



**Draft Development Consent Order**

**Thurrock Flexible Generation Plant**

**Draft DCO version 7 submitted for Deadline 6 (July 2021)**



# The Thurrock Flexible Generation Plant Development Consent Order 202[ ]

---

## DRAFT DEVELOPMENT CONSENT ORDER

---

Planning Act 2008	
The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009	
Regulation Number	Regulation 5(2)(b)
Planning Inspectorate Project Reference	EN010092
Application Document Reference	A3.1
Author	Burges Salmon LLP

Version	Date	Description
7	July 2021	Version 7 for deadline 6

---

**202[ ] No.**

**INFRASTRUCTURE PLANNING**

**THE THURROCK FLEXIBLE GENERATION PLANT DEVELOPMENT  
CONSENT ORDER 202[ ]**

*Made* - - - - - \*\*\*

*Coming into force* - - - - - \*\*\*

**CONTENTS**

**PART 1  
PRELIMINARY**

1.	Citation and commencement	6
2.	Interpretation	6

**PART 2  
PRINCIPAL POWERS**

3.	Development consent etc. granted by the Order	9
4.	Limits of deviation	9
5.	Maintenance of authorised development	10
6.	Operation of generating station	10
7.	Benefit of Order	10
8.	Consent to transfer benefit of Order	10
9.	Defence to proceedings in respect of statutory nuisance	11
10.	Disapplication of legislation etc.	12

**PART 3  
STREETS**

11.	Street works	13
12.	Application of the 1991 Act	13
13.	Temporary restriction of use of streets	14
14.	Access to works	15
15.	Traffic regulation	15

**PART 4  
SUPPLEMENTAL POWERS**

16.	Discharge of water	16
17.	Authority to survey and investigate the land	17

18.	Removal of human remains	17
-----	--------------------------	----

## PART 5 POWERS OF ACQUISITION

19.	Compulsory acquisition of land	19
20.	Statutory authority to override easements and other rights	19
21.	Time limit for exercise of authority to acquire land compulsorily	20
22.	Compulsory acquisition of rights	20
23.	Private rights	21
24.	Application of the 1981 Act	22
25.	Acquisition of subsoil only	22
26.	Modification of Part 1 of the 1965 Act	23
27.	Rights under or over streets	23
28.	Temporary use of land for carrying out the authorised development	23
29.	Temporary use of land for maintaining the authorised development	25
30.	Statutory undertakers	25
31.	Apparatus and rights of statutory undertakers in stopped up streets	26
32.	Recovery of costs of new connections	26
33.	Special category land	26
34.	Funding	27

## PART 6 OPERATIONS

35.	Deemed Marine Licence	27
36.	Felling or lopping of trees and removal of hedgerows	27
37.	Works in the river Thames: conditions	28
38.	Power to dredge	29

## PART 7 MISCELLANEOUS AND GENERAL

39.	Protective provisions	29
40.	Operational land for the purposes of the 1990 Act	29
41.	Certification of plans, etc.	30
42.	Service of notices	30
43.	No double recovery	31
44.	Application of landlord and tenant law	31
45.	Arbitration	32

---

## SCHEDULES

SCHEDULE 1 — AUTHORISED DEVELOPMENT	33
SCHEDULE 2 — REQUIREMENTS	36
PART 1 — REQUIREMENTS	36
PART 2 — APPROVAL OF MATTERS SPECIFIED IN REQUIREMENTS	46

SCHEDULE 3 — TRAFFIC REGULATION SUSPENSION OF EXISTING TRAFFIC REGULATION ORDERS	47
SCHEDULE 4 — HIGHWAYS SUBJECT TO TEMPORARY CONTROL OR RESTRICTION	47
SCHEDULE 5 — LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN AND IN WHICH ONLY RIGHTS ETC MAY BE ACQUIRED	48
SCHEDULE 6 — LAND OF WHICH ONLY TEMPORARY POSSESSION MAY BE TAKEN	54
SCHEDULE 7 — MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION FOR NEW RIGHTS AND IMPOSITION OF RESTRICTIVE COVENANTS	55
SCHEDULE 8 — DEEMED MARINE LICENCE	58
PART 1 — GENERAL	58
PART 2 — CONDITIONS APPLYING TO CONSTRUCTION ACTIVITIES	61
PART 3 — PROCEDURE FOR THE DISCHARGE OF CONDITIONS	65
SCHEDULE 9 — PROTECTIVE PROVISIONS	66
PART 1 — FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWAGE UNDERTAKERS	66
PART 2 — FOR THE PROTECTION OF ANGLIAN WATER SERVICES LIMITED	70
PART 3 — FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORK	72
PART 4 — FOR THE PROTECTION OF THE ENVIRONMENT AGENCY	73
PART 5 — FOR THE PROTECTION OF NATIONAL GRID	77
PART 6 — FOR THE PROTECTION OF THE PORT OF LONDON AUTHORITY	87
PART 7 — FOR THE PROTECTION OF NETWORK RAIL	96
PART 8 — FOR THE PROTECTION OF THE PORT OF TILBURY LONDON LIMITED	103
PART 9 — FOR THE PROTECTION OF HIGHWAYS ENGLAND COMPANY LIMITED	105
PART 10 — FOR THE PROTECTION OF RWE GENERATION UK LIMITED	108
PART 11 — FOR THE PROTECTION OF THURROCK COUNCIL	112

An application has been made to the Secretary of State under section 37 of the Planning Act 2008(a) (“the 2008 Act”) in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(b) for an Order granting development consent.

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

---

(a) 2008. c. 29. Section 37 was amended by section 137(5) of, and paragraph 5 of Schedule 13(1) to, the Localism Act 2011 (c. 20). Section 83(1) was amended by paragraph 35 of that Schedule. Section 114 was amended by paragraph 55 of that Schedule. Section 120 was amended by section 140 of, and paragraph 60 of Schedule 13(1) to, that Act.

(b) S.I. 2009/2264, as amended by the Localism Act 2011 (Infrastructure Planning) (Consequential Amendments) Regulations 2012 (S.I. 2012/635) and the Infrastructure Planning (Prescribed Consultees and Interested Parties etc.) (Amendment) Regulations 2013 (S.I. 2013/522). There are other amendments to the Regulations which are not relevant to this Order.

(c) S.I. 2010/103, amended by S.I. 2012/635.

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(1) of the 2008 Act, has submitted a report and recommendation to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn, and the recommendations and report of the single appointed person, and taken into account the environmental information in accordance with regulation 3 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(a) has decided to make an Order granting development consent for the development described in the application [with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application].

The Secretary of State is satisfied that replacement land has been or will be given in exchange for the special category land (as defined in article 2 of this Order), and the replacement land (as defined in that article) has been or will be vested in the prospective seller and subject to the same rights, trusts and incidents as attach to the special category land, and that, accordingly, section 131(4) of the 2008 Act applies.

The Secretary of State is satisfied that the special category land (as defined in article 2 of this Order), when burdened with any new rights authorised to be compulsorily acquired under this Order, will be no less advantageous than it was before to the 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.

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 117, 120, 122, 123, 131, 132 and schedule 5 of the 2008 Act, makes the following Order:

## PART 1 PRELIMINARY

### **Citation and commencement**

**1.** This Order may be cited as the Thurrock Flexible Generation Plant Development Consent Order 202[ ] and comes into force on [ ] 202[ ].

### **Interpretation**

**2.—(1)** In this Order except where provided otherwise—

“1961 Act” means the Land Compensation Act 1961**(b)**;

“1965 Act” means the Compulsory Purchase Act 1965**(c)**;

“1980 Act” means the Highways Act 1980**(d)**;

“1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981**(e)**

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

---

(a) S.I. 2017/572.  
(b) 1961 c.33  
(c) 1956 c.65  
(d) 1980 c.66  
(e) 1981 c.66.  
(f) 1990 c. 8.

