmental statement"*.

### **Requirement 4**

- 7.2.4 For the reasons set out in paragraphs 7.1.12 and 7.1.13, I propose the phrase *"unless otherwise approved by the relevant planning authority"* is deleted from the second line of paragraph 4(4).

### **Requirement 9**

- 7.2.5 For the reasons set out in paragraphs 7.1.12 and 7.1.13, I propose the phrase *"unless otherwise approved by the relevant planning authority"* is deleted from the second line of paragraph 9(2).

### **Requirement 10**

- 7.2.6 For the reasons set out in paragraphs 7.1.12 and 7.1.13, I do not consider that the tailpiece is appropriate and that accordingly the phrase *"unless otherwise approved by the relevant planning authority, and"* should be deleted from line 2 of paragraph 10(2).

### **Requirement 11**

- 7.2.7 In response to the representations submitted by TfL (paragraphs 6.3.26 and 6.3.27 above) I propose that this requirement should amplified to place a continuing responsibility for maintenance on the applicant by inserting as the first sentence: *"All landscaping implemented in accordance with an approved landscaping scheme must be maintained in accordance with details approved from time to time by the relevant planning authority"*.

### **Requirement 12**

- 7.2.8 For the reasons set out in paragraphs 7.1.12 and 7.1.13, I propose the phrase *"unless otherwise approved by the relevant planning authority"* is deleted from the last line of paragraph 12(2).

### **Requirement 14**

- 7.2.9 For the reasons set out in paragraphs 7.1.12 and 7.1.13, I propose the phrase *"unless otherwise approved by the relevant planning authority"* is deleted from the last line of paragraph 14(4).

### **Requirement 15**

- 7.2.10 For the reasons set out in paragraphs 7.1.12 and 7.1.13, I propose the phrase *"unless otherwise approved by the relevant planning authority"* is deleted from the second line of paragraph 15(2).

### **Requirement 16**

- 7.2.11 Given the obligation to review the CoCP which would itself require consultation with relevant statutory bodies, I consider it is important that the authorised development should be clearly undertaken in accordance with the most up to date version at the time. I therefore recommend that the phrase *"unless*

*otherwise approved by the relevant planning authority*" is deleted from the last line of paragraph 16(2).

### **Requirement 17**

- 7.2.12 For the reasons set out in paragraphs 7.1.12 and 7.1.13, I recommend that the phrase "*unless otherwise approved by the relevant planning authority*" is deleted from the end of paragraph 17(3).

### **Schedule 3**

- 7.2.13 Paragraph 4 provides for a specific procedure in the event of the applicant wishing to appeal against a decision of the discharging authority. The justification for a bespoke appeals mechanism instead of importing articles 78 and 79 of the TCPA 1990 was the subject of my written questions 1Q 10.9, and 2Q 10.14, and I raised the matter again as part of my letter sent to the applicant on 1 August 2016 (PD-018).

- 7.2.14 The applicant's reasoning for a bespoke appeals mechanism is set out in the EM, drawing attention to the precedents of other recently confirmed DCOs, and also in a specific response to my letter (REP8-030). In this, the applicant argues:

- the bespoke process it envisages would have a wider scope than just planning matters as it would cover the Order as a whole embracing all agreements, approvals, consents or notices of the appropriate discharging authority;
- this application is likely to generate a large number of approvals (and I assume therefore by implication an increased potential for refusals); and
- the appeals mechanism would be to a much faster and stricter timescale than provided for by the TCPA.

- 7.2.15 Whilst the precedents from some other DCOs are understood, I am not persuaded that the particular circumstances of this application are so exceptional in terms of volume or urgency of likely appeals as to require a purpose built appeals mechanism, rather than simply relying upon the well-established processes of the TCPA 1990 used in many other confirmed Orders.

- 7.2.16 I have considered carefully therefore whether paragraphs 4(2) to (12) of Schedule 3 should be deleted and replaced by a straightforward reference to sections 78 (right of appeal in relation to planning decisions) and 79 (determination of appeals) of the 1990 Act. I am though mindful of the NG DCO recently approved in 2014 which contains a similar appeals mechanism to that proposed in Schedule 3, and which overlaps with this application within the same local authority area. It would

perhaps be confusing to have two such closely related approved DCOs being implemented at the same time containing different approaches to handling appeals. For this reason alone, I conclude that there is a marginal advantage in the mechanism proposed in paragraph 4 of Schedule 3, even though it does differ in detail from that in the NG DCO.

- 7.2.17 However, if this mechanism is to be adopted, I consider amendments are necessary to paragraph 4(2)(d). The references in it to paragraph 4(2)(a) and paragraph 1(1) appear to be transposed, and a definition of start date is needed. As this cannot be before the date of the appointed person, I propose this paragraph is amended to make the notice of appointment the operative start date.
- 7.2.18 In addition, the reference to Circular 03/2009 in paragraph 4 (12) appears to be overtaken, and I therefore consider that the final sentence should be amended to read "*the appointed person must have regard to Planning Practice Guidance*".
- 7.2.19 Finally, LBE pointed out at the second ISH the disadvantage of the prescribed fee table in paragraph 3 of Schedule 3. But in my view, consideration of any future indexing can be left to the planning performance agreement proposed as part of the DCO between the applicant and LBE (REP8-009).

### **Schedule 13**

- 7.2.20 Further to the discussion in Chapter 5 concerning the protective provisions, I propose that Part 2 of Schedule 13 is amended by the deletion of paragraph 4 and consequential renumbering amendments to subsequent paragraphs. Part 3 is replaced by the version of CRT's protective provisions as amended by the applicant and with some further minor modifications I suggest. This means that this Part of the Schedule is deleted entirely and the revised version as amended is substituted. In relation to the protective provisions concerning NG in Part 5, the draft Order contains the applicant's version which for the reasons set out in Chapter 5 I recommend should be accepted, but with some modifications as set out in detail in paragraph 6.3.47. I propose these modifications are therefore made to the text of Part 5 accordingly.

### **Minor changes**

- 7.2.21 A number of minor amendments and typographical corrections are noted in the draft Order which are self-explanatory.

## **7.3 OBLIGATIONS**

- 7.3.1 During the course of the examination, a DCO made pursuant to s106 of the TCPA 1990 was offered between the applicant, LBE

and LWL. The DCOB has been executed and is dated 23 August 2016. The principal obligations are:

- prior to the commencement of the proposed development, the applicant must submit a local employment strategy to LBE, which the project contractor and operator of the ERF will be responsible for implementing;
- the project contractor must submit a local labour report at various intervals following the commencement of the proposed development, and the operator of the ERF must do likewise during the operational phase;
- the operator must provide heat to the LVHN; if the heat offtake agreement has not been agreed prior to the date of full commercial operations, the applicant or LWL will be required to make available technical and non-commercially sensitive information regarding the heat output from the ERF to any developer who wishes to become a heat offtaker;
- LWL must submit a construction travel plan before the commencement of the proposed development, and an operational travel plan prior to the full commencement of operations;
- before the full commercial operations date, the applicant or LWL must submit a servicing management plan for non-waste deliveries;
- a contribution by the applicant or LWL to costs associated with pedestrian and cycle improvements and safety audits; and
- LBE to enter into a planning performance agreement in relation to the proposed development.

7.3.2 Whilst this agreement is not for approval by the Secretary of State, I consider it meets the tests set out in paragraph 204 of the NPPF, and as it is agreed and signed it should be accorded appropriate weight in reaching a decision about whether the Order should be confirmed.

## **7.4 RECOMMENDATION CONCERNING THE ORDER**

7.4.1 I am satisfied that the description of the authorised development in Schedule 1 of the draft Order comprises development falling within the terms of s14, s15 and s115 of the PA 2008 and further that the provisions and requirements in the draft DCO fall within the terms of s120 PA 2008.

7.4.2 I recommend that development consent should be granted by the Secretary of State for the North London Heat and Power Project, and the final form of the Development Consent Order I recommend is that in Appendix D.

## **8 CONCLUSIONS AND RECOMMENDATIONS**

- 8.1.1 In coming to my overall conclusions, I have had regard to the matters listed in s104 PA 2008 as amended, including the NPSs EN-1 and EN-3, and the LIRs submitted by the GLA and the London Boroughs of Enfield, Barnet and Haringey.
- 8.1.2 I have considered all important and relevant matters and conclude, for the reasons stated in this report, that subject to the modifications to the draft Order that I propose, the benefits of the proposed development contained in the application for the NLHPP as a whole would outweigh its adverse impacts. I therefore recommend that the Secretary of State should grant development consent for this application.
- 8.1.3 I have also considered the request for powers of CA to be included in any Order that is made. I conclude that in the situation where development consent for the application is granted, a compelling case is justified in the public interest for the grant of the CA powers sought by the applicant in respect of the land and rights shown on the Land Plans and described in the BoR.

### **RECOMMENDATION**

- 8.1.4 As the Examining Authority, I recommend under s83 of the Planning Act 2008 that development consent for the North London Heat and Power Project should be granted and that the Secretary of State makes an Order under s114 of the Planning Act 2008 in the form at Appendix D.

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## APPENDIX A - THE EXAMINATION

## APPENDIX A EVENTS IN THE EXAMINATION

Item	Matters	Due Dates
1	Preliminary Meeting	<b>Wednesday 24 February 2016</b>
2	Issue by the ExA of: <ul style="list-style-type: none"> <li>• Examination timetable</li> <li>• ExA's first written questions</li> </ul>	<b>Wednesday 2 March 2016</b>
3	<b>Deadline 1</b>  Deadline for receipt by the ExA of <ul style="list-style-type: none"> <li>• Summaries of all relevant representations (RR) submitted by 23 December 2015 exceeding 1500 words</li> <li>• Comments on RRs</li> <li>• Notification by statutory parties of wish to be considered as an interested party</li> <li>• Notification by persons within certain categories of interests on the land of wish to become an interested party</li> <li>• Notification by interested parties of wish to make oral representations at the issue specific hearing on the draft Development Consent Order (DCO) to be held on 18 March 2016</li> <li>• Notification by affected persons of wish to speak at a compulsory acquisition hearing</li> <li>• Notification by interested parties of wish to speak at an open floor hearing</li> <li>• Submissions from interested parties recommending locations or items for the itinerary for the accompanied site inspection on</li> </ul>	<b>11.59pm Wednesday 9 March 2016</b>

	<p>17 March 2016</p> <ul style="list-style-type: none"> <li>Any further information requested by the ExA for this deadline</li> </ul>	
4	Accompanied site inspection	<b>Thursday 17 March 2016</b>
5	Issue specific hearing dealing with matters relating to the draft DCO	<b>Friday 18 March 2016</b>
6	<p><b>Deadline 2</b></p> <ul style="list-style-type: none"> <li>Written representations (WRs) by all interested parties</li> <li>Summaries of all WRs exceeding 1500 words</li> </ul>	<b>11.59pm Wednesday 23 March 2016</b>
7	<p><b>Deadline 3</b></p> <p>Deadline for receipt by ExA of:</p> <ul style="list-style-type: none"> <li>Written summaries of oral submissions put at the issue specific hearing dealing with matters relating to the draft DCO held on 18 March 2016</li> <li>Responses to the ExA's first written questions</li> <li>Local Impact Reports (LIR) from local authorities</li> <li>Statements of Common Ground (SoCG) requested by the ExA</li> <li>Updated draft DCO from the applicant</li> <li>Any further information requested by the ExA for this deadline</li> </ul>	<b>11.59pm Wednesday 6 April 2016</b>

8	<p><b>Deadline 4</b></p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> <li>• Comments on WRs and any responses to comments on RRs</li> <li>• Comments on LIR</li> <li>• Comments on responses to the ExA's first written questions</li> <li>• Any further information requested by the ExA for this deadline</li> </ul>	<p><b>11.59pm Wednesday 27 April 2016</b></p>
9	<p>Publication by the ExA of:</p> <ul style="list-style-type: none"> <li>• Second written questions</li> </ul>	<p><b>Wednesday 11 May 2016</b></p>
10	<p><b>Deadline 5</b></p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> <li>• Responses to the ExA's second written questions</li> <li>• Any further information requested from the ExA for this deadline</li> </ul>	<p><b>11.59pm Sunday 5 June 2016</b></p>
11	<p><b>Deadline 6</b></p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> <li>• Comments on responses to the ExA's second written questions</li> <li>• Any further information requested by the ExA for this deadline</li> </ul>	<p><b>11.59pm Sunday 19 June 2016</b></p>
12	<p>Issue specific hearing dealing with matters relating to the draft DCO</p>	<p><b>Tuesday 5 July 2016</b></p>
13	<p>Open floor hearing (afternoon)</p>	<p><b>Tuesday 5 July 2016</b></p>
14	<p>Open floor hearing (evening)</p>	<p><b>Tuesday 5 July 2016</b></p>

15	Compulsory acquisition hearing	<b>Wednesday 6 July 2016</b>
16	<p><b>Deadline 7</b></p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> <li>• Written summaries of oral submissions put at any hearings held between 27 June and 8 July</li> <li>• Any further information requested by the ExA for this deadline</li> </ul>	<b>11.59pm Monday 18 July 2016</b>
17	<p>Publication by the ExA of:</p> <ul style="list-style-type: none"> <li>• Report on Implications for European Sites (RIES) (not required)</li> </ul>	<b>Tuesday 26 July 2016</b>
18	Accompanied site inspection	<b>Wednesday 17 August 2016</b>
19	<p><b>Deadline 8</b></p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> <li>• Written summaries of oral submissions put at any hearings held on 17 and 18 August</li> <li>• Applicant's final draft DCO and Explanatory Memorandum</li> <li>• Comments on the ExA's RIES (if required)</li> <li>• Any further information requested by the ExA for this deadline</li> </ul>	<b>11.59pm Monday 22 August 2016</b>
20	Examination closed	<b>Wednesday 24 August 2016</b>

## APPENDIX B – EXAMINATION LIBRARY

## **North London Heat and Power Project Examination Library**

This Examination Library relates to the North London Heat and Power Project application. The library lists each document that has been submitted to the examination by any party and documents that have been issued by the Planning Inspectorate. All documents listed have been published to the National Infrastructure Planning website and a hyperlink is provided for each document. A unique reference is given to each document and these references are used in the report as explained in paragraph 1.1.6. The documents within the library are categorised either by document type or by the deadline to which they are submitted.

Please note the following:

- Advice under Section 51 of the Planning Act 2008 that has been issued by the Planning Inspectorate is published to the National Infrastructure Planning website, but is not included within the Examination Library as such advice is not an examination document.
- This document contains references to documents from the point the application was submitted.
- The order of documents within each sub-section is either chronological, numerical, or alphabetical and confers no priority or higher status on those that have been listed first.

**North London Heat and Power Project – EN010071**

**Examination Library - Index**

<b>Category</b>	<b>Reference</b>
<a href="#">Application Documents</a>  As submitted and amended version received before the PM. Any amended version received during the Examination stage to be saved under the Deadline received	APP-xxx
<a href="#">Adequacy of Consultation responses</a>	AoC-xxx
<a href="#">Relevant Representations</a>	RR-xxx
<a href="#">Procedural Decisions and Notifications from the Examining Authority</a>  Includes Examining Authority's questions, s55, and post acceptance s51	PD-xxx
<a href="#">Additional Submissions</a>  Includes anything accepted at the Preliminary Meeting and correspondence that is either relevant to a procedural decision or contains factual information pertaining to the examination	AS-xxx
<a href="#">Events and Hearings</a>  Includes agendas for hearings and site inspections, audio recordings, responses to notifications, applicant's hearing notices, and responses to Rule 6 and Rule 8 letters	EV-xxx
<a href="#">Representations – by Deadline</a>	
<a href="#">Deadline 1:</a>  • Summaries of all relevant representations (RR) submitted by 23 December 2015 exceeding 1500 words  • Comments on RRs	REP1-xxx



<ul style="list-style-type: none"> <li>• Notification by statutory parties of wish to be considered as an interested party</li> <li>• Notification by persons within certain categories of interests on the land of wish to become an interested party</li> <li>• Notification by interested parties of wish to make oral representations at the issue specific hearing on the draft Development Consent Order (DCO) to be held on 18 March 2016</li> <li>• Notification by affected persons of wish to speak at a compulsory acquisition hearing</li> <li>• Notification by interested parties of wish to speak at an open floor hearing</li> <li>• Submissions from interested parties recommending locations or items for the itinerary for the accompanied site inspection on 17 March 2016</li> <li>• Any further information requested by the ExA for this deadline</li> </ul>	
<p><a href="#">Deadline 2:</a></p> <ul style="list-style-type: none"> <li>• Written representations (WRs) by all interested parties</li> <li>• Summaries of all WRs exceeding 1500 words</li> </ul>	REP2-xxx
<p><a href="#">Deadline 3:</a></p> <ul style="list-style-type: none"> <li>• Written summaries of oral submissions put at the issue specific hearing dealing with matters relating to the draft DCO held on 18 March 2016</li> <li>• Responses to the ExA's first written questions</li> <li>• Local Impact Reports (LIR) from local authorities</li> <li>• Statements of Common Ground</li> </ul>	REP3-xxx

<p>(SoCG) requested by the ExA</p> <ul style="list-style-type: none"> <li>• Updated draft DCO from the applicant</li> <li>• Any further information requested by the ExA for this deadline</li> </ul>	
<p><a href="#">Deadline 4:</a></p> <ul style="list-style-type: none"> <li>• Comments on WRs and any responses to comments on RRs</li> <li>• Comments on LIR</li> <li>• Comments on responses to the ExA's first written questions</li> <li>• Any further information requested by the ExA for this deadline</li> </ul>	REP4-xxx
<p><a href="#">Deadline 5:</a></p> <ul style="list-style-type: none"> <li>• Responses to the ExA's second written questions</li> <li>• Any further information requested from the ExA for this deadline</li> </ul>	REP5-xxx
<p><a href="#">Deadline 6:</a></p> <ul style="list-style-type: none"> <li>• Comments on responses to the ExA's second written questions</li> <li>• Any further information requested by the ExA for this deadline</li> </ul>	REP6-xxx
<p><a href="#">Deadline 7:</a></p> <ul style="list-style-type: none"> <li>• Written summaries of oral submissions put at any hearings held between 27 June and 8 July</li> <li>• Any further information requested by the ExA for this deadline</li> </ul>	REP7-xxx
<p><a href="#">Deadline 8:</a></p> <ul style="list-style-type: none"> <li>• Written summaries of oral submissions put at any hearings held on 17 and 18 August</li> </ul>	REP8-xxx

<ul style="list-style-type: none"> <li>• Applicant's final draft DCO and Explanatory Memorandum</li> <li>• Comments on the ExA's RIES (if required)</li> <li>• Any further information requested by the ExA for this deadline</li> </ul>	
<p><a href="#">Other Documents</a></p> <p>Includes s127/131/138 information, s56, s58 and s59 certificates, and transboundary documents</p>	<p>OD-xxx</p>

## North London Heat and Power Project – EN010071

### Examination Library

#### Application Documents

APP-001	<a href="#">AD01.01 Cover Letter - Covering letter submitted with the Application</a>
APP-002	<a href="#">AD01.02 Navigation Document - A guide to the documents included in the Application</a>
APP-003	<a href="#">AD01.03 Application Form - Completed DCO application form</a>
APP-004	<a href="#">AD01.04 Newspaper Notices - Copies of newspaper notices publicising the Application</a>
APP-005	<a href="#">AD01.05 Glossary and Acronyms - Provides explanations of any technical terminology and acronyms used in the reports and documents</a>
APP-006	<a href="#">AD02.01 Book of Plans Part A - Site Location Plans and Land Plans: The drawings that have been prepared for the Application comprising site location plans and land plans</a>
APP-007	<a href="#">AD02.01 Book of Plans Part B - Work Plans and Other Plans Required by Regulations: The drawings that have been prepared for the Application comprising works plans and other plans required by regulations</a>
APP-008	<a href="#">AD02.02 Design Code Principles - A combined document that includes the design code principles and supporting plans</a>
APP-009	<a href="#">AD03.01 Draft DCO - Draft Development Consent Order: Contains the legal powers being applied for as part of the Application</a>
APP-010	<a href="#">AD03.02 Explanatory Memorandum - Describes the purpose and effect of each provision of the Draft DCO</a>
APP-011	<a href="#">AD03.03 S106 Draft Agreement - Section 106 Draft Agreement: Sets out the proposed planning obligations</a>
APP-012	<a href="#">AD04.01 CPO Statement of Reasons - Explains the reasons why powers of compulsory acquisition are necessary to implement the Project</a>
APP-013	<a href="#">AD04.02 Funding Statement - Explains how the Project would be funded</a>
APP-014	<a href="#">AD04.03 Book of Reference - Contains all land referencing information for land proposed to be used or acquired for the Project</a>
APP-015	<a href="#">AD04.04 CPO Powers Roadmap - Is provided for information and sets out what CPO powers will be used in relation to each land plot shown on the land plans</a>
APP-016	<a href="#">AD05.01 Consultation Report - Sets out the consultation process that has been undertaken to comply with its pre-application consultation duties</a>
APP-017	<a href="#">AD05.01 Consultation Report Appendices - Contains the appendices to the Consultation Report</a>

APP-018	<a href="#">AD05.02 Planning Statement - Sets out the planning policy context for the Project</a>
APP-019	<a href="#">AD05.03 Alternatives Assessment Report: Summarises the alternatives that have been considered by the Applicant</a>
APP-020	<a href="#">AD05.04 Need Assessment - Explains why the Project is proposed</a>
APP-021	<a href="#">AD05.05 Fuel Management Assessment - Sets out how waste received at the Edmonton EcoPark will be managed</a>
APP-022	<a href="#">AD05.06 Combined Heat and Power Development Strategy: Describes the CHP development strategy for the proposed Energy Recovery Facility</a>
APP-023	<a href="#">AD05.07 DAS Part A - Design and Access Statement: Outlines the design concepts and principles</a>
APP-024	<a href="#">AD05.07 DAS Part B - Design and Access Statement: Outlines the design concepts and principles</a>
APP-025	<a href="#">AD05.07 DAS Part C - Design and Access Statement: Outlines the design concepts and principles</a>
APP-026	<a href="#">AD05.07 DAS Part D - Design and Access Statement: Outlines the design concepts and principles</a>
APP-027	<a href="#">AD05.08 Grid Connection Statement - Demonstrates the feasibility and proposed approach to grid connection upgrade works to support the proposed electrical export capacity</a>
APP-028	<a href="#">AD05.09 Health Impact Assessment - Assesses the potential health impacts resulting from the Project</a>
APP-029	<a href="#">AD05.10 Utility Strategy - Explains how the Project will connect to existing utility infrastructure systems</a>
APP-030	<a href="#">AD05.11 Transport Assessment - Sets out the implications of the Project on transport</a>
APP-031	<a href="#">AD05.11 Transport Assessment Appendices - Contains the figures and appendices to the Transport Assessment</a>
APP-032	<a href="#">AD05.12 Code of Construction Practice - Sets out the principles and controls developed to reduce and mitigate the effects of the Project during construction</a>
APP-033	<a href="#">AD05.13 Sustainability Statement - Outlines and appraises the sustainability objectives for the design and construction of the Project</a>
APP-034	<a href="#">AD05.14 Flood Risk Assessment - Assesses the risk of flooding to the Application Site</a>
APP-035	<a href="#">AD05.15 Statement on Potential Statutory Nuisances and Mitigation Measures - States whether the Project engages one or more of the matters set out in Section 79(1) of the Environmental Protection Act 1990(b)</a>

APP-036	<a href="#">AD05.16 Report on Natural Features - Provides an assessment of any effects on natural features</a>
APP-037	<a href="#">AD05.17 No Significant Effects Report - Sets out the recommendations from the Habitat Regulations Assessment screening report</a>
APP-038	<a href="#">AD06.01 ES Non Technical Summary - Provides a non-technical summary of the Environmental Statement</a>
APP-039	<a href="#">AD06.02 Environmental Statement Volume 1- Provides a description of the Environmental Impact Assessment approach and methodology</a>
APP-040	<a href="#">AD06.02 Environmental Statement Volume 1 Figures and Appendices - Contains the figures and appendices to Volume 1 of the Environmental Statement</a>
APP-041	<a href="#">AD06.02 Environmental Statement Volume 2 - Sets out the assessment of the likely significant effects of the Project on the environment</a>
APP-042	<a href="#">AD06.02 Environmental Statement Volume 2 Appendices 2.1 - 2.3 - Contains the appendices to Section 2 Volume 2 of the ES</a>
APP-043	<a href="#">AD06.02 Environmental Statement Volume 2 Appendices 3.1 - 3.2 - Contains the appendices to Section 3 Volume 2 of the ES</a>
APP-044	<a href="#">AD06.02 Environmental Statement Volume 2 Appendices 5.1 - 5.10 - Contains the appendices to Section 5 Volume 2 of the ES</a>
APP-045	<a href="#">AD06.02 Environmental Statement Volume 2 Appendices 7.1 - 7.3 - Contains the appendices to Section 7 Volume 2 of the ES</a>
APP-046	<a href="#">AD06.02 Environmental Statement Volume 2 Appendices 8.1 - 8.4 - Contains the appendices to Section 8 Volume 2 of the ES</a>
APP-047	<a href="#">AD06.02 Environmental Statement Volume 2 Appendices 9.1 - 9.2 - Contains the appendices to Section 9 Volume 2 of the ES</a>
APP-048	<a href="#">AD06.02 Environmental Statement Volume 2 Appendices 10.1 - 10.2 - Contains the appendices to Section 10 Volume 2 of the ES</a>
APP-049	<a href="#">AD06.02 Environmental Statement Volume 2 Appendices 11.1 - 11.3 - Contains the appendices to Section 11 Volume 2 of the ES</a>
APP-050	<a href="#">AD06.02 Environmental Statement Volume 2 Figures 2.1 to 2.18 - Contains the figures to Volume 2 of the Environmental Statement</a>
APP-051	<a href="#">AD06.02 Environmental Statement Volume 2 Figures 2.19 to 11.2 - Contains the figures to Volume 2 of the Environmental Statement</a>
APP-052	<a href="#">AD06.02 Environmental Statement Volume 3: Sets out the assessment of the likely significant effects of the Project on the environment</a>
APP-053	<a href="#">AD06.02 Environmental Statement Volume 3 Appendix 1.1-1.4 - Contains the appendices to Volume 3 of the Environmental Statement</a>
APP-054	<a href="#">AD06.03 Environmental Commitments and Mitigation Schedule - Sets out</a>

	<a href="#">the environmental commitments and mitigation that the Applicant commits to delivering as part of the Project</a>
<b>Revised application documents and response to post acceptance s51 advice – Published on 5 January 2016</b>	
APP-055	<a href="#">North London Waste Authority - Letter to PINS regarding Certificates and Revised Book of Reference</a>
APP-056	<a href="#">North London Waste Authority - Response to S51 Advice Letter</a>
APP-057	<a href="#">North London Waste Authority - AD04.03 Book of Reference Revision 2</a>
APP-058	<a href="#">North London Waste Authority - AD04.04 CA Powers Roadmap Revision 2</a>
APP-059	<a href="#">North London Waste Authority - Comparison Between Submitted Book of Reference and Revised Book of Reference</a>
APP-060	<a href="#">North London Waste Authority - Definitive List of Category 3 Persons December 2015</a>
<b>Adequacy of Consultation Responses</b>	
AoC-001	<a href="#">Welwyn Hatfield Council</a>
AoC-002	<a href="#">London Borough of Barnet</a>
AoC-003	<a href="#">Epping Forest District Council</a>
AoC-004	<a href="#">London Borough of Waltham Forest</a>
AoC-005	<a href="#">Hertsmere Borough Council</a>
AoC-006	<a href="#">Greater London Authority</a>
AoC-007	<a href="#">Broxbourne Council</a>
AoC-008	<a href="#">Enfield Council</a> Late Adequacy of Consultation response received on the 17 November 2015. As this response was received after the decision whether to accept the North London Heat and Power Project for examination had been issued, it was not taken into account by the Examining Inspector
<b>Relevant Representations</b>	
RR-001	<a href="#">KTI Energy Limited</a>
RR-002	<a href="#">Marine Society and Sea Cadets</a>
RR-003	<a href="#">E Roberts Timber Ltd</a>
RR-004	<a href="#">David Arweny</a>
RR-005	<a href="#">Karen Crowder-James on behalf of Bestway Cash and Carry Ltd</a>

RR-006	<a href="#">Greater London Authority</a>
RR-007	<a href="#">National Grid Electricity Transmission Plc and National Grid Gas Plc</a>
RR-008	<a href="#">Natural England</a>
RR-009	<a href="#">Biffa Waste Services Ltd</a>
RR-010	<a href="#">Monika Weglarz on behalf of Transport for London</a>
RR-011	<a href="#">Environment Agency</a>
RR-012	<a href="#">Canal &amp; River Trust</a>
RR-013	<a href="#">Lee Valley Regional Park Authority</a>
RR-014	<a href="#">John Bosworth on behalf of Kennet Properties Limited</a>
RR-015	<a href="#">John Bosworth on behalf of Thames Water Utilities Limited</a>
RR-016	<a href="#">London Borough of Enfield</a>
RR-017	<a href="#">Historic England</a>
RR-018	<a href="#">Edmonton residents</a>
RR-019	<a href="#">North London Waste Plan</a>
RR-020	<a href="#">Public Health England</a>
<b>Procedural Decisions and Notifications from the Examining Authority</b>	
PD-001	<a href="#">Notification of Decision to Accept Application</a>
PD-002	<a href="#">Section 55 Acceptance of Applications Checklist</a>
PD-003	<a href="#">Post acceptance s51 advice</a>
PD-004	<a href="#">S61 Appointment of Examining Authority</a>
PD-005	<a href="#">Rule 6 letter</a>
PD-006	<a href="#">Notification of March hearing and Accompanied Site Inspection</a>
PD-007	<a href="#">Rule 8 Letter</a>
PD-008	<a href="#">Examining Authority's First Written Questions</a>
PD-009	<a href="#">Examining Authority's Second Written Questions</a>
PD-010	<a href="#">Notification of Accompanied Site Visit on 17 August 2016</a>
PD-011	<a href="#">Rule 17 Letter sent to Canal and River Trust</a> Request for Further Information 29 July 2016



PD-012	<a href="#">Rule 17 Letter sent to Zayo Group Limited</a> Request for Further Information 29 July 2016
PD-013	<a href="#">Rule 17 Letter sent to Transport for London</a> Request for Further Information 29 July 2016
PD-014	<a href="#">Rule 17 Letter sent to Lee Valley Regional Park Authority</a> Request for Further Information 29 July 2016
PD-015	<a href="#">Rule 17 Letter sent to Thames Water Utilities Limited</a> Request for Further Information 29 July 2016
PD-016	<a href="#">Rule 17 Letter sent to National Grid</a> Request for Further Information 29 July 2016
PD-017	<a href="#">Rule 17 Letter sent to Kennet Properties Limited</a> Request for Further Information 29 July 2016
PD-018	<a href="#">Rule 17 Letter sent to North London Waste Authority</a> Request for Further Information 1 August 2016
PD-019	<a href="#">Notification of completion of ExA Examination</a>
<b>Additional Submissions</b>	
AS-001	<a href="#">Health and Safety Executive</a> Representation submitted as a result of the s56 notification
AS-002	<a href="#">Scottish Natural Heritage</a> Representation submitted as a result of the s56 notification
<b>Events and Hearings</b>	
<b>Preliminary Meeting – 24 February 2016</b>	
EV-001	<a href="#">Audio recording of the Preliminary Meeting held on 24 February 2016</a>
EV-002	<a href="#">Preliminary Meeting note</a> Note of the Preliminary meeting held on 24 February 2016
<b>Accompanied Site Visit and Hearing – 17 and 18 March 2016</b>	
EV-003	<a href="#">Agenda Letter for the Site Visit on 17 March 2016</a>
EV-004	<a href="#">Agenda for the Issue Specific Hearing on the DCO 18 March 2016</a>
EV-005	<a href="#">Audio Recording of the Issue Specific Hearing on the DCO on 18 March 2016 - Part 1</a>
EV-006	<a href="#">Audio Recording of the Issue Specific Hearing on the DCO on 18 March 2016 - Part 2</a>
EV-007	<a href="#">Action points from the Issue Specific Hearing on 18 March 2016</a>

<b>Issue Specific, Compulsory Acquisition and Open Floor Hearings – 5 and 6 July 2016</b>	
EV-008	<a href="#">Notification of July Hearings</a>
EV-009	<a href="#">Agenda for the Issue Specific Hearing on 5 July 2016</a>
EV-010	<a href="#">Agenda for the Compulsory Acquisition Hearing on 6 July 2016</a>
EV-011	<a href="#">Audio Recording of the Issue Specific Hearing on the Draft DCO on 5 July 2016 - Session 1</a>
EV-012	<a href="#">Audio Recording of the Issue Specific Hearing on the Draft DCO - Session 2, and the First Open Floor Hearing on 5 July 2016</a>
EV-013	<a href="#">Audio Recording of the Second Open Floor Hearing on 5 July 2016</a>
EV-014	<a href="#">Audio Recording of the Compulsory Acquisition Hearing on the Draft DCO on 6 July 2016</a>
<b>Representations</b>	
<b>Deadline 1 – 9 March 2016</b>	
REP1-001	<a href="#">Canal and River Trust</a> Comments in advance of the March Hearing on the Draft DCO
REP1-002	<a href="#">Transport for London</a> Comments in advance of the March Hearing on the Draft DCO
REP1-003	<a href="#">North London Waste Authority</a> AD07.01 Comments on Relevant Representations
REP1-004	<a href="#">National Grid</a> Comments for Deadline 1
REP1-005	<a href="#">The Eley Estate Company</a> Comments for Deadline 1
REP1-006	<a href="#">Zayo Group UK Limited</a> Late representation submitted on 6 April 2016. Accepted at the discretion of the Examining Authority
REP1-007	<a href="#">Royal Mail Limited</a> Late representation submitted on 26 May 2016. Accepted at the discretion of the Examining Authority
<b>Deadline 2 – 23 March 2016</b>	
REP2-001	<a href="#">River Lea Anglers Club</a> Written Representation
REP2-002	<a href="#">David Arweny</a> Written Representation

REP2-003	<a href="#">Transport for London</a> Written Representation
REP2-004	<a href="#">Environment Agency</a> Written Representation and Summary
REP2-005	<a href="#">Biffa Waste Services Ltd</a> Written Representation
REP2-006	<a href="#">Bestway Holdings Ltd</a> Written Representation
REP2-007	<a href="#">Thames Water Utilities Limited and Kennet Properties Limited</a> Written Representation
REP2-008	<a href="#">Greater London Authority</a> Written Representation (includes Local Impact Report)
REP2-009	<a href="#">Canal and River Trust</a> Written representation (updated on 14 April 2016 to include the missing appendix 1 - The Knottingley Power Protective Provisions)
REP2-010	<a href="#">Canal and River Trust</a> Summary of Written Representation
REP2-011	<a href="#">Lee Valley Regional Park Authority</a> Written Representation
REP2-012	<a href="#">London Borough of Enfield</a> Written Representation
REP2-013	<a href="#">National Grid</a> Written Representation
<b>Deadline 3 – 6 April 2016</b>	
REP3-001	<a href="#">London Borough of Barnet</a> Local Impact Report
REP3-002	<a href="#">Haringey Council</a> Local Impact Report
REP3-003	<a href="#">London Borough of Enfield</a> Local Impact Report
REP3-004	<a href="#">London Borough of Enfield</a> Response to the ExA's first written questions
REP3-005	<a href="#">North London Waste Plan</a> Response to the ExA's first written questions
REP3-006	<a href="#">National Grid</a> Response to the ExA's first written questions
REP3-007	<a href="#">Environment Agency</a> Response to the ExA's first written questions

REP3-008	<a href="#">Transport for London</a> Response to the ExA's first written questions
REP3-009	<a href="#">Canal and River Trust</a> Response to the ExA's first written questions
REP3-010	<a href="#">Lee Valley Regional Park Authority</a> Response to the ExA's first written questions
REP3-011	<a href="#">Thames Water</a> Response to the ExA's first written questions
REP3-012	<a href="#">North London Waste Authority</a> AD03.04 Statement of Common Ground - Greater London Authority
REP3-013	<a href="#">North London Waste Authority</a> AD03.04 Statement of Common Ground - Lee Valley Regional Park Authority
REP3-014	<a href="#">North London Waste Authority</a> AD03.04 Statement of Common Ground - Natural England
REP3-015	<a href="#">North London Waste Authority</a> AD03.04 Statement of Common Ground - Transport for London
REP3-016	<a href="#">North London Waste Authority</a> AD07.02 Responses to the Examining Authority's First Written Questions
REP3-017	<a href="#">North London Waste Authority</a> AD07.03 Table of Revisions to the Draft DCO
REP3-018	<a href="#">North London Waste Authority</a> Updated Draft Development Consent Order - Submitted for Deadline 3 - Clean version
REP3-019	<a href="#">North London Waste Authority</a> Updated Draft Development Consent Order - Submitted for Deadline 3 - Comparison version against Draft submitted October 2015
REP3-020	<a href="#">North London Waste Authority</a> AD07.04 Applicant's Oral Submissions at the DCO Hearing 18 March 2016
REP3-021	<a href="#">North London Waste Authority</a> AD03.04 Statement of Common Ground – London Borough of Enfield. Late submission for Deadline 3 accepted at the discretion of the Examining Authority
REP3-022	<a href="#">Greater London Authority</a> Local Impact Report (submitted with Written Representation at Deadline 2)
<b>Deadline 4 – 27 April 2016</b>	
REP4-001	<a href="#">North London Waste Authority</a> AD07.05 Comments on Written Representations

REP4-002	<a href="#">North London Waste Authority</a> AD07.06 Comments on Local Impact Reports
REP4-003	<a href="#">North London Waste Authority</a> AD07.07 Comments on Responses to the ExA's First Written Questions
REP4-004	<a href="#">Thames Water</a> Comments on Written Representations, Local Impact Reports and responses to ExA's first written questions
<b>Deadline 5 – 5 June 2016</b>	
REP5-001	<a href="#">North London Waste Authority</a> AD07.08 Responses to the ExA's Second Written Questions
REP5-002	<a href="#">North London Waste Authority</a> AD03.04 Statement of Common Ground - Environment Agency
REP5-003	<a href="#">London Borough of Enfield</a> Response to the ExA's Second Written Questions
REP5-004	<a href="#">Thames Water Utilities Ltd</a> Response to the ExA's Second Written Questions
REP5-005	<a href="#">Royal Mail</a> Written Representation
REP5-006	<a href="#">Biffa Waste Services Ltd</a> Submission for Deadline 5
<b>Deadline 6 – 19 June 2016</b>	
REP6-001	<a href="#">North London Waste Authority</a> AD05.12 Code of Construction Practice (Rev 1 Clean)
REP6-002	<a href="#">North London Waste Authority</a> AD05.12 Code of Construction Practice (Rev 1 Tracked)
REP6-003	<a href="#">North London Waste Authority</a> AD06.03 Environmental Commitments and Mitigation Schedule (Rev 1 Clean)
REP6-004	<a href="#">North London Waste Authority</a> AD06.03 Environmental Commitments and Mitigation Schedule (Rev 1 Tracked)
REP6-005	<a href="#">North London Waste Authority</a> AD07.09 Comments on Deadline 5 Submissions
REP6-006	<a href="#">North London Waste Authority</a> AD07.10 Plans and Drawings Updated for Deadline 6
REP6-007	<a href="#">North London Waste Authority</a> Draft DCO Submitted for Deadline 6 (clean)
REP6-008	<a href="#">North London Waste Authority</a>

	Draft DCO Submitted for Deadline 6 (comparison)
REP6-009	<a href="#">North London Waste Authority</a> Table of DCO Amendments submitted for Deadline 6
REP6-010	<a href="#">North London Waste Authority</a> Validation certificate
REP6-011	<a href="#">North London Waste Authority</a> Validation Report
REP6-012	<a href="#">North London Waste Authority</a> Table of Revisions to Code of Construction Practice
REP6-013	<a href="#">North London Waste Authority</a> Table of Revisions to the Environmental Commitments and Mitigation Schedule
REP6-014	<a href="#">Canal and River Trust</a> Submission for Deadline 6 regarding protective provisions
REP6-015	<a href="#">Biffa Waste Services Ltd</a> Submission for Deadline 6
REP6-016	<a href="#">North London Waste Authority</a> AD03.04 Statement of Common Ground - Canal and River Trust. Late submission for Deadline 6 accepted at the discretion of the Examining Authority
REP6-017	<a href="#">North London Waste Authority</a> AD03.04 Updated Statement of Common Ground - London Borough of Enfield (Rev 1). Late submission for Deadline 6 accepted at the discretion of the Examining Authority
REP6-018	<a href="#">Greater London Authority</a> Comments on responses to the ExA's second written questions. Late submission for Deadline 6 accepted at the discretion of the Examining Authority
REP6-019	<a href="#">Biffa Waste Services Ltd</a> Late submission for Deadline 6 accepted at the discretion of the Examining Authority
<b>Deadline 7 – 18 July 2016</b>	
REP7-001	<a href="#">North London Waste Authority</a> AD02.02 Design Code Principles Rev 1
REP7-002	<a href="#">North London Waste Authority</a> AD03.01 Draft DCO (Rev 3 Clean)
REP7-003	<a href="#">North London Waste Authority</a> AD03.01 Draft DCO (Rev 3 Tracked)
REP7-004	<a href="#">North London Waste Authority</a> AD03.03 Development Consent Obligations (Rev 1 Clean)