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

“2008 Act” means the Planning Act 2008;

“2009 Act” means the Marine and Coastal Access Act 2009 (b)

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

“the access, rights of way and traffic management plans” means the plans certified as such by the Secretary of State for the purposes of this Order;

“apparatus” has the same meaning as in section 105(1) of the New Roads and Street Works Act 1991(c);

“authorised development” means the development and associated development described in Schedule 1 (authorised development);

“book of reference” means the document certified as such by the Secretary of State as the book of reference for the purposes of the Order;

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

“business day” means a day other than a Saturday or Sunday, Good Friday, Christmas Day or a bank holiday in England and Wales under section 1 of the Banking and Financial Dealings Act 1971;

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

“commence” means carry out a material operation, as defined in section 155 of the 2008 Act (which explains when development begins), comprised in or for the purposes of the authorised development other than the permitted preliminary works and “commencement”, “commenced” and cognate expressions are to be construed accordingly;

“concept drainage plan” means the plans certified as such by the Secretary of State for the purposes of this Order;

“design principles statement” means the document certified by the Secretary of State as the design principles statement for the purposes of this Order;

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means but while in electronic form;

“environmental statement” means the documents certified by the Secretary of State as the environmental statement for the purposes of this Order;

“highway authority” means Thurrock Borough Council;

“Highways England” means Highways England Company Limited (company number 09346363), whose registered office is at Bridge House, Walnut Tree Close, Guildford, GU1 4ZZ, appointed as highway authority for the highways specified in article 2 of the Appointment of a Strategic Highways Company Order 2015(a) or any successor in function;

“the illustrative cross section plans” means the document certified as the illustrative cross section plans by the Secretary of State for the purposes of the Order;

“the illustrative landscape plan” means the document certified as the illustrative landscape plan by the Secretary of State for the purposes of the Order;

“the land plans and special category land plans” means the document certified as the land plans and special category land plans by the Secretary of State for the purposes of this Order;

“maintain” includes inspect, repair, adjust or alter the authorised development, and remove, reconstruct or replace any part, provided that such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement; and any derivative of “maintain” is to be construed accordingly;

“MMO” means the Marine Management Organisation;

---

(a) 1991 c.22.  
(b) 2009 c.23.  
(c) 1991 c. 22.

“NGET” means National Grid Electricity Transmission Plc (company registration number 02366977), whose registered office is at 1 to 3 Strand, London, WE2N 5EH;

“NGG” means National Grid Gas Plc (company registration number 02006000), whose registered offices at 1 to 3 Strand, London, WCN 5EH;

“Order land” means the land which is required for the authorised development shown on the land plans and described in the book of reference;

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

“outline code of construction practice” means the document certified as the outline code of construction practice by the Secretary of State for the purposes of the Order;

“outline construction traffic management plan” means the document certified as the outline construction traffic management plan by the Secretary of State for the purposes of the Order;

“outline construction worker travel plan” means the document certified as the outline construction worker travel plan by the Secretary of State for the purposes of the Order;

“outline ecological management plan” means the document certified as the outline ecological management plan by the Secretary of State for the purposes of the Order;

“outline local employment and skills strategy” means the document certified as the outline local employment and skills strategy by the Secretary of State for the purposes of the Order;

“outline marine written scheme of archaeological investigation” means the document certified as the outline marine written scheme of archaeological investigation applying below Mean High Water Springs by the Secretary of State for the purposes of the Order;

“outline written scheme of archaeological investigation” means the document certified as the outline written scheme of archaeological investigation applying above Mean High Water Springs by the Secretary of State for the purposes of the Order;

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

“preliminary navigational risk assessment” means the document certified as the preliminary navigational risk assessment for the operation of the Thurrock Flexible Power Generation Plant Causeway, Revision R03-00 prepared by Nash Maritime limited and dated 11 December 2020 by the Secretary of State for the purposes of the Order;

“permitted preliminary works” means all or any of—

- (a) environmental surveys, geotechnical surveys, intrusive archaeological surveys and other investigations;
- (b) above ground site preparation for temporary facilities for the use of contractors;
- (c) the provision of temporary means of enclosure and site security for construction;
- (d) the temporary display of site notices or advertisements;
- (e) protected species relocation in accordance with a relevant licence;
- (f) infilling of ditches and creation of new ditches; and
- (g) site clearance (including vegetation removal, vegetation management to create or enhance habitat);

“PLA” means the Port of London Authority;

“plot” means the plots listed in the book of reference and shown on the land plans;

“Port of Tilbury London Limited” means the statutory harbour authority for and operator of the Port of Tilbury, London;

“relevant planning authority” means Thurrock Borough Council;

“replacement land” means the land forming plot 01/07 listed in the book of reference and shown on the special category land plan of the lands plans as replacement common land;

---

(a) 1981 c.67.



“requirement” means those matters set out in Schedule 2 (requirements) and a reference to a numbered requirement is a reference to the requirement set out in the paragraph of that Schedule with the same number;

“Secretary of State” means the Secretary of State for Business, Energy and Industrial Strategy;

“special category land” means the land registered as common land under the Commons Act 2006 and shown on the special category land plan of the lands plans;

“statutory undertaker” has the same meaning as set out in section 127(8) of the 2008 Act;

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

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

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

“the undertaker” means Thurrock Power Limited, company number 10917470, whose registered office is at 1st Floor, Kensington Church Street, London, W8 7LP;

“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;

“work” means a work set out in Schedule 1; and a reference to a work designated by a number, or by a combination of letters and numbers, is a reference to the work so designated in that Schedule;

“working day” means any day other than a Saturday, Sunday, or English bank or public holiday; and

“works plans” means the plans certified by the Secretary of State as the works plans for the purposes of this Order.

(2) Reference 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 airspace above its surface, and to any trusts or incidents (including restrictive covenants) to which the land is subject, and references in this Order to the creation or acquisition of new rights include the imposition of restrictive covenants which interfere with the interests or rights of another and are for the benefit of the land which is acquired under this Order or is otherwise comprised in the Order.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work are taken to be measured along that work.

(4) In this Order “includes” must be construed without limitation.

(5) References in this Order to any statutory body include that body’s successor bodies as from time to time have jurisdiction in relation to the authorised development.

(6) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1.

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

## PART 2

### PRINCIPAL POWERS

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

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

#### **Limits of deviation**

**4.—**(1) The undertaker must construct the authorised development within the Order limits shown on the works plans.

(2) In constructing or maintaining the authorised development, the undertaker may deviate laterally from the indicative centrelines or situations of the authorised development shown on the works plans to the extent of the limits of deviation for each work shown on those plans; and

- (a) vertically from the levels of the authorised development shown on the illustrative cross section plans—
  - (i) upwards only within the parameters for the relevant work set out in table 1 in requirement 4; or
  - (ii) downwards to any distance.

### **Maintenance of authorised development**

5.—(1) Subject to sub-paragraphs (2) and (3), the undertaker may at any time maintain the authorised development, except to the extent that this Order, or an agreement made under this Order, provides otherwise.

- (2) This article only authorises the carrying out of maintenance works within the Order limits.
- (3) Nothing in this Order authorises the carrying out of maintenance dredging by the undertaker.

### **Operation of generating station**

6.—(1) The undertaker is authorised to use and operate the authorised development for which development consent is granted by this Order.

(2) Paragraph (1) does not relieve the undertaker of any requirement to obtain any permit or licence under any legislation that may be required from time to time to authorise the operation of the authorised development.

### **Benefit of Order**

7.—(1) Subject to article 8 (consent to transfer benefit of order), the provisions of this Order conferring powers on the undertaker have effect solely for the benefit of the undertaker.

- (2) Paragraph (1) does not apply to —
  - (a) Work number 3 in relation to which this Order has effect for the benefit of the undertaker and NGET; and
  - (b) Work numbers 4 and 5 in relation to which this Order has effect for the benefit of the undertaker and NGG.

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

8.—(1) The undertaker may—

- (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 (1) references in this Order to the undertaker, except in paragraph (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 (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 required for a transfer or grant under this article, except where the transferee or lessee is—

- (i) the holder of a licence under section 6 of the Electricity Act 1989(a);
- (ii) in relation only to a transfer or lease of Work numbers 4 or 5, the holder of a licence under section 7 of the Gas Act 1986(b);
- (iii) in relation to a transfer or lease of any works within a highway, a highway authority responsible for the highways within the Order limits; and
- (iv) in relation to a transfer or lease of any works within a street situated within the Port of Tilbury or work no. 15, Port of Tilbury London Limited or any successor as the statutory harbour authority for the Port of Tilbury.

(5) Where the consent of the Secretary of State is not required under paragraph (4) the undertaker must notify the Secretary of State in writing before transferring or granting a benefit referred to in paragraph (1).