REP7-005	<a href="#">North London Waste Authority</a> AD03.03 Development Consent Obligations (Rev 1 Tracked)
REP7-006	<a href="#">North London Waste Authority</a> AD04.01 CA Statement of Reasons (Rev 1 Clean)
REP7-007	<a href="#">North London Waste Authority</a> AD04.01 CA Statement of Reasons (Rev 1 Tracked)
REP7-008	<a href="#">North London Waste Authority</a> AD04.04 CA Powers Roadmap (Rev 2 Clean)
REP7-009	<a href="#">North London Waste Authority</a> AD04.04 CA Powers Roadmap (Rev 2 Tracked)
REP7-010	<a href="#">North London Waste Authority</a> AD06.03 Environmental Commitments and Mitigation Schedule (Rev 2 Clean)
REP7-011	<a href="#">North London Waste Authority</a> AD06.03 Environmental Commitments and Mitigation Schedule (Rev 2 Tracked)
REP7-012	<a href="#">North London Waste Authority</a> AD07.14 Table of Revisions to the Draft DCO
REP7-013	<a href="#">North London Waste Authority</a> AD07.17 Table of Revisions to the Environmental Commitments and Mitigation Schedule
REP7-014	<a href="#">North London Waste Authority</a> AD07.15 Table of Revisions to the Statement of Reasons
REP7-015	<a href="#">North London Waste Authority</a> AD07.18 Note Regarding the Rights Held by National Grid
REP7-016	<a href="#">North London Waste Authority</a> AD07.19 Practical Management of Interactions with the National Grid DCO
REP7-017	<a href="#">North London Waste Authority</a> AD07.20 Update on the Status of Private Agreement Negotiations
REP7-018	<a href="#">North London Waste Authority</a> AD07.21 Response to Written Representation from Biffa
REP7-019	<a href="#">North London Waste Authority</a> AD07.22 Summary of Oral Submissions made at Issue Specific Hearing on 5 July
REP7-020	<a href="#">North London Waste Authority</a> AD07.23 Summary of Oral Submissions made at Compulsory Acquisition Hearing on 6 July
REP7-021	<a href="#">North London Waste Authority</a> AD07.24 Indicative Crane Oversailing Radius

REP7-022	<a href="#">North London Waste Authority</a> AD07.25 Table of Revisions and Manuscript Amendments to Drawings as given to ExA During Hearing 5 July 2016
REP7-023	<a href="#">North London Waste Authority</a> AD07.26 Plans and Drawings Updated for Deadline 7
REP7-024	<a href="#">North London Waste Authority</a> AD07.27 Table of Revisions to Plans and Drawings for Deadline 7
REP7-025	<a href="#">North London Waste Authority</a> AD07.28 Table of Revisions to the Design Code Principles
REP7-026	<a href="#">North London Waste Authority</a> AD07.28 Table of Revisions to the Compulsory Acquisition Roadmap
REP7-027	<a href="#">North London Waste Authority</a> Validation Certificate DCO
REP7-028	<a href="#">North London Waste Authority</a> Validation Report DCO
REP7-029	<a href="#">North London Waste Authority</a> CVs of Euston Ling and Ben Stansfield
REP7-030	<a href="#">Zayo Group UK Limited</a> Submission for Deadline 7
REP7-031	<a href="#">Thames Water Utilities Limited and Kennet Properties Limited</a> Comments submitted in advance of the 6 July hearing
REP7-032	<a href="#">Transport for London</a> Post Hearing Submission
REP7-033	<a href="#">KTI Energy Limited</a> Post Hearing Submission
REP7-034	<a href="#">KTI Energy Limited</a> Submission for Deadline 7
REP7-035	<a href="#">National Grid</a> Post Hearing Submission
REP7-036	<a href="#">David Arweny</a> Submission for Deadline 7
REP7-037	<a href="#">North London Waste Authority</a> AD05.12 Code of Construction Practice (Rev 2 Clean). Late submission for Deadline 7 accepted at the discretion of the Examining Authority
REP7-038	<a href="#">North London Waste Authority</a> AD05.12 Code of Construction Practice (Rev 2 Tracked). Late submission for Deadline 7 accepted at the discretion of the Examining Authority
REP7-039	<a href="#">North London Waste Authority</a>



	AD07.16 Table of Revisions to the Code of Construction Practice. Late submission for Deadline 7 accepted at the discretion of the Examining Authority
REP7-040	<a href="#">Biffa Waste Services Ltd</a> Late submission for Deadline 7 accepted at the discretion of the Examining Authority
<b>Deadline 8 –22 August 2016</b>	
REP8-001	<a href="#">North London Waste Authority</a> AD02.01 Book of Plans (Rev 2) Issue- resubmitted as the final version of the document
REP8-002	<a href="#">North London Waste Authority</a> AD02.02 Design Code Principles (Rev 1) Issue - resubmitted as the final version of the document
REP8-003	<a href="#">North London Waste Authority</a> AD03.01 Draft DCO (Rev 4 Clean)
REP8-004	<a href="#">North London Waste Authority</a> AD03.01 Draft DCO (Rev 4 - Comparison Deadline 8 Version Against Deadline 7 Version)
REP8-005	<a href="#">North London Waste Authority</a> AD03.01 Draft DCO (Rev 4 - Comparison Deadline 8 Version Against Application Version)
REP8-006	<a href="#">North London Waste Authority</a> AD03.01 Validation report of the Draft DCO (Rev 4).
REP8-007	<a href="#">North London Waste Authority</a> AD03.01 Validation certificate of the Draft DCO (Rev 4)
REP8-008	<a href="#">North London Waste Authority</a> AD03.02 Explanatory Memorandum (Rev 1)
REP8-009	<a href="#">North London Waste Authority</a> AD03 03 Development Consent Obligations (Rev 2 Clean)- Late submission
REP8-010	<a href="#">North London Waste Authority</a> AD03.03 Development Consent Obligations (Rev 2 Tracked)- Late submission
REP8-011	<a href="#">North London Waste Authority</a> AD03.05 DCO Schedules 6-8 Explanatory Diagrams (Rev 1) -resubmitted as the final version of the document
REP8-012	<a href="#">North London Waste Authority</a> AD04.03 Book of Reference (Rev 2) - resubmitted as the final version of the document
REP8-013	<a href="#">North London Waste Authority</a> AD05.12 Code of Construction Practice (Rev 2 Clean) - resubmitted as the final version of the document

REP8-014	<a href="#">North London Waste Authority</a> AD07.39 Note on Revisions to the Environmental Statement
REP8-015	<a href="#">North London Waste Authority</a> AD06.02 Environmental Statement Vol 1 - resubmitted as the final version of the document
REP8-016	<a href="#">North London Waste Authority</a> AD06.02 Environmental Statement Vol 1 Figures and Appendices- resubmitted as the final version of the document
REP8-017	<a href="#">North London Waste Authority</a> AD06.02 Environmental Statement Vol 2 - resubmitted as the final version of the document
REP8-018	<a href="#">North London Waste Authority</a> AD06.02 Environmental Statement Vol 2 Figures 2.1 to 11.2 - resubmitted as the final version of the document
REP8-019	<a href="#">North London Waste Authority</a> AD06.02 Environmental Statement Vol 2 Appendices 2.1 to 5 - resubmitted as the final version of the document
REP8-020	<a href="#">North London Waste Authority</a> D06.02 Environmental Statement Vol 2 Appendices 7.1 to 7.3 - resubmitted as the final version of the document
REP8-021	<a href="#">North London Waste Authority</a> AD06.02 Environmental Statement Vol 2 Appendices 8.1 to 11.3 - resubmitted as the final version of the document
REP8-022	<a href="#">North London Waste Authority</a> AD06.02 Environmental Statement Vol 3 - resubmitted as the final version of the document
REP8-023	<a href="#">North London Waste Authority</a> AD06.02 Environmental Statement Vol 3 Appendices (Rev 1) - resubmitted as the final version of the document
REP8-024	<a href="#">North London Waste Authority</a> AD06.03 Environmental Commitments and Mitigation Schedule (Rev 2 Clean) - Issue - resubmitted as the final version of the document
REP8-025	<a href="#">North London Waste Authority</a> AD07.31 Statement of the Final Position Concerning Outstanding Objections to Compulsory Acquisition
REP8-026	<a href="#">North London Waste Authority</a> AD07.32 Table of Revisions to the Book of Plans Since Application
REP8-027	<a href="#">North London Waste Authority</a> AD07.32 Table of Revisions to the DCO Schedule 6-8 Explanatory Diagrams
REP8-028	<a href="#">North London Waste Authority</a> AD07.33 Table of Revisions to the Draft DCO

REP8-029	<a href="#">North London Waste Authority</a> AD07.35 Note of Clarification Following the Accompanied Site Inspection on 17 August 2016
REP8-030	<a href="#">North London Waste Authority</a> AD07.36 Applicant's Response to the Rule 17 Letter Dated 1 August 2016 Relating to Appeals
REP8-031	<a href="#">North London Waste Authority</a> AD07.37 NLHPP Roadmap of Plans
REP8-032	<a href="#">North London Waste Authority</a> AD07.38 Joint Statements with Lee Valley Regional Park Authority ,National Grid Electricity Transmission PLC and Zayo UK Ltd
REP8-033	<a href="#">North London Waste Authority</a> Joint Statement with Lee Valley Regional Park Authority on negotiations for private agreement
REP8-034	<a href="#">Canal and River Trust</a> Response to the Rule 17 Issued 29 July 2016
REP8-035	<a href="#">Lee Valley Regional Park Authority</a> Comments for Deadline 8
REP8-036	<a href="#">National Grid</a> Response to the Rule 17 Issued 29 July 2016
REP8-037	<a href="#">Royal Mail Group</a> Written Representation- Late submission
REP8-038	<a href="#">Transport for London</a> Response to the Rule 17 Issued 29 July 2016
<b>Other Documents</b>	
OD-001	<a href="#">Transboundary Screening Matrix</a>
OD-002	<a href="#">North London Waste Authority</a> Certificates of Compliance

## APPENDIX C: LIST OF ABBREVIATIONS

## APPENDIX C: LIST OF ABBREVIATIONS

Abbreviation or usage	
ACC	Air Cooled Condenser
AEP	Annual Exceedance Probability
AOD	Above Ordnance Datum
APFP	Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009
AQMA	Air Quality Management Area
BoR	Book of Reference
BREEAM	Building Research Establishment Environmental Assessment Methodology
BWRF	Bulky Waste Recycling Facility
CA	Compulsory Acquisition
C&I	Commercial and Industrial
CHP	Combined Heat and Power
CIF	Carbon Intensity Floor
CLAAP	Central Leaside Area Action Plan
CMP	Construction Management Plan
CMS	Control Management System
CoCP	Code of Construction Practice
CoPA	Control of Pollution Act 1974
CO <sub>2</sub>	Carbon dioxide
CRT	Canal & River Trust
DAS	Design and Access Statement
dB	Decibel
dB(A)	A-weighted Decibel
DCO	Development Consent Order
DCOb	Development Consent Obligation
DHEC	District Heating Energy Centre
DMRB	Design Manual for Roads and Bridges
DSP	Delivery and Servicing Plan
EA	Environment Agency
ECMS	Environmental Commitments and Mitigation Schedule
EEA	European Economic Area
EfW	Energy from waste
EIA	Environmental Impact Assessment
EM	Explanatory Memorandum
EMF	Electro-Magnetic Fields
EMS	Environmental Management System
EPR	Environmental Permitting Regulations 2010
ERF	Energy Recovery Facility
ES	Environmental Statement
ExA	Examining Authority
FGT	Flue Gas Treatment
FPP	Fuel Preparation Plant
FRA	Flood Risk Assessment
FTE	Full Time Equivalent
GLA	Greater London Authority

GLVIA	Guidelines for Landscape and Visual Impact Assessment
ha	Hectare
HE	Historic England
HGV	Heavy Goods Vehicles
HIA	Health Impact Assessment
HRA	Habitats Regulation Assessment
IBA	Incinerator Bottom Ash
IP	Interested Party
IPC	Infrastructure Planning Commission
ISH	Issue Specific Hearing
IVC	In-Vessel Composting
km	Kilometre
kV	Kilovolt
kWe	Kilowatt electricity
LACW	Local Authority Collected Waste
LB	London Borough
LBE	London Borough of Enfield
LIR	Local Impact Report
LNR	Local Nature Reserve
LPA	Local Planning Authority
LVHN	Lee Valley Heat Network
LVRP	Lee Valley Regional Park
LVRPA	Lee Valley Regional Park Authority
LWL	London Waste Limited
m	Metre
m <sup>2</sup>	Square metre
m <sup>3</sup>	Cubic metre
mg	Milligram
MGB	Metropolitan Green Belt
MRF	Materials Recovery Facility
MSW	Municipal Solid Waste
MVA	Mega Volt Amp
MW	Megawatt
MWe	Megawatt electricity
MWh	Megawatt hour
MWth	Megawatt thermal
NCN	National Cycle Network
NE	Natural England
NERC	Natural Environment and Rural Communities Act 2006
NG	National Grid
NG DCO	National Grid (North London Reinforcement Project) Order 2014
NLHPP	North London Heat and Power Project
NLJWS	North London Joint Waste Strategy (February 2009)
NLWA	North London Waste Authority
NLWP	North London Waste Plan
NO	Nitric oxide
NO <sub>x</sub>	Nitrogen oxides
NO <sub>2</sub>	Nitrogen dioxide
NPPF	National Planning Policy Framework (March 2012)
NPPG	National Planning Policy Guidance

NPS	National Policy Statement
NPS EN-1	Overarching National Policy Statement for Energy (July 2011)
NPS EN-3	National Policy Statement for Renewable Energy Infrastructure (July 2011)
NPSE	Noise Policy Statement for England (March 2010)
NSER	No Significant Effects Report
NSIP	Nationally Significant Infrastructure Project
NTS	Non-technical Summary
OAPF	Opportunity Area Planning Framework
OFH	Open Floor Hearing
PA 2008	The 2008 Planning Act (as amended)
PHE	Public Health England
PM	Preliminary Meeting
PM <sub>10</sub>	Fine Particulate Matter (diameter ≤10 microns)
PPG	Planning Practice Guidance
ProW	Public Right of Way
PV	Photovoltaic
RFPF	Recycling and Fuel Preparation Facility
RIES	Report on Implications for European Sites
RR	Relevant Representation
RRC	Reuse and Recycling Centre
RRF	Resource Recovery Facility
SAC	Special Area of Conservation
SMINC	Site of Metropolitan Importance for Nature Conservation
SO <sub>2</sub>	Sulphur dioxide
SoCG	Statement of Common Ground
SoR	Statement of Reasons
SOx	Sulphur oxides
SPA	Special Protection Area
SPD	Supplementary Planning Document
SPG	Supplementary Planning Guidance
SPZ	Source Protection Zone
SRN	Strategic Road Network
SSSI	Site of Special Scientific Interest
SRN	Strategic Road Network
STW	Sewage Treatment Works
SuDS	Sustainable Drainage Systems
SWMP	Site Waste Management Plan
TA	Transport Assessment
TCPA	Town and Country Planning Act 1990
TEMPRO	Trip End Model Presentation Programme
TfL	Transport for London
TMP	Traffic Management Plan
Tpa	tonnes per annum
TRICS®	Trip Rate Information Computer System
TWUL	Thames Water Utilities Ltd
UKPN	UK Power Networks
WFD	Water Framework Directive
WID	Waste Incineration Directive
WR	Written Representation

WRZ	Water Resource Zone
ZTV	Zone of Theoretical Visibility



## APPENDIX D - RECOMMENDED DCO

201[] No. []

**INFRASTRUCTURE PLANNING, ENGLAND**

**NORTH LONDON HEAT AND POWER GENERATING  
STATION ORDER 201[ ]**

*Made* - - - - - \*\*\*  
*Laid before Parliament* \*\*\*  
*Coming into force* - - - - - \*\*\*

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An application has been made to the Secretary of State under section 37 of the Planning Act 2008(a) (the “2008 Act”) and in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(b) for an Order under sections 114, 115, 120, 122, 123 and 140 of the 2008 Act.

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(a) 2008 c.29 Parts 3 and 6 were amended by Section 137 and Schedule 13 to the Localism Act 2011 (c.20).

(b) S.I. 2009/2264, amended by the Localism Act 2011 (Infrastructure Planning) (Consequential Amendments) Regulations 2012 (S.I. 2012/635), Infrastructure Planning (Prescribed Consultees and Interested Parties etc) (Amendment) Regulations 2012 (S.I. 2012/635), Infrastructure Planning (Prescribed Consultees and Interested Parties etc) (Amendment) Regulations 2013 (S.I. 2013/522), Infrastructure Planning (Applications: Prescribed Forms and Procedure) (Amendment) Regulations 2014 (S.I. 2014/2381) and the Infrastructure Planning (Environmental Impact Assessment) (Amendment) Regulations 2012 (S.I. 2012/787).

The application was examined by a single appointed person (appointed by the Secretary of State) in accordance with Chapters 3 and 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010 (a).

The single appointed person, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act, has submitted a report to the Secretary of State.

The Secretary of State, having considered the report and recommendation of the single appointed person, has taken into account the environmental information in accordance with regulation 3 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009(b), and decided the application, and has determined to make this Order giving effect to the proposals comprised in the application with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals.

The Secretary of State is satisfied that the special category land (as identified in the book of reference), when burdened with the Order rights, will be no less advantageous than it was before to persons in whom it is vested, other persons, if any, entitled to rights of common or other rights and the public, and that accordingly, section 132(3) of the 2008 Act applies.

Accordingly, in exercise of the powers conferred by sections 37, 114, 115, 120, 122, 123 and 140 of the 2008 Act, the Secretary of State makes the following Order:

#### **Citation and commencement**

1. This Order may be cited as the North London Heat and Power Generating Station Order 201[ ] and comes into force on [ ].

#### **Interpretation**

- 2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(c);

“the 1965 Act” means the Compulsory Purchase Act 1965(d);

- 
- (a) 2008(c.29). Sections 86-98 as amended by the Localism Act 2011, Schedule 13 (S.I. 2010/103) and the Localism Act 2011 (Infrastructure Planning) (Consequential Amendments) Regulations 2012 (S.I. 2012/635).
  - (b) S.I. 2009/2263 as amended by the Localism Act 2011 (Infrastructure Planning) (Consequential Amendments) Regulations 2012 (S.I. 2012/635) and Infrastructure Planning (Environmental Impact Assessment) (Amendment) Regulations 2012 (S.I. 2012/787).
  - (c) 1961(c.33). Section 1 and subsections (A1), (1) and (3)-(6) of section 4 were amended by articles 5(1), (2) (6) of, and paragraphs 31, 37(a), 37(b), 38, 39(a), 39(b), 39(c), of Schedule 1 and Schedule 5 of Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307). There are other amendments to the 1961 Act which are not relevant to this Order.
  - (d) 1965(c.56). Subsections (1)-(3) of section 1 and section 30 were amended by subsections (1) and (3) of section 34 of, and paragraph 14 of Schedule 4 to, and Schedule 6 to, the Acquisition of Land Act 1981 (c.67). Subsection (4) of section 1 was amended by section 4 of and paragraph 13(1)(a) and (b) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11). Subsection (5) of section 1 was amended by section 109 of and paragraph 124 of Schedule 10 to, the Courts Act 2003 (c.39). Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991(c.34). Section 4 and subsection (2) of section 11 were amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c.71). Section 5 was amended by section 67 of the Planning and Compensation Act 1991 (c.34). Subsection (2A)(d) and 2(d) of section 5, section 6, subsections (1) and (3) of section 8 and subsection (1) of section 10, subsection (3) of section 11, subsection (1) of section 15, subsection (1) of section 16, subsection (2) of section 17, subsections (1) and (2)(b) of section 18, subsection (2) of section 19 and subsection (3) of section 20 were amended by articles 5(1), (2) and (6) of, and paragraphs 59, 61, 62, 63, 65, 66, 67, 68, 69 ad 70 of Schedule 1 to, and Schedule 5 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307). Subsection (3) of section 10 was amended by section 4 of, and paragraph 13(2)(a) and (b) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). Subsection (1) of section 11 and sections 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c.67) and by sections 14 and 70 of, and paragraphs 12(1) and 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c.23). Section 13 was

“the 1980 Act” means the Highways Act 1980(a);

“the 1990 Act” means the Town and Country Planning Act 1990(b);

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

“the 2008 Act” means the Planning Act 2008;

“Advent Way” means Advent Way, Edmonton, London N18 3AB;

“apparatus” includes but is not limited to pipes, conduits, wires, sewers, drains, tunnels, cables and associated above and below ground structures and any structure for the lodging therein of apparatus or for gaining access to apparatus within the Order limits;

“approval consultee” means a consultee specifically named in a provision of this Order;

“Ardra Road” means Ardra Road, Edmonton, London N9 0BD;

“authorised development” means the development and associated development described in Schedule 1 (authorised development) and any other works authorised by this Order which are development within the meaning of section 32 of the 2008 Act;

“book of reference” means the document certified by the Secretary of State as the book of reference for the purposes of this Order under article 34 (certification of documents and plans);

“building” includes any structure or erection or any part of a building, structure or erection;

“carriageway” has the same meaning as in section 329 of the 1980 Act;

“cctv” means closed-circuit television cameras and equipment, mounting poles and associated cables;

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amended by sections 62 and 139 of, and paragraphs 27 and 28(1) and (2) to, the Tribunals, Courts and Enforcement Act 2007 (c.15). Subsection 2 of section 20 was amended by section 70 of, and paragraph 4 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Subsections 3 and 4 of section 23 and subsection (1) of section 25 were amended by section 59 of, and paragraph 4 of part 2 of Schedule 11 to, the Constitutional Reform Act 2005 (c.4). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). There are other amendments to the 1965 Act which are not relevant to this Order.