(6) The notification referred to in paragraph (5) must state—

- (a) the name and contact details of the person to whom the benefit of the powers will be transferred or granted;
- (b) subject to paragraph (7), the date on which the transfer will take effect;
- (c) the powers to be transferred or granted;
- (d) pursuant to paragraph (3), the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted; and
- (e) where relevant, a plan showing the works or areas to which the transfer or grant relates.

(7) The date specified under paragraph (6)(b) must not be earlier than the expiry of five working days from the date of the receipt of the notice.

(8) The notice given under paragraph (6) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.

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

**9.**—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisances) of the Environmental Protection Act 1990(c) in relation to a nuisance falling within paragraph (g) of section 79(1) (statutory nuisances and inspections therefor) of that Act no order is to be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

- (a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and 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(d);
- (b) is a consequence of the construction or maintenance of the authorised development and cannot reasonably be avoided; or
- (c) is a consequence of the use of the authorised development and cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 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.

---

(a) 1989 c.29.

(b) 1986 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).

(c) 1990 c. 43. Section 82(1) was amended by paragraph 6 of Schedule 17 to the Environment Act 1995 (c. 25). There are amendments to this Act which are not relevant to this Order.

(d) 1974 c. 40. Section 61 was amended by Schedule 7 to the Building Act 1984 (c .55), paragraph 15 of Schedule 3 to the Environmental Protection Act 1990 and Schedule 24 to the Environment Act 1995.

## Disapplication of legislation etc.

**10.**—(1) The following enactments do not apply in relation to the construction of any work or the carrying out of any operation for the purpose of or in connection with, the construction of the authorised development or any maintenance of any part of the authorised development —

- (a) the West Tilbury Commons, West Tilbury, Essex, Bye-Laws, made by the Conservators of West Tilbury Commons, under the powers of the Commons Regulation (West Tilbury) Provisional Order Confirmation Act 1893(a);
- (b) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (byelaw making powers of the authority) to the Water Resources Act 1991(b);
- (c) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991(c);
- (d) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(d) in respect of a flood risk activity (including works affecting sea defences) only;
- (e) sections 23 and 30 of the Land Drainage Act 1991(e); and
- (f) the provisions of the Neighbourhood Planning Act 2017(f) in so far as they relate to the temporary possession of land under articles 28 and 29 of this Order.

(2) Except as provided for in paragraphs 9(3), 9(4) and 17(2) of Part 6 of Schedule 9, sections 66 to 75 of the Port of London Act 1968 do not apply in relation to the construction of any work or the carrying out of any operation for the purpose of or in connection with, the construction of any part of the authorised development.

(3) Despite the provisions of section 208 (liability) of the 2008 Act, for the purposes of regulation 6 of the Community Infrastructure Levy Regulations 2010(g) any building comprising part of the authorised development is deemed to be:

- (a) a building into which people do not normally go; or
- (b) a building into which people go only intermittently for the purposes inspecting or maintaining fixed plant for machinery.

(4) In so far as any of:

- (a) the works to be carried out as part of Work nos. 12(a), 12(e) and 15; or
- (b) any ancillary work listed in Schedule 1; or
- (c) the use of Work no. 12 or the passage of construction, maintenance or decommissioning vehicles utilised for the authorised development; or
- (d) any activities carried out pursuant to the requirements set out in Schedule 2;

would result in conflict or non-compliance with the requirements of Schedule 2 to The Port of Tilbury (Expansion) Order 2019(h), then the requirement to comply with The Port of Tilbury (Expansion) Order 2019 is disapplied by this Order.

---

(a) 1893

(b) 1991 c. 57. Paragraph 5 was amended by section 100(1) and (2) of the Natural Environment and Rural Communities Act 2006 (c. 16), section 84 of, and paragraph 3 of Schedule 11 to, the Marine and Coastal Access Act 2009 (c. 23), paragraphs 40 and 49 of Schedule 25 to the Flood and Water Management Act 2010 (c. 29) and S.I. 2013/755. Paragraph 6 was amended by paragraph 26 of Schedule 15 to the Environment Act 1995 (c. 25), section 224 of, and paragraphs 20 and 24 of Schedule 16, and Part 5(B) of Schedule 22, to, the Marine and Coastal Access Act 2009 and S.I. 2013/755. Paragraph 6A was inserted by section 103(3) of the Environment Act 1995.

(c) As substituted by section 31 of, and paragraphs 25 and 38 of Schedule 2 to the Water Management Act 2010 (c. 29) and section 86(1) and (3) of the Water Act 2014 (c. 21).

(d) 2016/1154

(e) 1991 c. 59

(f) 2017 c.20

(g) 2010/948

(h) 2019/359

## PART 3

### STREETS

#### Street works

**11.**—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets as are within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street or change its position; and
- (e) execute any works required for, or incidental to, any works referred to in sub-paragraphs (a) to (d).

(2) The authority given by paragraph (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) Subject to article 12 (application of the 1991 Act), the provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

#### Application of the 1991 Act

**12.**—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 (street works in England and Wales) of the 1991 Act as major highway works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3)(a) of that Act; or
- (b) they are works which, had they been executed by the local highway authority, might have been carried out in exercise of the powers conferred by section 64(b) (dual carriageways and roundabouts) of the 1980 Act or section 184(c) (vehicle crossings over footways and verges) of that Act.

(2) In Part 3 of the 1991 Act references to the highway authority concerned are, in relation to works which are major highway works by virtue of paragraph (1), to be construed as references to the undertaker.

(3) The following provisions of the 1991 Act do not apply in relation to any works executed under the powers conferred by this Order—

- (a) section 56(d) (power to give directions as to timing of street works);
- (b) section 56A(e) (power to give directions as to placing of apparatus);
- (c) section 58(f) (restriction on works following substantial road works);
- (d) section 58A(g) (restriction on works following substantial street works); and
- (e) schedule 3A(h) (restriction on works following substantial street works).

- 
- (a) Section 86(3) defines what highway works are major highway works.
  - (b) As amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c.51) and section 168(2) of, and Schedule 9 to, the New Roads and Street Works Act 1991 (c.22).
  - (c) As amended by section 4 of, and paragraph 45 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11); and section 18 of and Schedule 8 to, the New Roads and Street Works Act 1991 (c.22).
  - (d) As amended by sections 40 and 43 of the Traffic Management Act 2004 (c.18).
  - (e) Inserted by section 44 of the Traffic Management Act 2004 (c.18).
  - (f) As amended by section 51 of the Traffic Management Act 2004.
  - (g) Inserted by section 52 of the Traffic Management Act 2004.
  - (h) Inserted by section 52 of, and Schedule 4 to, the Traffic Management Act 2004.

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved, under those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 13 (temporary restriction of use of streets) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act<sup>(a)</sup> referred to in paragraph (4) are—

- (a) section 54 (advance notice of certain works), subject to paragraph (6);
- (b) section 55 (notice of starting date of works), subject to paragraph (6);
- (c) section 57 (notice of emergency works);
- (d) section 59 (general duty of street authority to co-ordinate works);
- (e) section 60 (general duty of undertakers to co-operate);
- (f) section 68 (facilities to be afforded to street authority);
- (g) section 69 (works likely to affect other apparatus in the street);
- (h) section 75 (inspection fees);
- (i) section 76 (liability for cost of temporary traffic regulation); and
- (j) section 77 (liability for cost of use of alternative route),

and all such other provisions as apply for the purposes of the provisions mentioned above.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

### **Temporary restriction of use of streets**

**13.**—(1) The undertaker, during and for the purposes of carrying out the authorised development, may alter, divert or restrict the use of any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (4), prevent all persons from passing along the street.

(2) Without limitation on the scope of paragraph (1), the undertaker may temporarily restrict or control the use of the streets set out in column 2 of Schedule 4 to the extent set out in column 3 of that Schedule.

(3) The undertaker may use any street temporarily stopped up or restricted under the powers conferred by this article, and which is within the Order limits, as a temporary working site.

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

(5) The undertaker must not temporarily alter, divert or restrict the use of any street for which it is not the street authority without the consent of the street authority, which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld or delayed.

(6) 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.

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

---

(a) All as amended by the Traffic Management Act 2004.

## **Access to works**

**14.** The undertaker may, for the purposes of the authorised development, form and lay out means of access, or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

## **Traffic regulation**

**15.—**(1) From such a date as the undertaker may determine, the application of the traffic regulation order listed in column 3 of Schedule 3 will be suspended until the completion of the authorised development.

(2) The undertaker must notify the chief officer of police and the traffic authority in whose area the road is situated of the commencement of suspension under paragraph 1 not less than 14 days before the date to be determined under paragraph (1), and 14 days prior to completion of the authorised development of the date of completion for the purposes of paragraph (1).

(3) Without limitation on the scope of paragraph (1), and subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which consent must not be unreasonably withheld, the undertaker may, for the purposes of the authorised development revoke, amend or suspend in whole or in part any order not listed in Schedule 3 made, or having effect as if made, under the 1984 Act, either at all times or at times, on days or during such periods as may be specified by the undertaker.

(4) The power conferred by paragraph (3) may be exercised at any time prior to the expiry of 12 months from the commencement of operation of the authorised development but subject to paragraph (8) any prohibition, restriction or other provision made under this article may have effect both before and after the expiry of that period.

(5) The undertaker must consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (6).

(6) The undertaker must not exercise the powers conferred by this article unless it has—

(a) given not less than—

(i) 12 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or

(ii) 4 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,

to the chief officer of police and to the traffic authority in whose area the road is situated; and

(b) advertised its intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(i), or within 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a)(ii).

(7) Any prohibition, restriction or other provision made by the undertaker under this article-

(a) has effect as if duly made by, as the case may be—

(i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or

(ii) the local authority in whose area the road is situated, as an order under section 32 (power of local authorities to provide parking places) of the 1984 Act,

and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and

(b) is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004.

(8) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers

conferred by this article within a period of 24 months from the opening of the authorised development.

(9) Before exercising the powers conferred by this article the undertaker must consult such persons as it considers necessary and appropriate and must take into consideration any representations made to it by any such person.

(10) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.

(11) The powers conferred on the undertaker by this article with respect to any road have effect subject to any agreement entered into by the undertaker with any person with an interest in (or who undertakes activities in relation to) premises served by the road.

(12) Save for any application made to Highways England, if the traffic authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (3) the traffic authority is deemed to have granted consent.

## PART 4

### SUPPLEMENTAL POWERS

#### Discharge of water

**16.**—(1) Subject to paragraphs (3) and (4), the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out, maintenance or use of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(a).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs or the person or body otherwise having authority to give such consent; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or 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.

(6) This article does not authorise a groundwater activity or a water discharge activity for which an environmental permit would be required under regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016(b).

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, a harbour authority within the meaning of section 57(1) (interpretation) of the Harbours Act 1964(c), an internal drainage board, a joint planning board, a local authority, a sewerage undertaker or an urban development corporation; and

---

(a) 1991 c. 56.

(b) S.I. 2016/1154. “Groundwater activity” is defined in paragraph 3 of Schedule 22. “Water discharge activity” is defined in paragraph 3 of Schedule 21.

(c) 1964 c. 40.



- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991<sup>(a)</sup> have the same meaning as in that Act.

(8) If a person who receives an application for consent under paragraph (3) or approval under paragraph (4)(a) fails to notify the undertaker of a decision within 28 days of receiving an application, that person is deemed to have granted consent or given approval, as the case may be.

### **Authority to survey and investigate the land**

**17.**—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least fourteen days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required before or after 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 are to be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority.

(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, under Part 1 (determination of question of disputed compensation) of the 1961 Act.

(6) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

### **Removal of human remains**

**18.**—(1) Before the undertaker carries out any development or works which will or may disturb any human remains within the Order limits it must remove those human remains from within the Order limits, or cause them to be removed, in accordance with the following provisions of this article.

(2) Before any such remains are removed from within the Order limits the undertaker must give notice of the intended removal, describing the location of the identified remains and stating the general effect of the following provisions of this article, by—

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised project; and
- (b) displaying a notice in a conspicuous place on or near to the boundary of the Order limits.

---

(a) 1991 c. 57.

(3) As soon as reasonably practicable after the first publication of a notice under paragraph (2) the undertaker must send a copy of the notice to the relevant planning authority.

(4) At any time within 56 days after the first publication of a notice under paragraph (2) any person who is a personal representative or relative of any deceased person whose remains are interred in the specific land may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.

(5) Where a person has given notice under paragraph (4), and the remains in question can be identified, that person may cause such remains to be;

- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
- (b) removed to, and cremated in, any crematorium,

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (10).

(6) If the undertaker is not satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question is to be determined on the application of either party in summary manner by the county court, and the court may make an order specifying who is to remove the remains and as to the payment of the costs of the application.

(7) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(8) If—

- (a) within the period of 56 days referred to in paragraph (4) no notice under that paragraph has been given to the undertaker in respect of any remains in the Order limits; or
- (b) such notice is given and no application is made under paragraph (6) within 56 days after the giving of the notice but the person who has received the notice fails to remove the remains within a further period of 56 days; or
- (c) within 56 days after any order is made by the county court under paragraph (6) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (9), the undertaker must remove the remains and cause them to be re-interred in such burial ground, or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose and, so far as possible, remains from individual graves must be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(9) If the undertaker is satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(10) On the re-interment or cremation of any remains under this article—

- (a) a certificate of re-interment or cremation must be sent by the undertaker to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (8) must be sent by the undertaker to the relevant planning authority mentioned in paragraph (3).

(11) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(12) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(13) Section 25 of the Burial Act 1857 (a) (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) is not to apply to a removal carried out in accordance with this article.

## PART 5

### POWERS OF ACQUISITION

#### **Compulsory acquisition of land**

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

(2) This article is subject to paragraph (3), article 22 (compulsory acquisition of rights), article 25 (acquisition of subsoil etc. only), article 28 (temporary use of land for carrying out the authorised development) and article 33 (special category land).

(3) The undertaker may only exercise the power conferred by paragraph (1) on 1 of the 2 options for access forming part of Work No. 12 being:

- (a) the area within Work no 12(c) as shown on the works plans and comprising plots 01/19, 01/21, 01/22, 01/30, 01/31 and 01/32 and part of plot 01/20, as shown on the lands plans; or
- (b) the area within Work no 12(d) as shown on the works plans and comprising plots 01/27, 01/28, 01/29, 04/05, and 04/06 and part of plot 04/03 as shown on the lands plans; and

where the undertaker serves notice of entry under section 11 of the 1965 Act or makes a declaration under section 4 of the 1981 Act over any of the land specified in either (i) or (ii), it must at the same time serve on the owners of the land of the other option, a notice specifying that compulsory acquisition powers cannot be exercised over that land under this Order.

#### **Statutory authority to override easements and other rights**

**20.**—(1) The carrying out or use of the authorised development and the doing of anything else authorised by this Order is authorised for the purpose specified in section 158(2) of the 2008 Act (nuisance: statutory authority), notwithstanding that it involves—

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

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

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the use of land arising by virtue of a contract.

(4) Where an interest, right or restriction is overridden by paragraph (1), compensation—

- (a) is payable under section 7 (measure of compensation in case of severance) or section 10 (further provision as to compensation for injurious affection) of the 1965 Act; and

---

(a) 1857 c.81. Section 25 Substituted by Church of England (Miscellaneous Provisions) Measure 2014 No. 1 s.2. There are other amendments to this Act which are not relevant to this Order.

- (b) is to be assessed in the same manner 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.

(5) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1) of this article.

### **Time limit for exercise of authority to acquire land compulsorily**

**21.**—(1) After the end of the period 5 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 1981 Act (execution of declaration) as applied by article 24 (application of the Compulsory Purchase (Vesting Declaration) Act 1981).

(2) The authority conferred by article 28 (temporary use of the land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), save that nothing in this paragraph is to prevent the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

### **Compulsory acquisition of rights**

**22.**—(1) Subject to paragraphs (2) and (3), the undertaker may acquire compulsorily such rights or impose such restrictive covenants over the Order land as may be required for any purpose for which that land may be acquired under article 19 (compulsory acquisition of land) by creating them as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column 1 of Schedule 5 (land of which temporary possession may be taken and in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements or new rights in the land and the imposition of such restrictive covenants as are specified in column 2 of that Schedule.