- (a) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2), 1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51); section 1(2A) was inserted, and section 1(3) was amended, by section 259(1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.
- (b) 1990 c.8. Subsection (4)(aa) of section 56 was added by Planning and Compensation Act 1991 (c.34). Subsection (5)(a) of section 56 was amended by subsection (2)(a) of section 40 of the Planning and Compulsory Purchase Act 2004 (c.5) and subsection (1) of section 30 of, and paragraphs 2 and 3 of part 2 of Schedule 4 to, the Infrastructure Act 2015 (c.7). Subsection (5)(b) of section 56 was amended by subsection (4) of section 31 of, and paragraphs 8 and 10 of Schedule 6 to, Planning and Compensation Act 1991 (c.34). Subsections (3), (4), (6) and (7) of section 198 were amended by subsection (1) of section 192 and subsection (2)(a) of section 238 of, and paragraphs 7 and 8 of Schedule 8 to, and Schedule 13 to, the 2008 Act. Subsection (4)(a) of section 198 was amended by sections 31, 32, 42 and 84 of, and paragraphs 8 and 20 of Schedule 6 and paragraphs 8 and 34 of Schedule 7 to and Parts 1 and 2 of Schedule 19 to, the Planning and Compensation Act 1991 (c.34). Subsections (8) and (9) of section 198 were amended by subsection (3) of section 42 to the Planning and Compulsory Purchase Act 2004 (c.5). There are other amendments to the 1990 Act which are not relevant to this Order.
- (c) 1991 c.22. Sections 48(3A) and 50(1A), were inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 49, subsection (3) of section 63, subsection 7A(a) of section 74, subsections (2) and (10)(a) and section 86 were amended by subsection (6) of section 1 of, and paragraphs 113, 117 - 121 of part 2 of Schedule 1 to, the Infrastructure Act 2015 (c.7). Sections 51, 53-60, 65-69, subsections (1A), (4), (4B) and (6) of section 70, 71-72, 73A-73F, subsections (3)(b) and (7B) of section 74, 75, 78A, 39-80, 83, 88, subsection (2) of section 89, 90, 92-93, 95A and 96-97 were amended by sections 40, 42-45, 47-56, 58 and 59 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18). Subsection (5) of section 63 was added by section 32 of, and paragraph 27 of schedule 3 to, the Flood and Water Management Act 2010 (c.29). Subsection (4) of section 64 was added by section 81 of, and paragraph 7 of Schedule 2 to, the Road Traffic Act 1991 (c.40). Subsections (3) and (4A) of section 70 were amended by regulation 17E of The Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007 (S.I. 2007/1951). Subsections (2A), (3), (3)(b), (4), (5A)-(5C), (7), (7A) and (7B) were amended by sections 256 and 274 of, and part V(2) of Schedule 31 to, the Transport Act 2000 (c.38). Subsection (1)(a) of section 89 was amended by subsection (1) of section 2 of, and paragraph 57(1) of Schedule 1 to, the Water Consolidation (Consequential Provisions) Act 1991 (c.60). There are other amendments to the 1991 Act which are not relevant to this Order.

“code of construction practice” means the document certified by the Secretary of State as the code of construction practice for the purposes of this Order under article 34 (certification of documents and plans);

“commence” means begin to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of enabling works and the temporary display of site notices or advertisements, to the extent that they do not give rise to any new significant adverse environmental effects that were not assessed in the environmental statement and “commencement” is to be construed accordingly;

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

“DCO Schedules 6-8 explanatory diagrams” means the explanatory diagrams relating to Schedule 6 (public rights of way to be suspended), Schedule 7 (public rights of way to be extinguished) and Schedule 8 (streets to be temporarily stopped up) certified by the Secretary of State for the purposes of this Order under article 34 (certification of documents and plans);

“design code principles” means the document certified by the Secretary of State as the design code principles for the purposes of this Order under article 34 (certification of documents and plans);

“discharging authority” means the relevant authority, body or person responsible under the provisions of this Order for approving, consenting or discharging any matter;

“EcoPark House” means a new visitor, community and education centre with offices to be constructed as part of Works No. 3;

“Edmonton EcoPark” means the land at Edmonton EcoPark, Advent Way, London N18 3AG, the location of which is shown on drawing number A\_0003 Rev 00;

“electricity and heat generating station” means Works No. 1a in Schedule 1 (authorised development);

“enabling works” includes surveying, land clearance, geological testing and sampling, environmental and hazardous substance testing and sampling (including the making of trial boreholes, window sampling and test pits in connection with such testing and sampling), soil tests, pegging out, tree protection, ecological survey and mitigation works, archaeological investigation, removal of minor and re-locatable buildings and structures (other than the works described in Works No. 7 of Schedule 1), creation of enabling works accesses (other than the creation of the new accesses to the north and east of the Edmonton EcoPark and the widening of the existing access to the south of the Edmonton EcoPark), and for works falling within this definition, the erection of fencing, hoarding or any other means of temporary enclosure, temporary facilities including re-locatable buildings, connections to utilities, and in all cases similar related works which do not give rise to any new significant adverse environmental effects that were not assessed in the environmental statement;

“energy from waste facility” means all existing buildings structures and plant comprising the existing generating station at the Edmonton EcoPark and includes the waste reception hall, bunkers, cranes, grate fired boilers, ash handling system, flue gas cleaning system, waste water treatment plant, chimney stack and flues, turbine hall and electrical system and water cooled condensers;

“environmental commitments and mitigation schedule” means the document certified by the Secretary of State as the environmental commitments and mitigation schedule for the purposes of this Order under article 34 (certification of documents and plans);

“environmental statement” means the document certified by the Secretary of State as the environmental statement for the purposes of this Order under article 34 (certification of documents and plans);

“full operation” means the end of the transitional period;

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

“land clearance” means works to clear land of surface vegetation and to remove detritus;

“land plans” means the plans certified by the Secretary of State as the land plans for the purposes of this Order under article 34 (certification of documents and plans);

“Lee Park Way” means Lee Park Way, Edmonton, London N18 3AB;

“maintain” has its ordinary meaning and includes, to the extent assessed in the environmental statement, to keep up, preserve, conserve, inspect, repair, landscape, plant and re-plant, adjust, alter, remove, clear, refurbish, reconstruct, replace and improve, but not so as to vary the authorised development as described in Schedule 1, and “maintenance” is to be construed accordingly;

“Meridian Way” means Meridian Way, Edmonton, London N9 0AR;

“National Grid” means National Grid Electricity Transmission Plc, National Grid Gas Plc, any other company within the National Grid group of companies that owns or maintains apparatus within the Order limits, and their successors in title, assigns and any other person exercising their powers;

“operational site” means the area shown hatched green on drawing number A\_0004 Rev 00;

“Order land” means the land required for, or affected by, the authorised development shown within the site boundary on the land plans and described in the book of reference;

“Order limits” means the limits shown on the works plans within which the authorised development may be carried out;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(a);

“relevant planning authority” means the London Borough of Enfield;

“stage” means a stage of construction of the authorised development as approved under requirement 3 of Schedule 2 (requirements) and excludes enabling works;

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

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

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

“temporary laydown area” means the land within plot numbers 16, 18, 19, 20 and 21, as shown on the land plans;

“transitional period” is the period defined in paragraph 19(1) of Schedule 2;

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

“undertaker” means North London Waste Authority or a successor body, or such other person who has the benefit of this Order in accordance with article 8 (consent to transfer benefit of Order);

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

“works plans” means the plans certified by the Secretary of State as the works plans for the purposes of this Order under article 34 (certification of documents and plans).

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the air-space above its surface.

(3) All distances, directions and lengths referred to in this Order are approximate.

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(a) 1981 (c. 67). Section 4 was amended by articles 5(1), (2) and (6) of, paragraphs 149 and 150 of Schedule 1 to, and Schedule 5 to, the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307). Section 7 was amended by article 8 of, and paragraph 23 of part 1 of Schedule 3 to, (S.I. 1990/776), sections 70 and subsections (1), (3) and (8) of, and paragraph 9 of part 1 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34); section 328 of, and paragraphs 34(1) and (2) of part 1 of Schedule 29 to, the Greater London Authority Act 1999 (c.29), article 3(1), and sub-paragraphs (1) and (2) of paragraph 54 of Schedule 1 to, the Local Government Finance (Repeals, Savings and Consequential Amendments) Order 1990 (S.I. 2001/1149); section 53(1) of, and paragraph 53 of Schedule 1 to, the Fire and Rescue Services Act 2004 (c.21); and section 91 of, and paragraph 110 of part 3 of Schedule 12 to, the Postal Services Act 2011 (c.5). There are other amendments to this Act which are not relevant to this Order.

### **Development consent etc. granted by the Order**

3. Subject to the provisions of this Order including Schedule 2 (requirements) and Schedule 13 (protective provisions), the undertaker is granted development consent for the authorised development (as described in Schedule 1 (authorised development)) to be constructed, operated and maintained within the Order limits.

### **Limits of deviation**

4.—(1) The development authorised by this Order must be constructed, operated and maintained in the lines or situations shown on the works plans.

(2) Subject to Schedule 2 (requirements), in constructing, operating and maintaining the authorised development, the undertaker may—

- (a) deviate laterally from the lines or situation shown on the works plans to the extent of the limits of deviation shown on the works plans; and
- (b) deviate vertically from the levels shown on the works plans—
  - (i) to any extent upwards within the limits of deviation shown on the works plans; and
  - (ii) to any extent downwards as may be necessary, convenient or expedient.

### **Maintenance of authorised development**

5. Subject to article 3 (development consent etc. granted by the Order), article 4 (limits of deviation), article 16 (discharge of water), article 28 (temporary use of land for maintaining authorised development) and Schedule 2 (requirements) of this Order, the undertaker may at any time maintain the authorised development, except as far as this Order or an agreement made under this Order provides otherwise.

### **Operation of the authorised development**

6.—(1) The undertaker is authorised to operate the authorised development.

(2) Other than as set out in this Order, this article does not relieve the undertaker of any requirement to obtain any permit or licence or any other obligation under any other legislation that may be required to authorise the operation of any part of the authorised development.

### **Benefit of Order**

7. Subject to article 8 (consent to transfer benefit of Order), this Order is for the benefit of the undertaker.

### **Consent to transfer benefit of Order**

8.—(1) The undertaker may, with the consent of the Secretary of State—

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

(2) Where an agreement has been made in accordance with paragraph 8(1) references in this Order to the undertaker, except in paragraph 8(3), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph 8(1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.



(4) The consent of the Secretary of State is not required if the transferee or lessee is London Waste Limited provided it is wholly owned by North London Waste Authority.

### **Defence to proceedings in respect of statutory nuisance**

**9.**—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order will be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974(b); or
  - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and that the nuisance is attributable to the use of the authorised development which is being used in accordance with a scheme of monitoring and attenuation of noise agreed with the relevant planning authority as described in requirement 17 (control of noise during operational stage) of Schedule 2 (requirements) or in accordance with noise levels set out in an environmental permit relating to the operation of the authorised development; or
  - (ii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include a statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

### **Street works**

**10.**—(1) The undertaker may, for the purposes of constructing and maintaining the authorised development, enter on the parts of any of the streets specified in Schedule 4 (streets subject to street works) as is within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street or change its position; and

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(a) 1990 (c.43). Subsection (1) of section 79 was amended by section 24 of the London Local Authorities Act 1996 (c.i), section 120 of, paragraphs 1 and 2(a) of Schedule 17 to, paragraph 89 of Schedule 22 to, and Schedule 24 to the Environment Act 2005 (c.25), section 101 of the Clean Neighbourhoods and Environment Act 2005 (c.16) and section 2 of the Noise and Statutory Nuisance Act 1993 (c.40). Section 82 was amended by section 107 of and paragraphs 1 and 6 of Schedule 17 to, the Environment Act 1995 (c.25), section 5 of the Noise and Statutory Nuisance Act 1993 (c.40), and section 103 of the Clean Neighbourhoods and Environment Act 2005 (c.16). There are other amendments to this Act which are not relevant to this Order.

(b) 1974 (c.40). Section 61(9) was amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 (c.25). There are other amendments to this Act which are not relevant to this Order.

(e) execute any works required for or incidental to any works referred to in paragraphs 10(1)(a) to 10(1)(d).

(2) The authority given by paragraph 10(1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph 10(1).

(4) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

### **Alteration of street layout**

**11.** The undertaker may for the purposes of constructing the authorised development, alter the layout of each of the streets specified in column (2) of Schedule 5 (streets subject to alteration of layout) (and carry out works ancillary to such alteration) in the way specified in relation to that street in column (3) of Schedule 5 (streets subject to alteration of layout).

### **Public rights of way**

**12.—**(1) Subject to paragraph 12(2), the undertaker may for the purposes of constructing and maintaining the authorised development, temporarily suspend the sections of the public rights of way shown on plans C\_0012 Rev 01, C\_0013 Rev 00 and C\_0014 Rev 01 and specified in columns (2) and (3) of Schedule 6 (public rights of way to be temporarily suspended) to the extent specified in column (3) of Schedule 6 (public rights of way to be temporarily suspended) for the duration of the construction of the authorised development.

(2) The public rights of way specified in columns (2) and (3) of Schedule 6 (public rights of way to be temporarily suspended) must not be suspended under this article unless the alternative rights of way specified in column (4) of Schedule 6 (public rights of way to be temporarily suspended) are first provided by the undertaker.

(3) The alternative rights of way referred to in paragraph 12(2) must be provided for the duration of the construction of the authorised development.

(4) Subject to paragraph 12(5), with effect from the commencement of the authorised development the section of public right of way along Lee Park Way as referred to in column (2) of Schedule 7 (public rights of way to be extinguished) will be extinguished to the extent specified in column (3) of Schedule 7 (public rights of way to be extinguished).

(5) The public right of way specified in paragraph 12(4) must not be extinguished under this article unless the alternative rights of way shown in column (4) of Schedule 7 (public rights of way to be extinguished) are first provided, to the reasonable satisfaction of the relevant planning authority.

### **Temporary stopping up of streets**

**13.—**(1) The undertaker, for the purposes of constructing and maintaining the authorised development, may temporarily stop up, alter or divert any street (or part of it) within the Order limits and may for any reasonable time—

(a) divert the traffic from the street (or the relevant part of it); and

(b) subject to paragraph 13(2), prevent all persons from passing along the street (or the relevant part of it).

(2) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street (or relevant part of it) if there would otherwise be no such access.

(3) Without prejudice to the generality of paragraph 13(1), the undertaker may temporarily stop up, alter or divert the streets specified in Schedule 8 (streets to be temporarily stopped up) to the extent specified in that Schedule.

- (4) The undertaker must not temporarily stop up, alter or divert—
- (a) any street specified in Schedule 8 (streets to be temporarily stopped up) without first consulting the street authority; and
  - (b) any other street without the consent of the street authority which may attach reasonable conditions to any consent (such consent to be obtained in accordance with the provisions of Schedule 3 (procedure for approvals, consents and appeals).
- (5) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.
- (6) If the relevant street authority fails to notify the undertaker of its decision within 56 days beginning with the receipt of an application for consent under paragraph 13(4) that street authority will be deemed to have granted consent.

### **Access to works**

- 14.** For the purposes of constructing the authorised development, the undertaker may—
- (a) form and lay out means of access, or improve existing means of access, in the locations specified in Schedule 9 (access to works); and
  - (b) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires.

### **Agreements with street authorities**

- 15.—**(1) A street authority and the undertaker may enter into agreements with respect to—
- (a) the construction or demolition of any structure carrying a street over a body of water;
  - (b) the maintenance of the structure of any bridge carrying a street over a body of water;
  - (c) the construction or alteration of any new or existing access to the authorised development;
  - (d) any temporary stopping up, alteration or diversion of a street authorised by this Order; or
  - (e) the carrying out in the street of any of the works referred to in article 10 (street works) or any of works referred to in article 11 (alteration of street layout).
- (2) Without limiting paragraph 15(1), such an agreement may—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
  - (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
  - (c) contain such terms as to payment and otherwise as the parties consider appropriate.

### **Discharge of water**

- 16.—**(1) The undertaker may use any watercourse, public sewer or drain on any land within the Order limits for the drainage of water in connection with the construction, operation or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may make openings into, and connections with, the watercourse, public sewer or drain.
- (2) The undertaker must not discharge any water into any watercourse, public sewer or drain on any land within the Order limits except with the consent of the person to whom it belongs, such consent not to be unreasonably withheld or delayed but may be given subject to such terms and conditions as that person may reasonably impose.
- (3) The undertaker must not make any opening into any public sewer or drain on any land within the Order limits except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs and such approval must not be unreasonably withheld or delayed; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(4) The undertaker must not, in carrying out or maintaining works under this article, damage or interfere with the bed or banks of any watercourse forming part of a main river, subject to the works that are authorised under this Order. The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse, public sewer or drain under this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(5) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph 16(1) shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).

(6) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Environment Agency, an internal drainage board, a local authority, or a sewerage undertaker; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(b) have the same meaning as in that Act.

(7) This article does not relieve the undertaker of any obligation to obtain from the Environment Agency any permit, licence or any other obligation under any other legislation that may be required to authorise the making of a connection to or the use of a public sewer or drain by the undertaker under paragraph 16(1) or the discharge of any water into any watercourse, sewer or drain under paragraph 16(2).

### **Protective work to buildings**

**17.**—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the construction of any part of the authorised development in the vicinity of the building; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph 17(1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs 17(5) and 17(6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph 17(1) to carry out protective works to a building;

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(a) 1991 (c.56). Section 106 has been amended by sections 35, 43 and 56 of the Competition and Service (Utilities) Act 1992 (c.43), sections 36 and 99 of the Water Act 2003 (c.37) and section 32 of, and paragraph 16(1) of Schedule 3 to, the Flood and Water Management Act 2010 (c.29). There are other amendments to this Act that are not relevant to this Order.

(b) 1991 (c.57). There are other amendments to this Act that are not relevant to this Order.

- (b) a right under paragraph 17(3) to enter a building and land within its curtilage;
- (c) a right under paragraph 17(4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph 17(4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within paragraph 17(5)(a) or 17(5)(c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph 17(5)(a), paragraph 17(5)(c) or paragraph 17(5)(d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 7 days beginning with the day on which the notice was served, require the question of whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 35 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

- (a) protective works are carried out to a building under this article; and
- (b) within 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the construction, operation or maintenance of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act (compensation for injurious affection).

(10) Any compensation payable under paragraph 17(7) or paragraph 17(8) must be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(11) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, operation, or maintenance of the authorised development; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, operation or maintenance of the authorised development.

### **Authority to survey and investigate**

**18.**—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits, or onto any land which may be affected by the authorised development up to 250 metres away from the Order limits, or onto land which may be affected by the authorised development which is more than 250 metres from the Order limits with the prior approval of the relevant planning authority (or the local planning authority for land outside the London Borough of Enfield), and—

- (a) survey or investigate the land;
- (b) without limiting paragraph 18(1)(a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limiting paragraph 18(1)(a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) The undertaker must serve a notice on every owner and occupier of the land at least 14 days before any land may be entered or equipment placed or left on or removed from the land under paragraph 18(1).

(3) Any person entering land under this article on behalf of the undertaker —

- (a) must, if so required entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes may be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority, but such consent must not be unreasonably withheld or delayed; or
- (b) in a private street without the consent of the street authority, but such consent must not be unreasonably withheld or delayed.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, in accordance with Part 1 (determination of questions of disputed compensation) of the 1961 Act.

### **Compulsory acquisition of land**

**19.**—(1) Save in relation to land to which article 23 (compulsory acquisition of rights) and article 27 (temporary use of land for carrying out the authorised development) applies, the undertaker may acquire compulsorily so much of the Order land as is required for or to facilitate the authorised development, or is incidental to the authorised development.

(2) From the later of the date on which a compulsory acquisition notice under section 134(3) of the 2008 Act is served or the date on which the Order land, or any part of it, is vested in the undertaker, that land or that part of it which is vested (as the case may be) will be discharged from all leases, licences, rights, easements, liberties, privileges, advantages, restrictions, covenants, trusts and incidents to which it was previously subject.