(3) The undertaker may only exercise the power conferred by paragraph (1) on 1 of the 2 options for access forming part of Work No. 12 being:

- (a) the area within Work no 12(c) as shown on the works plans and comprising plots 01/19, 01/21, 01/22, 01/30, 01/31 and 01/32 and part of plot 01/20, as shown on the lands plans; or
- (b) the area within Work no 12(d) as shown on the works plans and comprising plots 01/27, 01/28, 01/29, 04/05, and 04/06 and part of plot 04/03 as shown on the lands plans; and

where the undertaker serves notice of entry under section 11 of the 1965 Act or makes a declaration under section 4 of the 1981 Act over any of the land specified in either (i) or (ii), it must at the same time serve on the owners of the land of the other option, a notice specifying that compulsory acquisition powers cannot be exercised over that land under this Order.

(4) Subject to section 8 of the 1965 Act (other provision as to divided land), where the undertaker acquires a right over land under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(5) Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation a new right.

## Private rights

**23.**—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry),

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights under this Order are suspended and unenforceable or, where so notified by the undertaker, extinguished in so far as in either case their continuance would be inconsistent with the exercise of the right—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry) in pursuance of the right,

whichever is earliest.

(3) Subject to the provisions of this article, all private rights over land owned by the undertaker within the Order land are extinguished on commencement of any activity authorised by this Order which interferes with or breaches such rights.

(4) Subject to the provisions of this article, all private rights over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land and so far as their continuance would be inconsistent with the exercise of the temporary possession of that land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this Order is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right or apparatus to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertaker etc.) or article 30 (statutory undertakers) applies.

(7) Paragraphs (1) to (4) have effect subject to—

- (a) any notice given by the undertaker before—
  - (i) the completion of the acquisition of the land or the acquisition of rights over land;
  - (ii) the undertaker's appropriation of it;
  - (iii) the undertaker's entry onto it; or
  - (iv) the undertaker's taking temporary possession of it;that any or all of those paragraphs do not apply to any right specified in the notice; and
- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(8) If any such agreement as is referred to in paragraph (7)(b)—

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) This article is subject to article 22(4).

### **Application of the 1981 Act**

- 24.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.
- (2) The 1981 Act, as applied, has effect with the following modifications.
- (3) In section 1 (application of Act) for subsection (2) substitute—
- “(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”
- (4) Omit section 5 (earliest date for execution of declaration).
- (5) Omit section 5A (time limit for general vesting declaration).
- (6) In section 5B(1) (extension of time limit during challenge)—
- (a) For “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)”; and
- (b) For “the three year period mentioned in section 5A” substitute “the five year period mentioned in article 21 of the Thurrock Power Flexible Generation Plant Development Consent Order 202[ ]”.
- (7) In section 6 (notices after execution of declaration) for subsection (1)(b) substitute—
- “(1b) on every other person who has given information to the acquiring authority with respect to any of that land further to the invitation published and served under section 134 of the Planning Act 2008,”.
- (8) In section 7 (constructive notice to treat) in subsection (1)(a) omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.
- (9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2).
- (10) References to the 1965 Act in the 1981 Act are to be constructed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act and as modified by article 26 (modification of Part 1 of the 1965 Act) to the compulsory acquisition of the land under this Order.

### **Acquisition of subsoil only**

- 25.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 19 (compulsory acquisition of land) and paragraph (1) of article 22 (compulsory acquisition of rights) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.
- (2) Where the undertaker acquires any part of, or rights in the subsoil of land under paragraph (1), the undertaker is not to be required to acquire an interest in any other part of the land.
- (3) Paragraph (2) does not prevent Schedule 2A to the 1965 Act (as modified by article 22(4) or paragraph 10 of Schedule 7 as the case may be) from applying where the undertaker acquires any part of, or rights in a cellar, vault, arch or other construction forming part of a house, building or manufactory.
- (4) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil only—
- (a) Schedule 2A (counter notice requiring purchase of land not in notice to treat) to the 1965 Act (as modified by article 26 (modification of Part 1 of the 1965 Act));
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

### **Modification of Part 1 of the 1965 Act**

**26.**—(1) The 1965 Act is to have effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or the restriction imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restriction is to be enforceable.

(2) Without limitation on the scope of sub-paragraph (1), Part 1 of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(3) In section 4A(1) (extension of time limit during challenge)—

- (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)”; and
- (b) for “the three year period mentioned in section 4” substitute “the five year period mentioned in article 21 of The Thurrock Flexible Generation Plant Development Consent Order 202[ ]”.

(4) in section 22(2) (interests omitted from purchase), for “section 4 of this Act” substitute “article 21 of The Thurrock Flexible Generation Plant Development Consent Order 202[ ]”.

### **Rights under or over streets**

**27.**—(1) The undertaker may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development any may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street or any easement or right in the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person’s interest in the land, and who suffers loss by the exercise of that power, is to be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

### **Temporary use of land for carrying out the authorised development**

**28.**—(1) The undertaker may, in connection with the carrying out of the authorised development—

(a) enter on and take temporary possession of—

- (i) the land specified in column (1) of Schedule 5 (land of which temporary possession may be taken and in which only new rights etc. may be acquired) for the purposes of constructing the authorised development;

- (ii) the land in column 1 of Schedule 6 (land of which only temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that Schedule; and
- (iii) any of the Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (powers of entry) and no declaration has been made under section 4 of the 1981 Act (execution of declaration), other than in connection with the acquisition of rights only:

- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any works specified in relation to that land in column (2) of Schedule 5 or column (2) of Schedule 6, or any mitigation.

(2) Not less than fourteen days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) In the case of land specified in paragraph (1)(a)(i) and (ii) after the end of the period of one year beginning with the date of completion of the works for which temporary possession of the land was taken; or
- (b) In the case of land referred to in paragraph (1)(a)(iii) after the end of the period of one year beginning with the date of completion of the works for which temporary possession of the land was taken unless the undertaker has, before the end of that period, served notice of entry under section 11 of the 1965 Act or made declaration under section 4 of the 1981 Act or has otherwise acquired the land subject to temporary possession.

(4) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or has otherwise acquired the land subject to temporary possession, the undertaker must, before giving up possession of land of which temporary possession has been taken under this article, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not to be required to replace a building removed under this article.

(5) The undertaker must pay compensation to the owners and occupiers of land which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(7) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(ii).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) Nothing in this article prevents the taking of temporary possession of any land more than once.



### **Temporary use of land for maintaining the authorised development**

**29.**—(1) Subject to paragraph (2), at any time during the maintenance period (as defined in paragraph 11) relating to any part of the authorised development, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than twenty-eight days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land 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.

(6) 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.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) 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 (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions).of the 2008 Act

(11) In this article “the maintenance period” means the period of 5 years beginning with the date on which the generating station forming Work No 1A first exports electricity to the national electricity transmission network.

### **Statutory undertakers**

**30.** Subject to article 22 and the provisions of Schedule 9 (protective provisions), the undertaker may—

- (a) acquire compulsorily the land belonging to statutory undertakers shown on the land plans and described in the book of reference;
- (b) extinguish or suspend the rights of, remove or reposition the apparatus belonging to statutory undertakers over or within the Order limits; and
- (c) acquire compulsorily the new rights over land belonging to statutory undertaker shown on the land plans and described in the book of reference.

### **Apparatus and rights of statutory undertakers in stopped up streets**

**31.** Where a street is temporarily altered or diverted or its use is temporarily stopped up under article 12 (temporary restriction of use of streets) any statutory undertaker whose apparatus is under, in, on, along or across the street is to have the same powers and right in respect of that apparatus, subject to Schedule 9 (protective provisions), as if this Order had not been made.

### **Recovery of costs of new connections**

**32.—**(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 30 (statutory undertakers) 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 (1) does not apply in the case of the removal of public sewer but where such a sewer is removed under article 30 (statutory undertakers), any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated 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 communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 31 (apparatus and rights of statutory undertakers in stopped up streets) or 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(a); and
- (b) “public utility undertaker” has the same meaning as in the 1980 Act.

### **Special category land**

**33.—**(1) The special category land is not to vest in the undertaker by virtue of any power granted by this Order until the undertaker has acquired the replacement land and the relevant planning authority has certified that the replacement land has been satisfactorily laid out and been made available by the undertaker.