(3) Any person who suffers loss by the extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

### **Time limit for exercise of authority to acquire land compulsorily or use land temporarily**

**20.**—(1) After the end of 7 years beginning on the day on which this Order is made—

- (a) no notice to treat may be served under Part 1 of the 1965 Act; and
- (b) no declaration may be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 24 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 27 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph 20(1), save that subject to article 27(3) and article 27(5) nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

### **Power to override easements and other rights**

**21.**—(1) Any authorised activity carried out by the undertaker is authorised if it is done in accordance with the terms of this Order, notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the user of land to which this article applies.

(2) In this article “authorised activity” means—

- (a) the construction, operation or maintenance of the authorised development;
- (b) the exercise of any power authorised by this Order; or
- (c) the use of any land (including the temporary use of land) authorised by this Order.

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and right to light. The restrictions to which this article applies are restrictions as to the user of land arising by contract.

(4) Where any interest, right or restriction to which this article applies is interfered with or breached, the interest, right or restriction is extinguished, temporarily suspended or discharged at the time the interference or breach commences in respect of the authorised activity in question, to the extent required for or ancillary or incidental to the carrying out of the authorised activity.

(5) Where any interest, right or restriction to which this article applies is interfered with or breached under paragraph 21(1), compensation—

- (a) is payable under section 7 or 10 of the 1965 Act; and
- (b) is to be assessed in the same way and subject to the same rules as in the case of other compensation under those sections where—
  - (i) the compensation is to be estimated in connection with a purchase under that Act; or
  - (ii) the injury arises from the execution of works on or use of land acquired under that Act.

(6) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable by any person on any grounds other than such an extinguishment, temporary suspension or discharge as is mentioned in paragraph 21(4).

### **Statutory authority to override easements and other rights**

**22.**—(1) The construction, operation or maintenance of development authorised by this Order and the doing of anything else authorised by this Order is authorised by virtue of section 158 (nuisance: statutory authority) of the 2008 Act, notwithstanding that it involves—

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

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

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

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

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support. The restrictions to which this article applies are restrictions as to the user of the land arising by contract.

(4) Subsection (2) of section 10 (further provision as to compensation for injurious affection) of the 1965 Act applies to paragraph 22(2) by virtue of section 152(5) of the 2008 Act.

(5) Any rule or principle applied to the construction of section 10 of the 1965 Act must be applied to the construction of paragraph 22(2) (with any necessary modifications).

### **Compulsory acquisition of rights**

**23.**—(1) The undertaker may acquire compulsorily existing rights and create and acquire compulsorily new rights (including new rights in relation to apparatus owned or operated by statutory undertakers and rights over land belonging to statutory undertakers within the Order

land) described in the book of reference, set out in Schedule 10 (land in which rights etc., may be acquired) and shown on the land plans.

(2) From the later of—

- (a) the date on which a compulsory acquisition notice is served; or
- (b) the date on which any new right is vested in the undertaker,

the land over which any new rights are acquired will be discharged from all rights, trusts and incidents to which it was previously subject so far as their continuance would be inconsistent with the exercise of that new right.

(3) Subject to section 8 of the 1965 Act, as substituted by Schedule 11 (modification of compensation and compulsory purchase enactments for creation of new rights) where the undertaker acquires an existing right over land in paragraph 23(1) the undertaker is not required to acquire a greater interest in that land.

(4) Any person who suffers loss as a result of the extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Schedule 11 (modification of compensation and compulsory purchase enactments for creation of new rights) has effect for the purpose of modifying the enactments relating to compensation and the provision of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right.

### **Application of the Compulsory Purchase (Vesting Declarations) Act 1981**

**24.—**(1) The Compulsory Purchase (Vesting Declarations) Act 1981(a)—

- (a) applies as if this Order were a compulsory purchase order; and
- (b) as so applied, has effect with the following modifications.

(2) In section 3 (preliminary notices), for subsection (1) substitute—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order, the acquiring authority must include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated”

(3) In that section, in subsection (2), for “(1)(b)” substitute “(1)” and after “given” insert “and published”.

(4) In that section, for subsections (5) and (6) substitute—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”

(5) In section 5 (earliest date for execution of declaration)—

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(a) 1981 (c.66), Sections 2 and 6 and subsection (6) of section 11 have been amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). Section 3 has been amended by section 34 of, and paragraph 37 of part 3 of Schedule 5 to, the Infrastructure Act 2015 (c.7). Section 10, subsection (4) of section 11 and paragraphs 4, 8 and 9 of Schedule 1 have been amended by article 5 of, paragraphs 145 – 148 of Schedule 1 to, and Schedule 5 to, the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307). Section 15 and Schedule 2 have been amended by section 161 of, and paragraphs 6 and 7 of Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c.28) and sections 56 and 321 of, paragraph 33 of Schedule 8 to, and Schedule 16 to the Housing Regeneration Act 2008 (c.17). Paragraphs 1 and 3 have also been amended by section 76 of, and paragraph 12 of part II of Schedule 9 to, the Housing Act 1988 (c.50). Schedule 3 was amended by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c.51). There are other amendments to this Act that are not relevant to this Order.



- (a) in subsection (1), after “publication” insert “in a local newspaper circulating in the area in which the land is situated”; and
- (b) omit subsection (2).

(6) In section 7 (constructive notice to treat), in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(7) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 are to be construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land under this Order.

### **Rights under or over streets**

**25.**—(1) The undertaker may enter on and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the construction, operation or maintenance of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

(2) The undertaker may exercise any power conferred by paragraph 25(1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Subject to paragraph 25(4), any person who is an owner or occupier of land appropriated under paragraph 25(1) without the undertaker acquiring any part of that person’s interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) Compensation is not payable under paragraph 25(3) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

### **Rights over land**

**26.**—(1) The undertaker may enter into and appropriate so much of the air-space over any land within the Order limits and over land indicated on drawing number E\_0011 Rev 00 as may be required for the construction and maintenance of the authorised development and may use the air-space for those purposes or any other purposes ancillary to the authorised development.

(2) The undertaker may exercise any power conferred by paragraph 26(1) in relation to land without being required to acquire any part of the land or any easement or right in the land.

(3) Subject to paragraph 26(4), any person who is an owner or occupier of land appropriated under paragraph 26(1) without the undertaker acquiring any part of that person’s interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) Compensation is not payable under paragraph 26(3) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

### **Temporary use of land for construction of the authorised development**

**27.**—(1) The undertaker may, in connection with the construction of the authorised development—

- (a) enter on and take temporary possession of the land specified in Schedule 12 (land of which temporary possession may be taken) for the purpose specified in relation to that land in that Schedule relating to the part of the authorised development specified in that Schedule;
- (b) remove any buildings, structures and vegetation from that land; and
- (c) remediate, carry out site levelling, surfacing, erect fencing and other means of enclosure, install utilities and services, and construct temporary works (including access), buildings and structures on that land.

(2) The undertaker must serve notice of its intended entry on the owners and occupiers of the land at least 14 days before entering on and taking temporary possession of the land under this article.

(3) Subject to paragraph 27(4), the undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in Schedule 12 (land of which temporary possession may be taken).

(4) The undertaker may remain in possession of the temporary laydown area for up to two years from the date of completion of Works No. 7.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the relevant land to—

- (a) the reasonable satisfaction of the owners of the land;
- (b) in accordance with the design code principles; and
- (c) to a condition no worse than the relevant land was in before temporary possession of the relevant land was taken pursuant to this article,

but the undertaker is not required to replace a building removed under this article.

(6) The undertaker must produce a written record of the condition of the relevant land prior to taking possession (such record to be agreed by the owner).

(7) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.

(8) Any dispute as to a person's entitlement to compensation under paragraph 27(7), or as to the amount of the compensation, must be determined under Part 1 of the 1961 Act.

(9) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph 27(7).

(10) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph 27(1) except that the undertaker is not precluded from acquiring new rights over any part of that land under article 23 (compulsory acquisition of rights).

(11) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(12) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

### **Temporary use of land for maintaining authorised development**

**28.**—(1) At any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) The undertaker must serve notice on the owners and occupiers of the land at least 14 days before entering on and taking temporary possession of the land under this article. The requirement to serve at least 14 days' notice does not apply where the undertaker has identified a potential risk to the safety of—

- (a) the authorised development or any of its parts;

- (b) the public; or
- (c) the surrounding environment,

and the undertaker may enter the land under paragraph 28(1) subject to giving such period of notice (if any) as is reasonably practicable in all the circumstances.

(3) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph 28(5), or as to the amount of the compensation, must be determined under Part 1 of the 1961 Act.

(7) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph 28(5).

(8) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(9) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(10) In this article, "the maintenance period", in relation to any part of the authorised development with the exception of the development described in paragraph 28(11), means the period of 5 years beginning with the date on which that part of the authorised development is first opened for use.

(11) In this article, "the maintenance period" in relation to—

- (a) the operational site;
- (b) landscaping over plots 15, 17, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 32 shown on the land plans; and
- (c) Lee Park Way (including plot number 14, which is the bridge over the River Lee Navigation),

means the lifetime of the authorised development beginning with the date on which those parts of the authorised development are first opened for use.

### **Statutory undertakers**

**29.** Subject to Schedule 13 (protective provisions), the undertaker may—

- (a) acquire compulsorily land belonging to statutory undertakers within the Order limits as described in the book of reference;
- (b) temporarily suspend or extinguish the rights of statutory undertakers within the Order limits as described in the book of reference and remove or reposition the apparatus belonging to statutory undertakers within the Order limits; and
- (c) acquire compulsorily new rights over land belonging to statutory undertakers within the Order limits as described in the book of reference.

### **Recovery of costs of new connections**

**30.**—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 21(1) (power to override easements and other rights) or article 23(1) (compulsory acquisition of rights) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph 30(1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 21(1) or article 23(1), any person who is—

- (a) the owner or occupier of premises the drains of which are connected with that sewer; or
- (b) the owner of a private sewer which is connected with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person connect with any other public sewer or with a private sewage disposal plant.

(3) This article does not have effect in relation to apparatus to which Part 3 of the 1991 Act applies.

(4) In this article—

- (a) “public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003<sup>(a)</sup>; and
- (b) “public utility undertaker” has the same meaning as in the 1980 Act.

### **Application of landlord and tenant law**

**31.**—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, operation or maintenance of the authorised development, or any part of it, so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person’s use.

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

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

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

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(a) 2003 (c.21). There are other amendments to this Act that are not relevant to this Order.

### **Operational land for purposes of the 1990 Act**

**32.** Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

### **Felling or lopping of trees**

**33.—**(1) The undertaker may fell or lop any tree or shrub near any part of the authorised development, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from—

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

(2) In carrying out any activity authorised by paragraph 33(1), the undertaker must not do unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph 33(2), or as to the amount of compensation, must be determined under Part 1 of the 1961 Act.

### **Certification of documents and plans**

**34.—**(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the works plans;
- (b) the land plans;
- (c) the book of reference;
- (d) the environmental statement;
- (e) the environmental commitments and mitigation schedule;
- (f) the code of construction practice;
- (g) the design code principles; and
- (h) the DCO Schedule 6-8 explanatory diagrams,

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

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

### **Arbitration**

**35.** Any difference or dispute under any provision of this Order (other than a difference or dispute that falls to be determined by the tribunal) must, unless otherwise provided for in this Order or unless otherwise agreed between the parties, be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

### **No double recovery**

**36.** Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

## Protective provisions for specified undertakers

37. Schedule 13 (protective provisions) has effect.

## Approvals, consents and appeals

38.—(1) Save as provided otherwise by this Order, Schedule 3 (procedure for approvals, consents and appeals) has effect in relation to all applications for consents, agreements, approvals or notices in relation to—

- (a) the provisions of this Order;
- (b) any document referred to in any provision of this Order; and
- (c) the functions of the local authority set out in sections 60 and 61 of the Control of Pollution Act 1974(a).

(2) Where an application is made to the discharging authority for any consent, agreement, approval or notice required or contemplated by any provision of this Order, such consent, agreement, approval or notice must not be unreasonably withheld.

(3) Where any provision of this Order provides that the authorised development is to be constructed, operated or maintained in accordance with a document or details approved by the discharging authority pursuant to this Order, the document or approved details is to be taken to include any amendment or revision that may subsequently be approved or agreed by the discharging authority, or other consent, agreement or approval of the discharging authority.

Signatory text

Address	<i>Name</i>
Date	Parliamentary Under Secretary of State Department

## SCHEDULE 1

Article 3

### AUTHORISED DEVELOPMENT

1. A nationally significant infrastructure project as defined in sections 14 and 15 of Part 3 of the 2008 Act in the London Borough of Enfield comprising—

(1) *Works No. 1a* — the construction of an electricity and heat generating station located at the Edmonton EcoPark, fuelled by up to 700,000 tonnes of waste and with a capacity of more than 50 megawatts of electricity (MW<sub>e</sub>) (gross), comprising the following buildings, structures and plant, located within the limits of deviation identified on Works Plan C\_0002 Rev 01—

- (i) a main building housing:
  - (a) a tipping hall;
  - (b) waste bunker and waste handling equipment;
  - (c) two process lines (with each line having a capacity of up to 350,000 tonnes of waste per annum), consisting of a moving grate, furnace, boiler and a flue gas treatment plant;
  - (d) facilities for the recovery of incinerator bottom ash and air pollution control residue;
  - (e) steam turbine(s) for electricity generation including equipment for heat off-take; and
  - (f) a control room containing the operational and environmental control and monitoring systems, and offices;

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(a) 1974 (c.40) Section 61 has been amended by the Building (Scotland) Act 2008; section 58 of the Building Act 1984 (c.55); Schedule 24 of the Environmental Act 1995 (c.25); section 162(i) of, and paragraph 15 of Schedule 15 to, the Environmental Protection Act 1990 (c.43).

- (ii) entry and exit ramps to the electricity and heat generating station;
- (iii) a stack containing flues for flue gas exhaust;
- (iv) cooling equipment; and
- (v) an observation platform enclosure.

2. Associated development within the meaning of section 115(2) of the 2008 Act in connection with the nationally significant infrastructure project Works No.1a as follows:

- (a) *Works No. 1b* – works required to provide buildings, structures, plant and equipment needed for the operation of the electricity and heat generating station located within the limits of deviation identified on Works Plan C\_0002 Rev 01 and as follows—
  - (i) a wastewater treatment facility;
  - (ii) a water pre-treatment plant;
  - (iii) external stores and workshops;
  - (iv) a fuelling area and fuel storage, vehicle wash, transport offices and staff facilities, toilets, natural gas intake and management compound, and fire control water tank(s); and
  - (v) electrical substation(s).
- (b) *Works No. 2* – the construction of a resource recovery facility comprising the following buildings, structures and plant located within the limits of deviation identified on Works Plan C\_0004 Rev 01 and as follows—
  - (i) a recycling and fuel preparation facility;
  - (ii) a reuse and recycling centre;
  - (iii) offices, and staff and visitor welfare facilities;
  - (iv) odour abatement and dust suppression plant and equipment; and
  - (v) fire control water tank(s) and pump house and equipment.
- (c) *Works No. 3* — the construction of a building to provide visitor, community and education facilities, office accommodation and a boat canopy located within the limits of deviation identified on Works Plan C\_0006 Rev 01.
- (d) *Works No. 4* – utilities and infrastructure works, landscaping, access, security and lighting, and weighbridges located within the limits of deviation identified on Works Plan C\_0008 Rev 01 and as follows—
  - (i) with regard to potable water, waste water, surface water, foul water, raw water, electricity, gas, cctv, telecoms and data—
    - (aa) the diversion, repositioning, decommissioning, removal, replacement, modification or upgrading of existing pipes, cables, systems and associated apparatus;
    - (bb) the laying or installation of new pipes, cables, systems and associated apparatus; and
    - (cc) the creation of connections to existing or new pipes, cables, systems and associated apparatus;
  - (ii) the erection of a raw water pumping station;
  - (iii) stabilisation works to the eastern bank of Salmon’s Brook;
  - (iv) the construction of surface water pumps, pipework and attenuation tanks;
  - (v) landscaping works;
  - (vi) the installation of areas of green roof and brown roof;
  - (vii) the widening of the existing entrance into the Edmonton EcoPark from Advent Way, including modification or replacement of the bridge over Enfield Ditch;

- (viii) the construction within the Edmonton EcoPark of vehicle and cycle parking, vehicle, cycle and pedestrian routes, and weighbridges;
  - (ix) the construction of an access into the Edmonton EcoPark from Lee Park Way, including bridging over Enfield Ditch;
  - (x) improvements to Lee Park Way including vehicle barriers and the creation of segregated pedestrian and cycle paths or the repositioning of existing pedestrian and cycle paths;
  - (xi) improvements to Deephams Farm Road (including improvements to the existing access into Deephams Farm Road from Ardra Road) and the use of Deephams Farm Road as an access to and from the Edmonton EcoPark;
  - (xii) the resurfacing of Ardra Road (if required);
  - (xiii) security, fencing, and lighting works and equipment;
  - (xiv) the erection of security facilities and equipment and gatehouses within the operational site at access points from Advent Way, Ardra Road, and Lee Park Way;
  - (xv) the upgrade and maintenance of the existing bridge over the River Lee Navigation;
  - (xvi) the installation of photovoltaic panels at roof level of the electricity and heat generating station and the resource recovery facility;
  - (xvii) the modification of kerb lines and pavements within plots 28 and 29;
  - (xviii) the creation of a new footpath within plot 21;
  - (xix) the improvement of the existing junction between Meridian Way and Ardra Road; and
  - (xx) the improvement of the existing junction between Advent Way and Lee Park Way.
- (e) *Works No. 5* – the creation of a temporary laydown area and its temporary use located within the limits of deviation identified on Works Plan C\_0009 Rev 01 and as follows:
- (i) areas of hardstanding;
  - (ii) the erection of fencing, hoarding or any other means of enclosure;
  - (iii) the erection of security facilities and equipment and gatehouses;
  - (iv) vehicle parking;
  - (v) office and staff welfare accommodation;
  - (vi) storage, fabrication, laydown area;
  - (vii) foul water storage and pumps and surface water attenuation storage and pumps;
  - (viii) utility works including electricity, water, cctv, telecoms and data;
  - (ix) the creation of vehicular, cycle and pedestrian access from Lee Park Way to the temporary laydown area;
  - (x) the improvement of the existing junction between Walthamstow Avenue and Lower Hall Lane; and
  - (xi) restoration of the temporary laydown area.
- (f) *Works No. 6* – site preparation and demolition works within the area located within the limits of deviation identified on Works Plan C\_0010 Rev 01 comprising—
- (i) the demolition of existing buildings, structures and plant excluding demolition of the energy from waste facility;
  - (ii) the construction of a temporary ash storage building;
  - (iii) the realignment of the exit ramp from the energy from waste facility; and
  - (iv) works to prepare the land shown on works plan C\_0010 Rev 01 for the construction of works numbers 1a, 1b, 2, 3, 4 and 5.



- (g) *Works No. 7* – decommissioning, demolition and removal of the energy from waste facility located within the limits of deviation identified on Works Plan C\_0011 Rev 01 and demolition and removal of—
  - (i) the existing stack;
  - (ii) demolition of the existing water pumping station on Ardra Road; and
  - (iii) making good.

**3.** In connection with Works No. 1 to Works No. 7 (inclusive), to the extent that they do not otherwise form part of any such work, being associated development within the meaning of section 115(2) of the 2008 Act:

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

## SCHEDULE 2 REQUIREMENTS

Article 3

### **Interpretation**

**1.**—(1) Where an approval of details is required under the terms of any requirement or where compliance with a document contains the wording “unless otherwise agreed” by the discharging authority, such approval of details (including any subsequent amendments or revisions) or agreement by the discharging authority is not to be given except in relation to minor or immaterial changes or deviations where it has been demonstrated to the satisfaction of the discharging authority that the subject-matter of the approval or agreement sought does not give rise to any new significant adverse environmental effects that were not assessed in the environmental statement.

(2) Subject to paragraph 1(1), where any requirement refers to a document or plan, that document or plan is to be taken as the version certified by the Secretary of State under the provisions of this Order or to any subsequent version of that document or plan approved or agreed by the discharging authority under a requirement of this schedule.

(3) In this schedule—

“AOD” means above ordnance datum;

“controlled waste” has the meaning given in section 75(4) Environmental Protection Act 1990; and

“hazardous waste” has the meaning given in section 75(8A) Environmental Protection Act 1990.

### **Time limits**

**2.** The authorised development must not be commenced after the expiration of 5 years from the date this Order comes into force.

### **Stages of the authorised development**

**3.** No authorised development (except enabling works and the temporary display of site notices and advertisements) is to commence until a written scheme setting out all the stages of construction of the authorised development has been submitted to and approved by the relevant planning authority. Nothing in this requirement prevents the undertaker from submitting further

written schemes revising the approved stages of development for the approval of the relevant planning authority.