(2) On the requirements of paragraph (1) being satisfied, the special category land is to vest in the undertaker and be discharged from all rights, trusts and incidents to which it was previously subject.

(3) On the requirements of paragraph (1) being satisfied the replacement land is to vest in the person(s) in whom the special category land was vested immediately before it was vested in the undertaker and is to be subject to the same rights trusts and incidents as attached to the special category land.

(4) As soon as reasonably practicable after paragraph (3) takes effect, the undertaker must apply under section 14 (statutory dispositions) of the Commons Act 2006(b) and paragraph 8 of Schedule 4 (applications pursuant to section 14: statutory dispositions) to the Commons Registration (England) Regulations 2014(c) to amend the relevant register of common land accordingly.

(5) In this article “rights, trusts and incidents” includes all such provisions contained the Commons Regulation (West Tilbury) Provisional Order Confirmation Act 1893 or having effect under that Act [and s193 of the Law of Property Act 1925.

---

(a) 2003 c.21.  
(b) 2006 C.26  
(c) S.I. 2014/3038

## **Funding**

**34.**—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any Order land unless it has first put in place either—

- (a) a guarantee and the amount of that guarantee approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2); or
- (b) an alternative form of security and the amount of that security for that purpose approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2).

(2) The provisions are—

- (a) article 19 (compulsory acquisition of land);
- (b) article 22 (compulsory acquisition of rights);
- (c) article 23 (private rights);
- (d) article 25 (acquisition of subsoil only);
- (e) article 28 (temporary use of land for carrying out the authorised development);
- (f) article 29 (temporary use of land for maintaining the authorised development); and
- (g) article 30 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2) is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised

## **PART 6 OPERATIONS**

### **Deemed Marine Licence**

**35.** The marine licence set out in Schedule 8 (deemed marine licence) is deemed to have been issued under Part 4 of the 2009 Act for the licensed activities set out in Part 1, and subject to the licence conditions set out in Part 2, of that licence.

### **Felling or lopping of trees and removal of hedgerows**

**36.**—(1) The undertaker may fell or lop any tree or shrub, or cut back its roots, within or overhanging land within the Order limits if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

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

(2) In carrying out any activity authorised by paragraph (1), the undertaker must—

- (a) do no unnecessary damage to any tree or shrub; and
- (b) pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

(4) The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (2), remove any hedgerow within the Order limits that is required to be removed.

(5) In this article “hedgerow” has the same meaning as in the Hedgerows Regulations 1997(a).

### **Works in the river Thames: conditions**

**37.**—(1) Subject to the provisions of this article, notwithstanding any rule of law, the public right of navigation will be—

- (a) temporarily suspended during the construction of Work no.10, over any part of the river Thames that is situated within the Order limits, and
  - (b) permanently extinguished before operation of Work no.10, over any part of the river Thames that is situated with the Order limits,
- with the written approval of the PLA.

(2) Not later than 28 days prior to the proposed commencement date of any suspension or extinguishment of the public right of navigation, the undertaker must apply to the PLA for approval under paragraph (1) for such suspension or extinguishment.

(3) An application for approval under paragraph (2) must provide details of the proposed suspension or extinguishment, including particulars of—

- (a) its commencement date;
  - (b) the duration of any suspension; and
  - (c) the affected area,
- (d) and must include an explanation of the need for any proposed suspension.

(4) The PLA may in relation to any application for approval made under paragraph (2) impose reasonable conditions for any purpose described in paragraph (5).

(5) Conditions imposed under paragraph (4) may include conditions as to—

- (a) the limits of any area subject to a temporary suspension or permanent extinguishment of the public right of navigation;
- (b) the duration of any temporary suspension;
- (c) the means of marking or otherwise providing warning in the river Thames of any area affected by a temporary suspension or permanent extinguishment of the public right of navigation; and
- (d) the use by the undertaker of the area subject to any temporary suspension so as not to interfere with any other part of the river Thames or affect its use.

(6) Following an approval of any suspension or extinguishment given by the PLA under this article or determined in accordance with article 45 (arbitration), the PLA must issue a notice to mariners within 21 days of the approval, giving the commencement date and other particulars of the suspension or extinguishment to which the approval relates, and that suspension or extinguishment will take effect on the date specified and as otherwise described in the notice.

(7) Subject to paragraph (8), an application for approval under this article is deemed to have been refused if it is neither given nor refused within 28 days of the PLA receiving the application under paragraph (2).

(8) An approval of the PLA under this article is not deemed to have been unreasonably withheld if approval within the time limited by paragraph (7) has not been given pending the outcome of any consultation on the approval in question that the PLA is obliged to carry out in the proper exercise of its functions.

(9) If any of the conditions set out in paragraph (10) is satisfied in relation to any land which forms part of the river and is land over which public rights of navigation have been permanently extinguished pursuant to paragraph (1)(b) the PLA may issue a notice to mariners that the land (or

any part of it) is available for navigation, and on the issue of such notice the public rights of navigation are re-established in relation to that land.

(10) The conditions referred to in paragraph (9) are the following:

- (a) construction of Work no.10 is not commenced on the land within 5 years of the permanent extinguishment of rights over the land pursuant to article 37(1)(b);
- (b) having been commenced, construction of Work no.10 on the land ceases and for this purpose construction will be deemed to have ceased if—
  - (i) work to construct or carry out Work no.10 has ceased for 20 years; or
  - (ii) the undertaker has confirmed to the PLA in writing that the land is no longer required for Work no.10 or that the undertaker does not object to the public rights of navigation over the land being re-established;
- (c) if any tidal work constructed on the land is removed pursuant to paragraph 15 of Part 6 of Schedule 9.

(11) The undertaker may not exercise the powers of paragraphs (1)(a) after completion of construction of Work no.10.

(12) The PLA must consult the Port of Tilbury London Limited on any application for an approval made to it under this article before issuing an approval.

### **Power to dredge**

**38.**—(1) The undertaker may dredge, deepen, scour, cleanse, alter and improve the river bed and foreshore of any part of the Order limits situated within the river Thames as may be required for the purpose of constructing and operating the authorised development.

(2) All materials dredged up or removed by the undertaker in exercise of the powers of paragraph (1) of this article or under Schedule 1 (authorised development) to this Order (other than wreck within the meaning of Part 9 (salvage and wreck) of the Merchant Shipping Act 1995(a)) are to be the property of the undertaker and may be used, sold, deposited or otherwise disposed of as the undertaker thinks fit.

(3) No materials dredged under the powers of this Order may be disposed of in the UK marine area except in accordance with an approval from

- (a) the MMO under a marine licence granted by the MMO; and
- (b) the PLA where such disposal is on the bed of the river Thames.

(4) The exercise of the powers of this article is subject to the requirements of Schedule 8 (deemed marine licence) and the provisions of Schedule 9 as to the PLA's approval of dredging proposals and the payment of compensation for the sale by the undertaker of any dredged material.

## **PART 7**

### **MISCELLANEOUS AND GENERAL**

#### **Protective provisions**

**39.** Schedule 9 (protective provisions) has effect.

#### **Operational land for the purposes of the 1990 Act**

**40.** Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as operational land) of the 1990 Act.

### **Certification of plans, etc.**

**41.**—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the land plans and special category land plans (consisting of a key plan and sheets 1 to 5 inclusive) (document number A2.2);
- (b) the works plans (document number A2.3);
- (c) the illustrative cross section plans (document number A2.8);
- (d) the illustrative landscape plan (document number A2.9);
- (e) the concept drainage plan (document number A2.10);
- (f) the book of reference (document number A4.3);
- (g) the environmental statement (document number A6.0);
- (h) the design principles statement (document number A8.4);
- (i) the outline code of construction practice (document number A8.6);
- (j) the outline ecological management plan (document number A8.7);
- (k) the outline construction traffic management plan (document number A8.8);
- (l) the outline construction worker travel plan (document number A8.9);
- (m) the outline written scheme of archaeological investigation, (document number A8.11);
- (n) the outline marine written scheme of archaeological investigation (document number A8.11b);
- (o) the preliminary navigational risk assessment (issue number R03-00);
- (p) the outline local employment and skills strategy (document number [ ]); and
- (q) any other plans or documents referred to in this Order as requiring certification,

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

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

### **Service of notices**

**42.**—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (5) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

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

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

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

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

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

### **No double recovery**

**43.** 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, or under two or more different provisions of this Order.

### **Application of landlord and tenant law**

**44.—**(1) This article applies to any agreement entered into by the undertaker under article 8 (consent to transfer of benefit of Order) so far as it relates to the terms on which any land is subject to a lease granted by or under that agreement.

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

(3) No enactment or rule of law to which paragraph (2) applies is to 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.

**Arbitration**

**45.** Except where otherwise expressly provided for in this Order and unless otherwise agreed in writing between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

Signed by authority of the Secretary of State for Business, Energy and Industrial Strategy

*Signed*

Title

Date

Department



# SCHEDULES

## SCHEDULE 1

Articles 2 and 3

### AUTHORISED DEVELOPMENT

In the administrative area of Thurrock Borough Council

The construction, operation and maintenance of a nationally significant infrastructure project as defined in sections 14(1)(a) and 15 of the 2008 Act, comprising—

Work no. 1 – An electricity generating station and battery storage facility with a net rated electrical output of up to 750 MW comprising—

1A – Gas fired electricity generating station with a net rated electrical output of up to 600 MW consisting of:

- (a) engine house building(s);
- (b) up to 48 gas reciprocating engines;
- (c) up to 48 exhaust stacks;
- (d) up to 48 gas engine exhaust energy recovery systems;
- (e) cooling system;
- (f) air pollutant control system;
- (g) lubricating oil and air pollutant control system reagent storage;
- (h) a gas pre-heat, metering and pressure reduction compound; and

1B – Battery storage facility with a net rated electrical output of up to 150 MW for four hours consisting of:

- (i) storage battery houses or containers;
- (j) storage inverter containers;
- (k) cooling system; and

1C – Facilities to serve both 1A and 1B consisting of:

- (l) electrical equipment comprising 132 kV and 275 kV substations and electrical cables, switch houses and switch rooms, and auxiliary transformers;
- (m) fire suppression system and firewater tank;
- (n) an operations, maintenance and storage building;
- (o) control room(s);
- (p) septic tank or packaged foul treatment plant;
- (q) internal roads and parking;
- (r) surface water drainage;
- (s) surface water runoff attenuation pond(s); and
- (t) landscaping.

together with associated development comprising.

Work no. 2 – Creation and enhancement of onshore wildlife habitat including topsoil strip, planting, construction of ditches, mounds and banks, and enhancement of retained ditches for ecological benefit; and connection of retained ditches to Work 1C(r) surface water drainage.

Work no. 3 – An electrical connection to Tilbury Substation comprising—

3A – 275 kV high-voltage underground cables for electricity export and lower voltage underground cables for auxiliary power supply; and

3B – Connection equipment in Tilbury Substation consisting of:

- (a) civil works – equipment bases, cable trenching, fencing;
- (b) electrical equipment installation – current transformers, voltage transformers, high accuracy metering equipment, circuit breakers, disconnectors and emergency shutoff;
- (c) cable sealing end (where underground high voltage transmission cables join to existing overhead transmission cable) including, base, structure and terminations;
- (d) blockhouse (switch room); and
- (e) control and protection modifications for the re-equipped bay and integration to the site wide systems, including busbar protection.

Work no. 4 – An underground high-pressure gas pipeline between Work 1 and Work 5A and gas pipeline(s) within Work 1.

Work no. 5 – A connection point to the gas National Transmission System comprising—

5A – A gas connection compound with landscaping consisting of:

- (f) a National Grid Minimum Offtake Connection facility containing remotely operable valve, control and instrumentation kiosk, and electrical supply kiosk;
- (g) a Pipeline Inspection Gauge Trap Facility containing pipeline inspection gauge launching facility, emergency control valve, isolation valve, control and instrumentation kiosk, and electrical supply kiosk; and

5B – If required by the siting of Work 5A, a high-pressure underground gas pipeline between Work 5A(a) and the gas National Transmission System; and

5C – An access track and junction from Station Road with drainage and landscaping.

Work no. 6 – An access road and junction from Station Road with drainage and landscaping.

Work no. 7 – A water supply connection to the water main at Station Road.

Work no. 8 – Construction compound(s) and laydown area(s) south of Tilbury Loop railway.

Work no. 9 – *Not used.*

Work no. 10 – A gated causeway with crane platforms, extending from above mean high water springs into the river Thames, and a berthing pocket for barges and including:

- (a) the construction and use of a causeway constructed of solid foundations, with a precast concrete pad running surface; and
- (b) creation by dredging, use and maintenance of a berthing pocket.

Work no. 11 – Alteration to sea wall.

Work no. 12 – An access road from the A1089 St Andrew's Road comprising—

- (a) improvements, repairs, widening, realignment and surfacing of existing private roads, verges and hardstanding areas, to make the route suitable for use by heavy goods vehicles;

and connecting to 12(a)—

- (b) engineering works and construction of new road section with drainage;
- (c) engineering works and construction of new road sections with drainage and landscaping;
- (d) engineering works and construction of new road sections with drainage and landscaping; and
- (e) engineering works and construction of new road section with alterations to ditch and electrical service boxes.

Work no. 13 – A footbridge, ground works and fencing for a permissive path between Fort Road and Work 14.

Work no. 14 – Creation of common land with planting and landscaping.

Work no. 15 - An access road and junction from Fort Road to the Port of Tilbury access road, comprising engineering works and construction of new road with gates, fencing and alterations to drainage, landscape planting and alteration of services.

In connection with the construction of any of those works comprising the Nationally Significant Infrastructure Project or associated development to the extent that they do not otherwise form part of any such work, further development within the Order limits consisting of—

- (a) retaining walls, embankments, barriers, parapets, drainage, fencing, culverts and lighting;
- (b) site clearance (including fencing and demolition of existing structures), earthworks (including soil stripping and storage, site levelling) and remediation of contamination if present;
- (c) works to alter the position of apparatus at or below ground level including mains, sewers, drains and cables and also including below ground structures associated with that apparatus;
- (d) construction compounds and working sites, storage areas, temporary vehicle parking, ramps and other means of access, internal roads and tracks, perimeter enclosures, security fencing, construction-related buildings, welfare facilities, construction lighting, haulage roads and other buildings, machinery, apparatus, works and conveniences including provision of services and utilities; and
- (e) landscaping, planting, tree planting and erection of permanent means of enclosure and boundary facilities including fences and gates, alteration of drains and ditches;
- (f) alteration of layout of streets to form temporary and permanent accesses, altering the level of any kerb, footway or verge within a street and surface treatments;
- (g) diversions during construction of existing access routes and subsequent reinstatement of existing routes;
- (h) such other works, working sites, storage areas and works of demolition, as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the authorised development, and
- (i) in relation to Work no. 10, works for the accommodation or convenience of vessels (including but not limited to berthing and mooring facilities, ladders, buoys, bollards, fenders, rubbing strips and fender panels, fender units and pontoons);

but only insofar as they do not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

# SCHEDULE 2 REQUIREMENTS

Article 3

## PART 1 REQUIREMENTS

### **Interpretation**

#### **1. In this Schedule—**

“AOD” means above Ordnance Datum;

“CCR area” means the area reserved for carbon capture readiness as shown on the work plans;

“CoCP” means the Code of Construction Practice;

“commissioning” means the process during which plant components and systems forming part of the authorised development, having been constructed or modified, are made operational and are tested and verified to be in accordance with design assumptions and to have met the appropriate safety criteria;

“concept causeway design” means the report entitled Concept Design of Causeway for Delivery of AILs (document number A7.8) prepared by AECOM Infrastructure & Environment UK Limited, revision D dated 11 February 2020;

“contaminated land” has the same meaning as that given in section 78A of the Environmental Protection Act 1990;

“discharging authority” means any body responsible for giving any consent, agreement or approval required by a requirement included in Part 1 of this Schedule, or for giving any consent, agreement or approval further to any document referred to in any such requirement;

“LEMP” means the Landscape and Ecological Management Plan;

“navigational risk assessment” means assessment of any potential risk of the specified works, and must contain the following information:

- (a) existing navigational features including extent of authorised channels, existing navigational structures and constraints;
- (b) tidal characteristics;
- (c) existing river uses;
- (d) general navigational arrangements;
- (e) existing site specific issues;
- (f) existing navigational risks;
- (g) proposed navigational strategies;
- (h) delivery schedules; and
- (i) such other details as agreed between the undertaker and the PLA; and

“requirement consultee” means any body named in a requirement as a body to be consulted by the discharging authority in discharging that requirement.