**Detailed design approval**

4.—(1) No stage is to commence until, for that stage, plans and written details of (where relevant)—

- (a) the external appearance of all new buildings and structures (including details of the colour, materials and samples);
- (b) piling risk assessments and piling method statements (both of which must include lateral and vertical limits of deviation for piling, such limits to not exceed those lines or situations shown on the works plans) relating to the electricity and heat generating station (Works No. 1a), the resource and recovery facility (Works No. 2) and the building to provide visitor, community and education facilities, and office accommodation (Works No. 3);
- (c) vehicular and pedestrian access;
- (d) parking and circulation areas and hard surfacing materials;
- (e) wayfinding signage outside the operational site; and
- (f) external operational lighting and cctv on the boundary of the operational site,

have been submitted to and approved in writing by the relevant planning authority.

(2) The details submitted under paragraph 4(1) must be in accordance with the design code principles.

(3) The relevant planning authority must consult the Environment Agency in reaching its decision with respect to paragraph 4(1)(b). The approval of the relevant planning authority of the piling risk assessments and the piling method statements may only be given where the investigation and assessment report (pursuant to requirement 14(2)) has concluded there is no unacceptable risk to groundwater in the relevant part of the Order land.

(4) The authorised development must be carried out in accordance with the details approved under paragraph 4(1).

**Parameters**

5. The authorised development must be constructed within with the following parameters—

(1) Works No. 1a (Drawing C\_0003 Rev 01)—

<i>Description</i>	<i>Work No.</i>	<i>Length (m)</i>	<i>Width (m)</i>	<i>Height (m)</i>	<i>Height (m AOD)</i>
Tipping hall	Works No. 1a paragraph (i)(a)	48	74	31.5	+44.0 AOD
Waste bunker and waste handling equipment	Works No. 1a paragraph (i)(b)	42.3	85	44.5	+57.0 AOD
Two process lines consisting of a moving grate, furnace, boiler and flue gas	Works No. 1a paragraphs (i)(c) and (i)(e)	130.7	74	56.5	+69.0 AOD

treatment plant and steam turbine(s)					
Facilities for the recovery of incinerator bottom ash and air pollution control residue	Works No. 1a paragraph (i)(d)	Below ground only			
Control room containing operational and environmental control and monitoring systems and offices	Works No. 1a paragraph (i)(f)	65.6	21	44.5	+57 AOD
Stack containing flues for flue gas exhaust	Works No. 1a paragraph (iii)	24	12.5	105	+117.5 AOD
Cooling equipment	Works No. 1a paragraph (iv)	60	24	28.7	+41.2 AOD
Observation platform enclosure	Works No.1a paragraph (v)	17	13	6 (above +44.0 AOD)	+50 AOD

(2) Works No. 1b (Drawing C\_0002 Rev 01)—

<i>Description</i>	<i>Work No.</i>	<i>Height (m)</i>	<i>Height (m AOD)</i>
Wastewater treatment facility, water pre-treatment plant, external stores and workshops, fuelling area and fuel storage, vehicle wash, transport offices and staff facilities, toilets, natural gas intake and management compound, fire control water tank(s) and electrical substation(s)	Works No. 1b	18	30.5

(3) Works No. 2 (Drawing C\_0005 Rev 01)—

<i>Description</i>	<i>Work No.</i>	<i>Length (m)</i>	<i>Width (m)</i>	<i>Height (m)</i>	<i>Height (m AOD)</i>
Resource	Works No. 2	127	180	20	+30.5 AOD

recovery paragraphs  
facility (i), (ii) and  
(iii)

Maximum dimensions based on dimensions of enclosing rectangle oriented north-south.

(4) Works No. 3 (Drawing C\_0007 Rev 01)—

<i>Description</i>	<i>Work No.</i>	<i>Length (m)</i>	<i>Width (m)</i>	<i>Height (m)</i>	<i>Height (m AOD)</i>
<i>Visitor, community and education facilities, office accommodation and boat canopy</i>	Works No. 3	41	16.7	14	+24.6 AOD

### **Environmental commitments and mitigation schedule**

6. The authorised development must be implemented in accordance with the measures set out in the environmental commitments and mitigation schedule.

### **Type of waste to be managed**

7. The waste permitted to be managed at the authorised development must not exceed 890,000 tonnes per annum and must be limited to—

- (a) local authority collected waste;
- (b) other controlled waste;
- (c) any materials derived from the waste referred to at (a) and (b) above; and
- (d) hazardous waste delivered to the operational site.

### **Notices**

8. Notice of the following events must be given to the relevant planning authority where practicable prior to the date on which the relevant event is intended to first occur and in any event within 7 days of the first occurrence of such event—

- (a) the commencement of the authorised development;
- (b) the issue of the certificate of practical completion for the electricity and heat generating station; and
- (c) the commencement of the full operation of the electricity and heat generating station (following the completion of any period of testing and commissioning).

### **BREEAM Rating**

9.—(1) No stage is to commence until, in relation to any new buildings within that stage (excluding temporary structures and temporary buildings)—

- (a) a pre-construction stage consultation with the Building Research Establishment (BRE) (in accordance with the BRE's requirements for such construction) has been carried out; and
- (b) proposals identifying the range of options to achieve the British Research Establishment Environmental Assessment Methodology (BREEAM) rating of no less than "very good" have been submitted to and approved in writing by the relevant planning authority.

(2) The relevant stage must be carried out in accordance with the details approved under paragraph 9(1).

### **Provision of landscaping**

**10.**—(1) No development within any stage, other than the restoration of the temporary laydown area, is to commence until a landscaping scheme for that stage has been submitted to and approved by the relevant planning authority. The landscaping scheme submitted for approval must be in accordance with the design code principles, the environmental commitments and mitigation schedule and include details of all proposed hard and soft landscaping works in the relevant stage including—

- (a) location, number, species, size and planting density of any proposed planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) permanent boundary fencing or other means of permanent enclosure;
- (d) expected finished ground levels;
- (e) any trees proposed to be retained, with measures for their protection during the construction period of the relevant stages; and
- (f) implementation timetable.

(2) The authorised development must be carried out in accordance with the details approved under paragraph 10(1), to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards, and in all cases must comply with the measures set out in the environmental commitments and mitigation schedule.

### **Maintenance of landscaping**

**11.** All landscaping implemented in accordance with an approved landscaping scheme must be maintained in accordance with details approved from time to time by the relevant planning authority. Any tree or shrub planted as part of an approved landscaping scheme that, within a period of 5 years after planting, is removed, dies or becomes, in the reasonable opinion of the relevant planning authority seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted.

### **Access and Roads**

**12.**—(1) No stage is to commence until written details in relation to that stage of—

- (a) the design, layout and management of any relevant new permanent or temporary means of access from the Order land to a public highway to be used by vehicular traffic; or
- (b) any alteration to an existing means of access to a public highway used by vehicular traffic; and
- (c) the taking of any necessary traffic management and control measures,

have been submitted to and approved by the relevant planning authority.

(2) The construction of accesses or alteration of the street or the taking of traffic management and control measures must be carried out in accordance with the details approved under paragraph 12(1).

### **Operational Surface and Foul Water Drainage**

**13.**—(1) No stage is to commence until written details of the operational surface and foul water drainage system (including means of pollution control) applicable to that stage have been submitted to and approved by the relevant planning authority in consultation with the relevant sewerage and drainage authority.

(2) The operational surface and foul water drainage system must be constructed in accordance with the details approved under paragraph 13(1) before the commencement of full operation of the electricity and heat generating station.

## **Contaminated land and groundwater**

**14.**—(1) No stage is to commence until a written scheme applicable to that stage to deal with any pre-existing contamination of land, including groundwater, within the Order limits which is likely to cause significant harm to persons or pollution of controlled waters or the environment has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency.

(2) The undertaker must consult the Environment Agency in relation to the written scheme before submitting it to the relevant planning authority for approval. The written scheme must include an investigation and assessment report, prepared by a specialist consultant to identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose (such remedial measures to include details of the data and sampling to be collected to demonstrate that the remedial measures are complete). The investigation and assessment report must be accompanied by a management plan which sets out long-term measures with respect to any contaminants remaining on the Order land (such management plan to include details of and a timetable and targets for long-term monitoring of pollutant linkages, the provision of regular reports, any maintenance measures of groundwater monitoring boreholes and equipment deemed necessary and arrangements for any contingency action deemed necessary as a consequence of the monitoring results).

(3) Remediation must be carried out in accordance with the written scheme approved under paragraph 14(1).

(4) If during any stage of the construction of the authorised development contamination not previously identified by the investigation and assessment report is found to be present which is assessed by the undertaker as likely to cause significant harm to persons or likely to cause pollution of controlled waters or the environment, then unless otherwise agreed by the relevant planning authority, no further development or works may be carried out in that part of the Order land in which contamination is identified until a remediation strategy is submitted to and approved by the relevant planning authority in consultation with the Environment Agency. The authorised development must be carried out in accordance with any remediation strategy approved pursuant to paragraph 14(4).

(5) A verification report must be submitted to and approved by the relevant planning authority (in consultation with the Environment Agency) demonstrating compliance with the remedial measures set out in the written scheme approved pursuant to paragraph 14(1) and any strategy approved pursuant to paragraph 14(4). The verification report must include results of the sampling required by the approved investigation and assessment report submitted as part of the written scheme.

(6) A second verification report must be submitted to and approved by the relevant planning authority (in consultation with the Environment Agency) when all long term monitoring has been completed. The second verification report must contain the results of monitoring required by the management plan pursuant to paragraph 14(2), details of any necessary contingency action undertaken as required by the management plan and confirmation that all long term remedial works approved pursuant to paragraph 14(1) and paragraph 14(4) have been carried out and that all long term remedial targets have been met.

(7) The undertaker must consult the Environment Agency in relation to the details of the piling risk assessments and piling method statements required pursuant to requirement 4(1) before submitting them to the relevant planning authority for approval. The undertaker must implement the piling design based on the approved piling risk assessments and piling method statements.

## **Ecology**

**15.**—(1) Full operation of the electricity and heat generating station must not occur until written details of the approach to monitoring and managing the landscaping and of bird and bat boxes (in accordance with the environmental commitments and mitigation schedule), including an implementation timetable, have been approved by the relevant planning authority.

(2) The authorised development must be carried out in accordance with the details approved under paragraph 15(1).

### **Code of Construction Practice**

**16.**—(1) Before commencing the enabling works or any stage of the authorised development, the undertaker must review the code of construction practice to establish whether it should be updated to reflect any new relevant construction methodology or environmental guidance and, where it is to be updated, the undertaker must seek the approval in writing of the relevant planning authority to any update of the code of construction practice.

(2) The authorised development must be undertaken in accordance with the code of construction practice.

### **Control of noise during operational stage**

**17.**—(1) Full operation of the electricity and heat generating station must not commence until a written scheme for noise management, including monitoring and attenuation in relation to the authorised development, and an implementation timetable, has been submitted to and approved by the relevant planning authority.

(2) The written scheme for noise management submitted pursuant to paragraph 17(1) must replicate any noise levels set out in any environmental permit relating to the authorised development.

(3) The authorised development must be carried out in accordance with the written scheme approved pursuant to paragraph 17(1).

### **Combined Heat and Power**

**18.**—(1) Works No. 1a must be constructed to produce combined heat and power through the provision of steam and hot water pass-outs and the preservation of space for the future provision of water pressurisation, heating and pumping systems.

(2) A corridor of land to contain heat pipes from the proposed electricity and heat generating station to the edge of the Edmonton EcoPark must be safeguarded, the location of which must be broadly in accordance with that identified on indicative drawing number D\_0013 Rev 00 of the design code principles.

### **Transitional period**

**19.**—(1) The energy from waste facility and the electricity and heat generating station must not operate at the same time for longer than 12 months, following which time the decommissioning and demolition of the energy from waste facility must be undertaken in accordance with the written scheme approved under requirement 20, and “transitional period” is to be construed accordingly.

(2) The amount of waste managed by the existing energy from waste facility or the electricity and heat generating station, or both during the transitional period must be no more than 700,000 tonnes per annum in aggregate.

### **Decommissioning and demolition of the energy from waste facility**

**20.**—(1) None of the works comprising Works No. 7 are to commence until a written scheme for such works has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency.

(2) The written scheme referred to in paragraph 20(1) must include details of the methods and timing for the decommissioning, demolition and removal of the energy from waste facility.

### **Decommissioning and demolition of the electricity and heat generating station**

**21.**—(1) Within 24 months of the electricity and heat generating station comprising Works No. 1a ceasing to be used for waste management purposes, a plan for the decommissioning, demolition and removal of the electricity and heat generating station must be submitted to the relevant planning authority for approval.

(2) Subject to obtaining the necessary consents and approvals, the decommissioning, demolition and removal of the electricity and heat generating station must be implemented in accordance with the plan approved under paragraph 21(1).

(3) On the one year anniversary of the operational site ceasing to be used for waste management purposes the undertaker must notify the relevant planning authority of the same.



PROCEDURE FOR APPROVALS, CONSENTS AND APPEALS

**Applications made for approvals and consents required by this Order**

1.—(1) If an application has been made to a discharging authority for any consent, agreement, approval or notice required by a provision of this Order, the discharging authority must give notice to the undertaker of its decision on the application promptly and in any event within a period of 56 days (unless another period is provided for under this Order) beginning with the working day immediately following that on which the application is received by the discharging authority.

(2) In determining any application to which paragraph 1(1) applies, the discharging authority may either grant or refuse consent in a written notice.

(3) Where consent is refused the discharging authority must provide its reasons for the refusal.

(4) If within 56 days (unless another period is provided for under this Order) after an application to which paragraph 1(1) applies the discharging authority has not notified the undertaker of its approval or refusal and the reasons for any refusal, the discharging authority will (unless the parties have agreed otherwise in writing) be deemed to have approved the application.

(5) Where the discharging authority intends to refuse an application, it must notify the undertaker of its intention to refuse as soon as such intention arises within the 56-day decision making period referred to in paragraph 1(1).

**Further information**

2.—(1) In relation to any application for a consent, agreement, approval or notice in respect of a provision of this Order, subject to paragraph 2(3) the discharging authority may request such further information from the undertaker as is necessary to enable it to consider the application.

(2) Where consent, agreement, approval or notice is required under a provision in this Order or by the code of construction practice (unless this Order or the code of construction practice requires that a consent be obtained pursuant to section 61 of the Control of Pollution Act 1974), the discharging authority must, in addition to any named consultee in the relevant provision, consult all other relevant and appropriate statutory consultees before deciding whether to grant or refuse consent under paragraph 1(2).

(3) Any request by the discharging authority for further information under paragraph 2(1) must be made in writing within 24 days of receipt of the application and must specify the further information required.

(4) In the event that the discharging authority does not make a request for further information under this paragraph 2 within the 24 day period referred to in paragraph 2(3) it will be deemed to have sufficient information to consider the application and may not after that period request further information (unless agreed in writing between the undertaker and the discharging authority within that 24 day period).

**Fees further to requirements**

3.—(1) Where an application is made to the discharging authority for written consent, agreement or approval in respect of a requirement, a fee must be paid to that authority as follows—

(a) fees must be calculated in accordance with the following table—

<i>Category 1</i>	<i>Category 2</i>
Subject to the cap stated below, the erection of	The carrying out of any operations not coming

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buildings—  
where no floor space is to be created by the development, £195;

within Category 1, £195 for each 0.1 hectare of the site area, subject to a maximum £1,690

where the area of gross floor space to be created by the development does not exceed 40 square metres, £195;

where the area of the gross floor space to be created by the development exceeds 40 square metres, but does not exceed 75 square metres, £385;

where the area of the gross floor space to be created by the development exceeds 75 square metres, but does not exceed 3750 square metres, £385 for each 75 square metres of that area; and

where the area of gross floor space to be created by the development exceeds 3750 square metres, £19,449; and an additional £115 for each 75 square metres.

Total Cap: £100,000.

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(b) where an application is made for discharge of a requirement (“current application”) in respect of which an application has been made previously, the fee payable in respect of the current application must be £385.

(2) For the purpose of the calculation of fees under paragraph 3(1)(a)—

- (a) the area is to be taken as consisting of the area of land or floor space (as the case may be) to which the application relates;
- (b) where the application relates to development within Category 1, the area of gross floor space created by the development is to be ascertained by external measurement of the floor space, whether or not it is bounded (wholly or partly) by external walls of a building;
- (c) where the application relates to development within Category 1 and the gross floor space to be created by the development exceeds 75 square metres and is not an exact multiple of 75 square metres, the area remaining after division of the total number of square metres of gross floorspace by the figure of 75 is to be treated as being 75 metres; and
- (d) where the application relates to development within Category 2 and the site area exceeds 0.1 hectares and is not an exact multiple of 0.1 hectares, the area remaining after division of the total number of hectares by the figure of 0.1 hectares is to be treated as being 0.1 hectares.

## Appeals

4.—(1) Save as otherwise provided in this Order, the undertaker may appeal in the event that—

- (a) the discharging authority refuses an application for any consent, agreement, approval or notice required or permitted by—
  - (i) a requirement included in this Order; or
  - (ii) a document referred to in any requirement included in this Order (unless such consent, agreement, approval or notice has to be obtained by virtue of any other legal requirement); or

- (iii) any other provision of this Order;
  - (b) the discharging authority grants an application for any consent, agreement, approval or notice required or permitted by this Order subject to conditions;
  - (c) the discharging authority issues a notice further to sections 60 and or 61 of the Control of Pollution Act 1974(a);
  - (d) on receipt of a request for further information under paragraph 2 of this Schedule, the undertaker considers that either the whole or part of the specified information requested by the discharging authority is not necessary for consideration of the application; or
  - (e) on receipt of any further information requested, the discharging authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.
- (2) The appeal process is as follows-
- (a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or determination giving rise to the appeal as referred to in paragraph 4(1);
  - (b) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the discharging authority and any requirement consultee and must on the same date affix a notice to a conspicuous object or objects on or near the site of the works which are the subject of such appeal which must give details of the decision of the discharging authority and of the application and notice that an appeal has been made together with the address within the locality where appeal documents may be inspected;
  - (c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to consider the appeal (“the appointed person”) and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for their attention should be sent;
  - (d) the discharging authority and any requirement consultee (if applicable) must submit their written representations together with any other representations received by them under the notice of application referred to in paragraph 1(1) or the notice of appeal referred to in paragraph 4(2)(a) to the appointed person in respect of the appeal within 10 business days of the notice of appointment in paragraph 4(2)(c) and must ensure that copies of their written representations and any other representations as sent to the appointed person are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
  - (e) the appeal parties must make any counter-submissions to the appointed person within 10 business days of receipt of written representations pursuant to paragraph 4(2)(c); and
  - (f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.

(3) The appointment of the person under paragraph 4(2)(2)(c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal they must as soon as practicable notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(5) Any further information required under paragraph 4(4) must be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person. The appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must

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(a) 1974 (c.40). Section 61 has been amended by the Building (Scotland) Act 2008; section 58 of the Building Act 1984 (c.55); Schedule 24 of the Environment Act 1995 (c.25); and section 162(1) of, and paragraph 15 of Schedule 15 to, the Environmental Protection Act 1990 (c.25).

require submission of written representations to the appointed person within 10 business days of the agreed date but must otherwise be in accordance with the process and time limits set out in paragraph 4(2)(c) - 4(2)(e).

- (6) On an appeal under this paragraph, the appointed person may—
- (a) allow or dismiss the appeal, or
  - (b) reverse or vary any part of the decision of the discharging authority (whether the appeal relates to that part of it or not),

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

(7) The appointed person may proceed to a decision on an appeal taking into account such written representations as have been sent within the relevant time limits and in its sole discretion such written representations as have been sent out with the relevant time limits.

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

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

(10) If an approval is given by the appointed person under this Schedule, it is to be treated as an approval for the purposes of this Order as if it had been given by the discharging authority. The discharging authority must confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person's determination.

(11) Save where a direction is given under paragraph 4(12) requiring the costs of the appointed person to be paid by the discharging authority, the reasonable costs of the appointed person must be met by the undertaker.

(12) On application by the discharging authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to Planning Practice Guidance or any circular or guidance which may from time to time replace it.

## SCHEDULE 4

Article 10

### STREETS SUBJECT TO STREET WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Streets subject to Street Works</i>
In the London Borough of Enfield.	The section of Lee Park Way starting from the junction with Advent Way, to the new access on the eastern edge of the Edmonton EcoPark from Lee Park Way. This section is within plots 14, 15, 21, 22 and 32 on the land plans.
In the London Borough of Enfield.	The section of Lee Park Way to north of the new access to be created on the eastern edge of the Edmonton EcoPark. This section is within plot 15 on the land plans.
In the London Borough of Enfield.	The section of Ardra Road, from its junction with Deephams Farm Road, to its junction with Meridian Way. This section is within plots 7 and 8 on the land plans.
In the London Borough of Enfield.	The section of Lower Hall Lane, from its junction with Walthamstow Avenue leading to proposed the temporary laydown area. This section is within plots 18, 19 and 20 on the land plans.
In the London Borough of	The section of Advent Way at the entrance south of the

Enfield.	Edmonton EcoPark. This section is within plot 31 on the land plans.
In the London Borough of Enfield.	The sections of cycle path within plots 14, 15, 17, 20, 21, 22, 24, 26, 27, and 32 on the land plans and also as shown on plan numbers C_0012 Rev 01, C_0013 Rev 00 and C_0014 Rev 01.
In the London Borough of Enfield.	The sections of footpaths within plots 8, 14, 15, 17, 21, 22, 24, 27, 28, 29, 30, 31 and 32 on the land plans and also as shown on plan numbers C_0012 Rev 01, C_0013 Rev 00 and C_0014 Rev 01.
In the London Borough of Enfield.	The section of the tow path running along the eastern side of the River Lee Navigation, within plot 17 on the land plans.
In the London Borough of Enfield.	Deephams Farm Road, which is plot 6 on the land plans.

## SCHEDULE 5

Article 11

### STREETS SUBJECT TO ALTERATION OF LAYOUT

<i>(1) Area</i>	<i>(2) Street to be altered</i>	<i>(3) Description of alteration</i>	<i>(4) Works number</i>
In the London Borough of Enfield.	The section of Advent Way shown within plot 31 on the land plans.	Works to widen the existing access from Advent Way into the Edmonton EcoPark, including modification to kerb lines and pavements within plot 31.	4(vii)
In the London Borough of Enfield.	The section of Lee Park Way shown within plots 14, 15, 21, 22, and 32 on the land plans.	Works to reposition footpaths and cycle paths that run along the section of Lee Park Way falling within plots 14, 15, 21, 22 and 32.  Works to create a new access branching off the section of Lee Park within plot 15, into the Edmonton EcoPark. The installation of vehicle barriers on Lee Park Way near the new access from Lee Park Way into the Edmonton EcoPark and on Lee Park Way near its junction with Advent Way.	4(ix) and 4(x)
In the London Borough of Enfield.	Deephams Farm Road.	Works to upgrade Deephams Farm Road to make it suitable for	4(xi), 4(xiii) and 4(xiv)

		operational and construction traffic, including provision of a new security barrier and gatehouse, works to improve the road surface, and new fencing.	
In the London Borough of Enfield.	Land on the verge of Lee Park Way within plots 28 and 29 as shown on the land plans.	Modification to kerb lines and pavements within these verges that fall within plots 28 and 29.	4(xvii)
In the London Borough of Enfield.	Footpath within plot 21 as shown on the land plans.	Creation of a new footpath to branch out from the existing footpath within this plot 21 south east towards Advent Way.	4(xviii)

## SCHEDULE 6

Article 12

### PUBLIC RIGHTS OF WAY TO BE TEMPORARILY SUSPENDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way to be temporarily suspended</i>	<i>(3)</i> <i>Extent of temporary suspension</i>	<i>(4)</i> <i>Temporary new public right of way to be provided in substitution</i>
In the London Borough of Enfield.	The section of pavement on the north side of Advent Way within plots 30 and 31, as shown on the land plans, plan C_0013 Rev 00 and in more detail on diagram 1 on page 2 of the DCO Schedules 6-8 explanatory diagrams.	For approximately 41 metres on Advent Way and into the southern entrance to the Edmonton EcoPark.	Approximately 42 metres of temporary footpath in the area shown cross hatched at the southern exit entrance to the Edmonton EcoPark leading onto Advent Way as shown on plan C_0013 Rev 00.
In the London Borough of Enfield.	The section of footpath and pavement running parallel with Advent Way to after the junction of Advent Way with Lee Park Way within plots 22, 24, 27, 28 and 29, as shown on the land plans, plan C_0014 Rev 01 and in more detail on diagram 2 on page 3 of the DCO Schedules 6-8 explanatory diagrams.	For approximately 130 metres within plots 27, 24, 28, 22 and 29 shown on the land plans and on plan C_0014 Rev 01.	Approximately 130 metres of temporary footpath in the area shown cross hatched bordering the northern edge of Advent Way and the southern section of Lee Park Way as shown on plan C_0014 Rev 01.

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way to be temporarily suspended</i>	<i>(3)</i> <i>Extent of temporary suspension</i>	<i>(4)</i> <i>Temporary new public right of way to be provided in substitution</i>
In the London Borough of Enfield.	The section of footpath and cycle path running from the junction of Advent Way with Lee Park Way and along Lee Park Way within plots 14, 15, 21, 22 and 32, as shown on the land plans, plan C_0014 Rev 01 and in more detail on diagram 3 on page 4 of the DCO Schedules 6-8 explanatory diagrams.	For approximately 315 metres within plots 14, 15, 21, 22 and 32 from the junction of Advent Way with Lee Park Way and along Lee Park Way.	Approximately 315 metres of temporary footpath and cycle path in the area shown cross hatched to the north of Advent Way and the east of the Edmonton EcoPark as shown on plan C_0014 Rev 01.
In the London Borough of Enfield.	Footpath leading from Lee Park Way to the tow path on the River Lee Navigation within plot 21, as shown on the land plans, plan C_0014 Rev 01 and in more detail on diagram 4 on page 5 of the DCO Schedules 6-8 explanatory diagrams.	For approximately 41 metres at the point of the access to be constructed to the temporary laydown area from Lee Park Way towards the eastern bank of the River Lee Navigation (north of the bridge over the River Lee Navigation).	Approximately 41 metres of temporary footpath in the area shown cross hatched to the north of Lee Park Way and the east of the River Lee Navigation on plan C_0014 Rev 01.
In the London Borough of Enfield.	Towpath, footpath and cycle path on the eastern bank of the River Lee Navigation within plots 13 and 17, as shown on the land plans, plan C_0014 Rev 01 and in more detail on diagram 5 on page 6 of the DCO Schedules 6-8 explanatory diagrams.	For approximately 26 metres under the bridge over the River Lee Navigation forming part of Lee Park Way.	Approximately 201 metres of temporary footpath in the area shown on plan C_0014 Rev 01.
In the London Borough of Enfield.	Cycle path on Lower Hall Lane within plot 20, as shown on the land plans, plan C_0014 Rev 01 and in more detail on diagram 6 on page 7 of the DCO Schedules 6-8 explanatory diagrams.	For approximately 59 metres across the part of Lower Hall Lane bordering the access from Lower Hall Lane to the temporary laydown area.	Approximately 59 metres of temporary footpath in the area shown cross hatched across Lower Hall Lane leading to the junction with Walthamstow Avenue on plan C_0014 Rev 01.
In the London Borough of Enfield.	Cycle path running parallel with Advent Way to after the junction of Advent Way with Lee Park Way, within plots 17, 27, 24, 22 and 21, as shown on the land plans, plan C_0014 Rev 01 and in	For approximately 131 metres across plots 17, 27, 24, 22, 21 on the land plans, running to the north of Advent Way, east of the tow path running	Approximately 131 metres of temporary footpath in the area shown cross hatched across plots 17, 27, 24, 22, 21 on the land plans on the land to

<i>(1) Area</i>	<i>(2) Public right of way to be temporarily suspended</i>	<i>(3) Extent of temporary suspension</i>	<i>(4) Temporary new public right of way to be provided in substitution</i>
	more detail on diagram 7 on page 8 of the DCO Schedules 6-8 explanatory diagrams.	along the western edge of the River Lee Navigation, cutting across Lee Park Way and towards Lower Hall Lane.	the east of the River Lee Navigation and north of Advent Way, as shown on plan C_0014 Rev 01.



## SCHEDULE 7

Article 12

### PUBLIC RIGHTS OF WAY TO BE EXTINGUISHED

<i>(1) Area</i>	<i>(2) Public right of way to be extinguished</i>	<i>(3) Extent of public right of way to be extinguished</i>	<i>(4) New public right of way to be substituted</i>
In the London Borough of Enfield.	The section of footpath and cycle path on Lee Park Way within plots 14, 15, 21, 22 and 32 as shown on the land plans and in more detail on diagram 8 on page 9 of the DCO Schedules 6-8 explanatory diagrams.	For approximately 315 metres from the junction of Advent Way and Lee Park Way leading north as shown hatched red on plan C_0014 Rev 01 on Lee Park Way.	Approximately 315 metres of footpath along Lee Park Way and approximately 314.5 metres of cycle path along Lee Park Way within plots 14, 15, 21, 22 and 32 on the land plans and as shown on plan C_0014 Rev 01.

## SCHEDULE 8

Article 13

### STREETS TO BE TEMPORARILY STOPPED UP

<i>(1) Area</i>	<i>(2) Street to be temporarily stopped up</i>	<i>(3) Extent of temporary stopping up</i>
In the London Borough of Enfield.	Advent Way, within plot 31, as shown on the land plans and on plan C_0013 Rev 00.	For approximately 42 metres at the entrance to the south of the Edmonton EcoPark within plot 31, as shown on the land plans, plan C_0013 Rev 00 and in more detail on diagram 9 on page 10 of the DCO Schedules 6-8 explanatory diagrams.
In the London Borough of Enfield.	Lee Park Way, within plots 14, 15, 21, 22 and 32, as shown on the land plans and on plan C_0014 Rev 01.	For approximately 315 metres from the junction of Advent Way and along Lee Park Way within plots 14, 15, 21, 22 and 32 as shown on the land plans, plan C_0014 Rev 01 and in more detail on diagram 10 on page 11 of the DCO Schedules 6-8 explanatory diagrams.
In the London Borough of Enfield.	Lower Hall Lane, within plots 18, 19 and 20 as shown on the land plans and on plan C_0014 Rev 01.	For approximately 41 metres from the junction of Lower Hall Lane and Walthamstow Avenue to the entrance to the temporary laydown area from Lower Hall Lane, within plots 18, 19 and 20 as shown on the land plans, plan C_0014 Rev 01 and in more detail on

<i>(1) Area</i>	<i>(2) Street to be temporarily stopped up</i>	<i>(3) Extent of temporary stopping up</i>
		diagram 11 on page 12 of the DCO Schedules 6-8 explanatory diagrams.
In the London Borough of Enfield.	Ardra Road, within plots 7 and 8, as shown on the land plans and on plan C_0012 Rev 01.	For approximately 470 metres on plots 7 and 8 between the junction between Ardra Road and Meridian Way and the junction between Ardra Road and Deephams Farm Road as shown on the land plans, plan C_0012 Rev 01 and in more detail on diagram 12 on page 13 of the DCO Schedules 6-8 explanatory diagrams.
In the London Borough of Enfield.	Tow path, footpath and cycle path along the eastern side of the River Lee Navigation within plots 13 and 17, as shown on the land plans and plan C_0014 Rev 01.	For approximately 26 metres within plots 13 and 17 from Advent Way, running north along the eastern bank of the River Lee Navigation towards the northern end of the temporary laydown area, as shown on the land plans, plan C_0014 Rev 01 and in more detail on diagram 13 on page 14 of the DCO Schedules 6-8 explanatory diagrams.
In the London Borough of Enfield.	Cycle path running parallel with Advent Way to the junction of Advent Way with Lee Park Way, within plots 17, 27, 24, 22, 21 as shown on the land plans and plan C_0014 Rev 01.	For approximately 131 metres within plots 17, 21, 22, 24 and 27, as shown on the land plans, plan C_0014 Rev 01 and in more detail on diagram 14 on page 15 of the DCO Schedules 6-8 explanatory diagrams.
In the London Borough of Enfield.	Cycle path on Lower Hall Lane within plot 20, as shown on the land plans and on plan C_0014 Rev 01.	For approximately 59 metres across the part of Lower Hall Lane bordering the access from Lower Hall Lane to the temporary laydown area, within plot 20, as shown on the land plans, plan C_0014 Rev 01 and in more detail on diagram 15 on page 16 of the DCO Schedules 6-8 explanatory diagrams.
In the London Borough of Enfield.	The section of pavement on the north side of Advent Way, within plots 30 and 31, as shown on the land plans and on plan C_0013 Rev 00.	For approximately 41 metres on Advent Way and into the southern entrance to the Edmonton EcoPark, within plots 30 and 31, as shown on the land plans, plan C_0013 Rev 00 and in more detail on diagram 16 on page 17 of the DCO Schedules 6-8 explanatory diagrams.

<i>(1) Area</i>	<i>(2) Street to be temporarily stopped up</i>	<i>(3) Extent of temporary stopping up</i>
In the London Borough of Enfield.	The section of footpath and pavement running parallel with Advent Way to the junction of Advent Way with Lee Park Way within plots 22, 24, 27, 28 and 29, as shown on the land plans and plan C_0014 Rev 01.	For approximately 130 metres within plots 27, 24, 28, 22 and 29, as shown on the land plans, plan C_0014 Rev 01 and in more detail on diagram 17 on page 18 of the DCO Schedules 6-8 explanatory diagrams.
In the London Borough of Enfield.	Footpath leading from Lee Park Way to the tow path on the River Lee Navigation within plot 21 as shown on the land plans and plan C_0014 Rev 01.	For approximately 37 metres from the point of the access to be constructed to the temporary laydown area from Lee Park Way towards the eastern bank of the River Lee Navigation (north of the bridge over the River Lee Navigation), within plot 21, as shown on the land plans, plan C_0014 Rev 01 and in more detail on diagram 18 on page 19 of the DCO Schedules 6-8 explanatory diagrams.

## SCHEDULE 9

Article 14

### ACCESS TO WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Description of Access</i>	<i>(3)</i> <i>Works Number</i>
In the London Borough of Enfield.	Access from Advent Way to the south of the Edmonton EcoPark as shown on plans C_0012 Rev 01 and C_0013 Rev 00.	4(vii)
In the London Borough of Enfield.	Access from Meridian Way to Ardra Road as shown on plan C_0013 Rev 00.	4(xix)
In the London Borough of Enfield.	Access from Walthamstow Avenue to the south of Lower Hall Lane into the temporary laydown area as shown on plans C_0012 Rev 01 and C_0014 Rev 01.	5 (x)
In the London Borough of Enfield.	Access from Advent Way to the south of Lee Park Way as shown on plans C_0012 Rev 01 and C_0014 Rev 01.	4(xx)
In the London Borough of Enfield.	Access from Lee Park Way to the south of the temporary laydown area shown on plans C_0012 Rev 01 and C_0014 Rev 01.	5(ix)
In the London Borough of Enfield.	Access from the northern end of Deephams Farm Road as shown on plan C_0012 Rev 01.	4(xi)
In the London Borough of Enfield.	Access from Lee Park Way into the Edmonton EcoPark as shown on plans C_0012 Rev 01 and C_0014 Rev 01.	4(ix)

## SCHEDULE 10

Article 23

### LAND IN WHICH RIGHTS ETC., MAY BE ACQUIRED

<i>(1)</i> <i>Plot number of land shown on land plans</i>	<i>(2)</i> <i>Purpose for which rights may be acquired</i>
1, 2, 4, 7, 8, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32 and 34.	Right of access with or without vehicles, plant, apparatus and materials to execute any works for the purposes of or incidental to the construction, operation and maintenance of the authorised development.  Right to divert, reposition, decommission, remove, replace, modify or upgrade existing pipes, cables, systems and associated apparatus with regard to those utilities listed in Works No. 4(i)(aa) to (cc) in Schedule

	<p>1 of this Order (including existing apparatus belonging to statutory undertakers located within the Order land and including existing apparatus located on land belonging to statutory undertakers within the Order land).</p> <p>Right to lay, install, use and maintain new pipes, cables, systems and associated apparatus with regard to those utilities listed in Works No. 4(i)(aa) to (cc) in Schedule 1 (including over and under existing apparatus belonging to statutory undertakers within the Order land and including on land belonging to statutory undertakers within the Order land).</p> <p>Right to create, use and maintain new connections to existing and new pipes, cables, systems and associated apparatus with regard to those utilities listed in Works No. 4(i)(aa) to (cc) in Schedule 1 of this Order (including existing apparatus belonging to statutory undertakers located within the Order land and including existing apparatus located on land belonging to statutory undertakers within the Order land).</p>
7 and 8.	<p>Right of way with or without vehicles over Ardra Road between the junction with Meridian Way and Deephams Farm Road.</p> <p>Right of access with or without vehicles, plant, apparatus and materials in connection with the maintenance of Ardra Road and any works ancillary to such maintenance including but without limitation the maintenance of street furniture.</p>
14.	Right to maintain the existing bridge over the River Lee Navigation.
14, 15, 21, 22 and 32.	<p>Right of way with or without vehicles over Lee Park Way.</p> <p>Right of access with or without vehicles, plant, apparatus and materials in connection with the maintenance of Lee Park Way and any works ancillary to such maintenance including but without limitation the maintenance of street furniture.</p> <p>Right of access with or without vehicles to maintain the access way to be constructed into the east of the Edmonton EcoPark from Lee Park Way.</p>
15, 17, 21, 22, 23, 24, 25, 26, 27, 28 and 29.	Right of access with or without vehicles, plant, apparatus and materials in connection with the maintenance of landscaping works authorised by this Order.

## SCHEDULE 11

Article 23

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

#### **Compensation enactments**

**1.** The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as to compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right, as they apply as respects compensation on the compulsory purchase of land and interests in land.

**2.**—(1) Without limiting paragraph 1, the Land Compensation Act 1973<sup>(a)</sup> has effect subject to the modifications set out in paragraph 2(2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act—

- (a) the words “land is acquired or taken” are substituted with the words “a right over land is purchased”; and
- (b) the words “acquired or taken from him” are substituted with the words “over which the right is exercisable”.

### **Application of 1965 Act**

**3.**—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired; or
- (b) the land over which the right is or is to be exercisable.

(2) Without limiting paragraph 3(1), Part 1 of the 1965 Act applies to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

**4.** Section 11 of the 1965 Act (powers of entry) is modified so as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any new right, it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or (which is deemed for this purpose to have been created on the date of service of the notice).

**5.** Sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

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(a) 1973 (c. 26). Section 44 was amended by paragraph 13(b) of Schedule 24 to the Highways Act 1980, paragraph 14(d) of Schedule 7 to the Gas Act 1986 (c.44) and paragraph 23 of Schedule 1 to the Water Consolidation (Consequential Provisions) Act 1991 (c.60).

## SCHEDULE 12

Article 27

### LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1) Number of land shown on land plans</i>	<i>(2) Purpose for which temporary possession may be taken</i>	<i>(3) Works No. and plan number</i>
11 and 12.	To temporarily place equipment in these plots (which are part of the River Lee Navigation).  To maintain the boat canopy that forms part of Works number 3.	Work No. 3. C_0006 Rev 01.
16, 18, 19 and 20.	To create and use a temporary laydown area.  To use as an access to the temporary laydown area from Walthamstow Avenue.  To carry out restoration works to restore the current landscaping in the area used for the temporary laydown area.	Work Nos. 5 and 6. C_0009 Rev 01 and C_0010 Rev 01.

## SCHEDULE 13

Article 37

### PROTECTIVE PROVISIONS

#### PART 1

##### Protection of Operators of Electronic Communications Code Networks

**1.** The provisions of this Part of this Schedule have effect for the protection of the operators referred to in this Part, unless otherwise agreed in writing between the undertaker and the operator concerned.

**2.** In this Part of this Schedule —

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

“2003 Act” means the Communications Act 2003;

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system are to be construed in accordance with paragraph 1(3A) of that code;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act as defined in section 106(1) of the 2003 Act;

“electronic communications code network” means—

so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and

an electronic communications network that the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

“operator” means the operator of an electronic communications code network.

**3.—**(1) Subject to paragraphs 3(2) and 3(3), if, as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works, or other property of an operator); or

(b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the reasonable and proper cost actually incurred by the operator in making good such damage or restoring the supply as the case may be and must make proper and reasonable compensation to an operator for any other reasonable and proper expenses, loss, damages, penalty or costs actually incurred by it.

(2) Nothing in paragraph 3(1) imposes any liability on the undertaker with respect to any damage or interruption as far as it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable prior written notice of any such claim or demand and no settlement or compromise may be made without the consent of the undertaker.

**4.—**(1) If in consequence of the exercise of the powers of this Order the access to the operator’s apparatus is materially obstructed, the undertaker shall provide such reasonable alternative means of access to such apparatus as will enable the operator to operate, maintain, repair or replace or use the apparatus.

(2) This Part of this Schedule does not apply to—

(a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or

(b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

**5.** Any difference or dispute arising between the operator and the undertaker under this Part of this Schedule shall, unless otherwise agreed in writing between the operator and the undertaker, be referred to and settled by arbitration under article 35 (arbitration).

**6.—**(1) Where, under this Part of this Schedule or anywhere else under this Order, the operator is required to give its consent or approval in respect of any matter, that consent or approval must not be unreasonably withheld or delayed.

(2) In respect of any specified work or the acquisition of rights under or over or use of the operator’s property, the operator must co-operate with the undertaker with a view to avoiding undue delay.



## PART 2

### Protection of Electricity, Gas, Water and Sewerage Undertakers

1. Except in relation to National Grid, the provisions of this Part of this Schedule have effect for the protection of the statutory undertakers referred to in this Part, unless otherwise agreed in writing between the undertaker and the statutory undertaker concerned.

2. In this Part of this Schedule —

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

“alternative apparatus” means alternative apparatus adequate to enable the statutory undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means any apparatus within the works limits as follows—

- (a) in the case of a statutory undertaker within paragraph (a) of the definition, electric lines or electrical plant (as defined in section 64 of the Electricity Act 1989(a)), belonging to or maintained by the undertaker for the purposes of electricity supply;
- (b) in the case of a statutory undertaker within paragraph (b) of the definition, any gas mains, pipes or other apparatus belonging to or maintained by the undertaker for the purposes of gas supply;
- (c) in the case of a statutory undertaker within paragraph (c) of the definition, water mains, pipes or other apparatus belonging to or maintained by the undertaker for the purposes of water supply; and
- (d) in the case of a statutory undertaker within paragraph (d) of the definition—
  - (i) any drain or works vested in the statutory undertaker under the Water Industry Act 1991; and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and in each case includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

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

“statutory undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
  - (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986**(b)**;
  - (c) a water undertaker within the meaning of Schedule 1 of the Interpretation Act 1978**(a)**;
- and

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- (a) (c.29). Section 6(1) has been amended by section 30 of the Utilities Act 2000 (c.27) and sections 136 and 197 of, and part 1 of Schedule 23 to, the Energy Act 2004 (c.20). Section 64 has been amended by article 24(c) of the Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental Provisions Order 1999 (S.I. 1999/506), section 108 of, paragraphs 24 and 38 of part 2 of Schedule 6 to, and Schedule 8 to the Utilities Act 2000 (c.27), sections 44, 89, 102, 143, 147, 180 and 197 of, paragraphs 3 and 15 of Schedule 19 to, and Part 1 of Schedule 23 to, the Energy Act 2000 (c.20), section 79 of, and paragraph 5 of Schedule 8 to, the Climate Change Act 2008 (c.27), section 72 of, and paragraph 5 of Schedule 8 to, the Energy Act 2011 (c.16), regulation 48 of the Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), articles 2 and 13 of the Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), section 26 of, and paragraphs 30 and 43 of part 1 of Schedule 6 to, the Enterprise and Regulatory Reform Act 2013 (c.24), and regulation 5 of the Electricity and Gas (Internal Markets) Regulations (S.I. 2014/3332).
  - (b) (c.44). Section 7 (1) was amended by section 76 of the Utilities Act 2000 (c.27) and section 197 of, and part 1 of Schedule 23 to, the Energy Act 2004 (c.20).

(d) a sewerage undertaker,

for the area of the authorised development and, in relation to any apparatus, means the statutory undertaker to whom it belongs or by whom it is maintained.

**3.** This Part of this Schedule does 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.

**4.—(1)** If, in the exercise of the powers conferred by this Order, 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 (if so required by the statutory undertaker) alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the statutory undertaker in question.

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

(3) If alternative apparatus or any part of such apparatus is to be constructed as a consequence of the removal of apparatus placed on the land referred to in paragraph 4(2), the statutory undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in other land in which the alternative apparatus is to be constructed.

(4) The statutory undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 35 (arbitration), and after the grant to the statutory undertaker of any such facilities and rights as are referred to in paragraph 4(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.

(5) Despite anything in paragraph 4(4), if the undertaker gives notice in writing to the statutory undertaker in question that it desires itself to execute any work or part of any work in connection with the construction or removal of apparatus, that work, instead of being executed by the statutory undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if so required by the statutory undertaker, and to the reasonable satisfaction of the statutory undertaker.

(6) Nothing in paragraph 4(5) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus without the prior approval of the statutory undertaker (such approval not to be unreasonably withheld or delayed).

**5.—(1)** Not less than 28 days before starting the execution of any works of the type referred to in paragraph 4(2) that will or may adversely affect any apparatus the removal of which has not been required by the undertaker under that paragraph, the undertaker must submit to the statutory undertaker in question a plan, section and description of the works to be executed.

(2) Any works of the type referred to in paragraph 4(2) are to be executed only in accordance with the plan, section and description submitted under paragraph 5(1) and in accordance with such reasonable requirements as may be made in accordance with paragraph 5(3) by the statutory

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(a) (c.30). The definition of “water undertaker” within that act was amended by sections 2 and 4 of, and paragraph 32 of Schedule 1 to, the Water Consolidation (Consequential Provisions) Act 1991 (c.60) and sections 58, 101, 141, 160, 163, 189, 190 and 193 of, paragraph 55 of Schedule 25 to, and paragraphs 3, 17, 40, 57 and 58 of Schedule 26 to the Water Act 1989 (c.15).

undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the statutory undertaker is entitled to observe and inspect the execution of those works.

(3) Any requirements made by a statutory undertaker under paragraph 5(2) must be made within a period of 21 days beginning with the day on which a plan, section and description under paragraph 5(1) are submitted to it.

(4) If a statutory undertaker in accordance with paragraph 5(3) 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 5(1) to 5(6) apply as if the removal of the apparatus had been required by the undertaker under paragraph 4(2).

(5) Nothing in this paragraph 5 precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and if this is done, the provisions of this paragraph 5 apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with paragraph 5(1) in a case of emergency but in that case it must give to the statutory undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with paragraph 5(2) in so far as is reasonably practicable in the circumstances.

**6.—**(1) Subject to the following provisions of this paragraph, the undertaker must repay to a statutory undertaker the proper and reasonable expenses actually incurred by that statutory undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 4(2).

(2) The value of any apparatus removed under the provisions of this Part of this Schedule is to be deducted from any sum payable under paragraph 6(1), 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 those 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 but for this paragraph would be payable to the statutory undertaker in question by virtue of paragraph 6(1) is to be reduced by the amount of that excess.

(4) For the purposes of paragraph 6(3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

(5) An amount which but for this paragraph 6(5) would be payable to a statutory undertaker in respect of works by virtue of paragraph 6(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.

**7.—**(1) Subject to paragraphs 7(2) and 7(3), if by reason, or in consequence, of the construction of any such works referred to in paragraph 4(2), any damage is caused to any 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 a statutory undertaker, or there is any material interruption in any service provided, or in the supply of any goods, by any statutory undertaker, the undertaker must—

- (a) bear and pay the proper and reasonable cost actually incurred by that statutory undertaker in making good such damage or restoring the supply; and
- (b) make proper and reasonable compensation to that statutory undertaker for any other reasonable and proper expenses, loss, damages, penalty or costs actually incurred by the statutory undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in paragraph 7(1) imposes any liability on the undertaker with respect to any damage or interruption as far as it is attributable to the act, neglect or default of a statutory undertaker, its officers, servants, contractors or agents.

(3) A statutory undertaker must give the undertaker reasonable prior written notice of any such claim or demand, and no settlement or compromise may be made without the consent of the undertaker.

**8.** If in consequence of the exercise of the powers of this Order the access to the statutory undertaker's apparatus is materially obstructed, the undertaker shall 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.

**9.** Any difference or dispute arising between the statutory undertaker and the undertaker under this Part of this Schedule shall, unless otherwise agreed in writing between the statutory undertaker and the undertaker, be referred to and settled by arbitration under article 35 (arbitration).

**10.—**(1) Where, under this Part of this Schedule or anywhere else under this Order, the statutory undertaker is required to give its consent or approval in respect of any matter, that consent or approval must not be unreasonably withheld or delayed.

(2) In respect of any specified work or the acquisition of rights under or over or use of the statutory undertaker's property, the statutory undertaker must co-operate with the undertaker with a view to avoiding undue delay.

## PART 3

### Protection of Canal & River Trust

**1.** The provisions of this Part of this Schedule have effect for the protection of CRT, unless otherwise agreed in writing between the undertaker and CRT.

**2.** In this Part of this Schedule –

“1965 Act” means the Compulsory Purchase Act 1965;

“CRT” means the Canal & River Trust and any successor body performing the same functions which holds or manages any of CRT's Property within the order limits;

“CRT's Property” means each and every part of land owned by CRT (whether beneficially or as trustee of the Waterways Infrastructure Trust) within the Order limits and includes the Waterway and any other land covered with water, sub-soil, air space and waterways;

“code of practice” means the “Code of Practice for Works Affecting the Canal & River Trust” dated April 2016 and as amended from time to time;

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“detriment” means any damage to the Waterway or any other of CRT’s Property that CRT demonstrates to the reasonable satisfaction of the undertaker that the undertaker has caused by the undertaking or presence of the specified works and, without prejudice to the generality of that meaning, includes:

- (a) the erosion of the bed or banks of the Waterway, or the impairment of the stability of any works, lands or premises forming part of the Waterway;
- (b) the deposit of materials or the siltation of the Waterway so as to damage the Waterway;
- (c) the pollution of the Waterway;
- (d) any significant alteration in the water level of the Waterway, or significant interference with the supply of water thereto, or drainage of water therefrom; and
- (e) any harm to the ecology of the Waterway (including any adverse impact on any site of special scientific interest comprised within any of CRT’s Property).

“engineer” means an engineer appointed by CRT for the relevant purposes of this Order (and includes a suitably qualified employee of CRT so appointed);

“plans” includes sections, designs, design data, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), programmes and details of the extent, timing and duration of any proposed use or occupation of any of CRT’s Property;

“specified works” means so much of any of the authorised development to be situated upon, across, under, over or within CRT’s Property, or which may in any way cause detriment to the Waterway;

“Waterway” means each and every part of the River Lee Navigation within the Order limits, together with its waterway wall and towing path, and any pond or other waterway or course situated on CRT’s Property, any works, services, apparatus, equipment, lands (including subsoil) or premises belonging to or under the control of CRT and held or used by it in connection with its statutory functions.

### **Powers requiring CRT’s consent**

**3.—**(1) The undertaker shall not use any of CRT’s Property for the passage or siting of vehicles, plant or machinery employed in the construction of the specified works other than:

- (a) with the consent in writing of the engineer; and
- (b) subject to compliance with such reasonable requirements as the engineer may from time to time specify-
  - (i) for the prevention of detriment; or
  - (ii) in order to avoid or reduce any inconvenience to CRT, its officers, agents and all other persons lawfully on such land or property.

(2) The consents required pursuant to this Part 3 of this Schedule shall not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions.

(3) Nothing in this paragraph 3 shall apply in relation to anything done in accordance with any approval given by CRT under paragraph 4.

### **Approval of plans, protective works etc.**

**4.—**(1) Except for works the details of which are required under Schedule 2 (Requirements) to be submitted to the relevant planning authority for approval, the undertaker must, before commencing construction of specified works or carrying out any works on CRT’s Property, supply to CRT proper and sufficient plans of that work for the reasonable approval (having due and proper regard to the timetable for the construction of the authorised development approved under requirement 3) of the engineer, and the specified work must not be commenced except in

accordance with such plans as have been approved in writing by the engineer (such approval not to be unreasonably withheld or delayed) or settled by arbitration in accordance with article 35 (arbitration) of this Order.

(2) If the engineer has not confirmed disapproval of the plans supplied pursuant to paragraph 4(1) and the grounds of disapproval in writing by the end of the period of 28 days beginning with the date on which the last of such required plans have been submitted to CRT by the undertaker, the engineer will be deemed to have approved the plans submitted pursuant to paragraph 4(1).

(3) When confirming approval of the plans supplied pursuant to paragraph 4(1), the engineer may specify reasonable and necessary protective works (whether temporary or permanent and which, for the avoidance of doubt, may include requirements to fence any specified works in order to separate the same from the Waterway or any other of CRT's Property) which, in the engineer's reasonable opinion, should be carried out before the commencement of the construction of a specified work, or during the undertaking of those specified works.

(4) Such protective works as may be agreed between the parties or settled by arbitration in accordance with article 35 (arbitration) must be constructed by the undertaker at a reasonable and necessary cost, with all reasonable dispatch. The undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that such of those protective works as are required to be undertaken prior to commencement of construction have been completed to the engineer's reasonable satisfaction. If the engineer has not confirmed his reasonable satisfaction of the completion of the protective works within 21 days of the undertaker's notification, the engineer will be deemed to have confirmed his reasonable satisfaction.

### **Design of specified works**

5. Without prejudice to its obligations as to the delivery of plans to CRT under the foregoing provisions of this Part of this Schedule, the undertaker must consult, collaborate and respond constructively to any approach, suggestion, proposal or initiative made by CRT as to the design and appearance of the specified works, including the materials to be used for their construction, and shall have regard to reasonable views as may be expressed by CRT in response to such consultation pursuant in particular to the requirements imposed on CRT by section 22 (general environmental and recreational duties) of the British Waterways Act 1995 and to the reasonable interest of CRT in preserving and enhancing the environment of the Waterway.

### **Surveying of Waterway**

6.—(1) Both before commencing any specified works upon CRT's Property or the Waterway, and following practical completion of those specified works, the undertaker shall procure, at a reasonable and necessary expense to the undertaker, the carrying out of a survey (including a dip-survey to measure the depth of the Waterway), by an appropriately qualified structural engineer (the "structural surveyor"), approved by CRT (whose approval shall not be unreasonably withheld or delayed), of so much of the Waterway as may be affected by the specified works ("the survey").

(2) For the purposes of the survey the undertaker and CRT shall:

- (a) afford reasonable facilities to the surveyor for access to the site of the specified works; to any land and existing works of the undertaker which may provide support for the Waterway and to CRT's Property as will or may be affected by the specified works; and
- (b) supply the surveyor as soon as reasonably practicable with all such information as he may reasonably require with regard to such existing works of the undertaker; to the specified works and the proposed method of their construction, and with regard to the Waterway.

(3) The reasonable and necessary costs of the survey shall include the costs of any dewatering or reduction of the water level of any part of the Waterway (where reasonably required) which may be effected to facilitate the carrying out of the survey and the provisions of this Part of this

Schedule shall apply with all necessary modifications to any such dewatering or reduction in the water level as though the same were specified works.

(4) One electronic copy and one hard copy of the survey shall be provided to CRT at no cost to CRT.

### **Undertaking of works**

7.—(1) The undertaker shall give to the engineer 14 days' notice of its intention to commence the construction of any of any specified works or protective works (or such notice as may be reasonably practicable in the case of repair carried out in an emergency), so that, where appropriate, CRT may publish notices bringing the undertaking of those works to the attention of users of the Waterway.

(2) All specified works, and all protective works, when commenced, must be constructed:

- (a) with all reasonable dispatch (having regard to the timetable for construction of the authorised development approved under requirement 3) in accordance with the plans approved or deemed to have been approved or settled under paragraph 4;
- (b) in accordance with the code of practice and under the supervision (where appropriate), and to the reasonable satisfaction of, the engineer;
- (c) in such manner as to cause as little damage or disturbance as is possible to CRT's Property; and
- (d) so far as is reasonably practicable, so as not to interfere with the safe use of the Waterway.

(3) If any damage to CRT's Property is caused by the carrying out of, or in consequence of the construction of, any specified works, the undertaker must make good such damage and must pay to CRT all reasonable and proper expenses that CRT actually incurs by reason of such damage, interference or obstruction.

(4) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligent act or default of CRT or its servants, contractors or agents or any liability on CRT with respect to any damage, costs, expenses or loss attributable to the negligent act or default of the undertaker or its servants, contractors or agents.

(5) The undertaker must:

- (a) at all times afford reasonable facilities to the engineer for access to a specified works during its construction; and
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

(6) CRT must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by CRT under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them

### **Effect of specified works**

8. If at any time during the construction of, or after the completion of, any specified works, CRT gives notice to the undertaker informing it that the state of maintenance of those specified works appears to be such as adversely affects the operation of the Waterway, or otherwise adversely affects CRT's Property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put such specified work in such state of maintenance as shall no longer have such adverse effect.

### **Repayment of CRT's fees etc.**

9. The undertaker shall repay to CRT in accordance with the code of practice all fees, costs, charges and expenses reasonably and properly incurred by CRT for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works or any protective works.

### **Agreements**

10.—(1) The undertaker and CRT may enter into, and carry into effect, agreements for the transfer to the undertaker of:

- (a) any of CRT's Property shown on the works or land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such of CRT's Property; and
- (c) and rights and obligations (whether or not statutory) of CRT relating to any of CRT's Property or any lands, works or other property referred to in this paragraph.

### **Arbitration**

11. Any difference or dispute arising between the operator and the undertaker under this Part of this Schedule shall, unless otherwise agreed in writing between the operator and the undertaker, be referred to and settled by arbitration under article 35 (arbitration).

## **PART 4**

### **Protection of Environment Agency**

1.—(1) The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and the Agency.

(2) In this Part of this Schedule —

“1973 Transfer Rights” means a right of way over parts of plots 1, 30 and 31 (as shown on the land plans) pursuant to a transfer dated 19 January 1973 as detailed in registered title number MX410055;

“Agency” means the Environment Agency;

2. The undertaker must not in the exercise of the powers conferred by this Order unreasonably prevent the Agency's access to and use of the dosing station adjacent to Salmon's Brook in the vicinity of the southern entrance to the Edmonton EcoPark except where construction and operation of the authorised development reasonably requires interference with or obstruction of the free, uninterrupted and safe use of the 1973 Transfer Rights in which case a suitable alternative access shall be agreed with the Agency and provided prior to and for the duration of any such interference.

3. Any difference or dispute arising between the undertaker and the Agency under this Part of this Schedule shall, unless otherwise agreed in writing between the Agency and the undertaker, be referred to and settled by arbitration under article 35 (arbitration).



## 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;
- (c) 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;
- (d) “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 Plc 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 6(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 6(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), 8 (retained apparatus: protection gas undertakers), 9 (retained apparatus: protection: electricity undertakers), 10 (expenses) and 11 (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 17 (protective work to buildings), must exercise those powers so as not to materially 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.

### **Removal of apparatus**

**6.—**(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**

**7.—**(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 7(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 15 (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**

**8.—**(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 8(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 8(1) and 8(2) apply until the statutory undertaker has given written approval of the plan so submitted. Subject to compliance with the approval process in paragraph 16 (approval process), if, 56 days after the details set out in paragraph 8(2) have been submitted to the statutory undertaker, the statutory undertaker has not notified the undertaker of its disapproval or grounds of disapproval, the statutory undertaker will be deemed to have approved the details.

(4) Any approval of the statutory undertaker required under paragraph 8(2)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in paragraph 8(5) or 8(7); and,
- (b) must not be unreasonably withheld or delayed.

(5) In relation to any work to which paragraphs 8(1) and 8(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 8(1) or as relevant paragraph 8(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 8(5) or 8(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 to provide confirmation of whether it is satisfied or not within 14 days of the completion of the relevant protective works) 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 8(5) or 8(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 and 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(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 8(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 8(5), 8(6) or 8(7) insofar as is reasonably practicable in the circumstances; and
- (b) comply with paragraph 8(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 11 (indemnity).

### **Retained apparatus: Protection: Electricity 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 seek from the statutory undertaker details of the underground extent of their electricity tower foundations. The statutory undertaker must provide those details within 14 days of the request

(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;
- (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 9(1) must, in addition to the matters set out in paragraph 9(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 9(2) or 9(3) apply until the statutory undertaker has given written approval of the plan so submitted. Subject to compliance with paragraph 16 (approval process), if, 56 days after the details set out in paragraph 9(2) have been submitted to the statutory undertaker, the statutory undertaker has not notified the undertaker of its disapproval or grounds of disapproval, the statutory undertaker will be deemed to have approved the details.

(5) Any approval of the statutory undertaker required under paragraphs 9(2) or 9(3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in paragraphs 9(6) or 9(8); and,

(b) must not be unreasonably withheld or delayed.

(6) In relation to any work to which paragraphs 9(2) or 9(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 9(1) or as relevant paragraph 9(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 9(6) or 9(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 to provide confirmation of whether it is satisfied or not within 14 days of the completion of the relevant protective works) 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 9(6) or 9(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 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(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 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(6), 9(7) and 9(8) insofar as is reasonably practicable in the circumstances; and
- (b) comply with paragraph 9(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**

**10.**—(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; and

- (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 10(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 10 (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**

**11.**—(1) Subject to paragraphs 11(2) and 11(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 (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 11(3) applies), excuse the undertaker from liability under the provisions of paragraph 11(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 11(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 8 (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 11(3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph 11.

(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**

**12.** 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**

**13.**—(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 6(2) or the statutory undertaker makes requirements for the protection or alteration of apparatus under paragraphs 8 or 9 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**

**14.** 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**

**15.** 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**

**16.** When submitting the plans to the statutory undertaker for approval under paragraph 7 or paragraph 8 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, contact details for responses and citing the relevant periods for response pursuant to this Part of this Schedule, unless otherwise agreed with statutory undertaker

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order grants development consent for and authorises North London Waste Authority (referred to in this Order as the undertaker) to construct, operate and maintain an electricity and heat generating station, together with associated development, in Edmonton, North London. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose. A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 34 of this Order (certification of documents and plans) may be inspected free of charge during working hours at the offices of North London Waste Authority, Unit 1B, Berol House, 25 Ashley Road, Tottenham Hale, London N17 9LJ.