### **Time limit**

- 2.** The authorised development must not commence later than the expiration of 5 years beginning with the date on which this Order comes into force.

## Notice of commencement of authorised development

3. Notice of commencement of the authorised development must be given to the relevant planning authority within 7 days of the date on which the authorised development is commenced.

### Detailed design

4.—(1) Other than Work no.10, no part of the authorised development can be commenced until written details of the following for that part have been submitted to and approved by the relevant planning authority specifying—

- (a) the siting, design, external appearance, dimensions and floor levels of all permanent buildings and structures;
- (b) the colour, materials and surface finishes of all permanent buildings and structures; and
- (c) details of the provision made for cycle parking facilities for staff.

(2) The details to be submitted for approval under sub-paragraph (1) must—

- (a) be in accordance with the design principles statement;
- (b) include flood resistance and resilience measures for a flood level of up to 2.84 m above Ordnance Survey datum for critical equipment; and
- (c) include appropriately scaled plans and sectional drawings.

(3) No works to the tidal defence wall in the vicinity of the proposed causeway can be commenced until the detailed design for that part has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency and Port of Tilbury London Limited.

(4) No works creating or affecting culverts in ordinary watercourses or the balancing pond east of For Road may be commenced unless the detail of such works has been approved by the relevant planning authority in consultation with Thurrock Council in its capacity as the lead local flood authority.

(5) In so far as the details submitted under paragraph (1) relate to Work no.4, the relevant planning authority must consult Highways England on those details prior to issuing any approval under that paragraph.

(6) No construction of Work no.10 may commence until the detailed design of that work has been submitted to and approved by the MMO in consultation with the PLA and Port of Tilbury London Limited.

(7) The detailed design for Work no 10 submitted under sub-paragraph (5) must be substantially in accordance with the concept causeway design.

(8) Other than Work no.10, the authorised development must be designed in accordance with the parameters specified in Table 1 below and the works plans and constructed in accordance with approved plans and any other approvals given by the relevant planning authority pursuant to this requirement.

**Table 1**

<i>Parameter</i>	<i>Work nos</i>	<i>Maximum value(s) and unit</i>
Gas engine exhaust stack height	1A(b)	43m AOD
Gas engine building(s) or equipment dimensions (in total)	1A(a, b, d, e, f)	Width: 135m Length: 265m Height: 20m
Battery building(s) or containers dimensions (in total)	1B	Width: 106m Length: 106m Height: 10m
Customer substation equipment height	1C(l)	15m

Height of all equipment and structures within Work 1 not otherwise specified	1	10m
National grid gas connection compound dimensions	5A	Width: 50m Length: 50m Height: 5m
Gas pipeline(s) maximum excavation depth	4	4m for trenched or 5m below base of feature crossed for trenchless construction
Underground cable(s) maximum depth	3A	4 m for trenched or 5 m below base of feature crossed for trenchless construction
Road construction working corridor width	6	20 m
Gas pipeline construction working corridor width	4	23 m
CCR minimum area	n/a	32,100 m <sup>2</sup>
Footbridge to replacement common land	13	Must be a clear span structure

(9) The buildings and structures identified in Table 1 must only be constructed within the area for the work of which they form part as shown in the works plans.

(10) The details submitted for Work no. 12 under sub-paragraph (1) above may only include details for either Work 12(c) or Work no. 12(d), and must specify which of Work no. 12(c) or Work no.12(d) is to be developed.

### **Code of construction practice**

**5.—**(1) No part of the authorised development can commence until a CoCP for that part has been submitted to and approved by the relevant planning authority.

(2) The CoCP must be substantially in accordance with the outline code of construction practice and:

- (a) include relevant measures relied on in the environmental statement; and
- (b) include management plans, working methods and mitigation measures including:
  - (i) details of lighting during construction;
  - (ii) pollution incident control plan;
  - (iii) soil management strategy; and
  - (iv) dust management and monitoring plan.

(3) Construction of the authorised development must be carried out in accordance with the approved CoCP.

### **Construction Traffic Management Plan**

**6.—**(1) No part of the authorised development can be commenced until a Construction Traffic Management Plan for that part has been submitted to and approved by the relevant planning authority in consultation with the highway authority Highways England, Network Rail, Port of Tilbury London Limited and Royal Mail.

(2) The Construction Traffic Management Plan must:

- (a) specify measures to manage the impacts of construction traffic during the construction works; and
- (b) be substantially in accordance with the outline construction traffic management plan.

(3) Construction works for the authorised development must be carried out in accordance with the approved Construction Traffic Management Plan for that part.

### **Construction Worker Travel Plan**

**7.**—(1) No part of the authorised development can be commenced until a Construction Worker Travel Plan for that part has been submitted to and approved by the relevant planning authority in consultation with the highway authority, Highways England, Network Rail and Port of Tilbury London Limited.

(2) The Construction Worker Travel Plan must be substantially in accordance with the outline construction worker travel plan.

(3) Construction works for the authorised development must be carried out in accordance with the approved Construction Worker Travel Plan for that part.

### **External lighting**

**8.**—(1) No part of the authorised development where use of artificial lighting is proposed in operation can be externally lit between 18:00 and 07:00 until a scheme for the management and mitigation of artificial light emissions during the operation of that part of the authorised development has been submitted to and approved by the relevant planning authority.

(2) The scheme approved under sub-paragraph (1) must be implemented and maintained as approved during the operational phase.

### **Construction hours**

**9.**—(1) Subject to sub-paragraph (2), no construction works are to take place except between—

- (a) 08:00 to 18:00 Monday to Friday; and
- (b) 08:00 to 13:00 on Saturdays;

unless otherwise agreed by the relevant planning authority.

(2) The following works are permitted outside the hours referred to in sub-paragraph (1)—

- (a) works that cannot be interrupted or emergency works; and
- (b) works which do not cause noise that is more than 5dB above the pre-construction ambient noise at the nearest residential property to the Order limits, subject to lower cut-off values of 65dB, 55dB and 45dB LAeq,T from site noise alone, for the daytime, evening and night-time periods, respectively, determined in accordance with Annex E of BS 5228-1:2009+A1:2014.

(3) Any emergency works carried out under sub-paragraph (2)(a) must be notified to the relevant planning authority within 72 hours of their commencement.

### **Surface and foul water drainage**

**10.**—(1) No part of the authorised development can be commenced until written details for that part have been submitted to and approved by the relevant planning authority.

(2) These details submitted under sub-paragraph (1) must include:

- (a) the means of pollution control;
- (b) connection points to existing drainage network with consideration to directing drainage away from the West Tilbury Main catchment; and
- (c) ground raising and effects on the routing of flood waters.

(3) The details submitted under sub-paragraph (1) must be in accordance with the concept drainage strategy certified under article 41.

(4) The surface and foul water drainage system for the relevant part of the authorised development must be constructed in accordance with the approved details unless otherwise agreed in writing by the relevant planning authority.

### **Flood evacuation plan**

**11.**—(1) The undertaker must, prior to the commencement of the authorised development, put in place a flood evacuation plan for the authorised development. The flood evacuation plan must be maintained and kept up to date throughout the operational life of the authorised development and be made available for inspection by all users of the site and displayed in a visible location at all times.

(2) A copy of the flood evacuation plan must be provided to the relevant planning authority or Thurrock Council acting as lead local flood authority on request.

### **Contaminated land**

**12.**—(1) If contaminated land is found during preliminary works or construction of the authorised development, no further development can be carried out in the affected area until an investigation and remediation scheme has been submitted to and approved by the relevant planning authority; and the scheme must include details of—

- (a) how the contaminated land is to be identified and assessed;
- (b) where remediation is required by the scheme, the remediation measures;
- (c) timescales for carrying out the remediation measures; and
- (d) any ongoing monitoring or mitigation requirements.

(2) Any remediation measures identified in the investigation and remediation scheme mentioned in sub-paragraph 1 must be carried out in accordance with the approved scheme.

(3) The undertaker must, prior to the commencement of Work no.10, carry out further sediment sampling of the river bed and analysis of those samples.

(4) The further sediment sampling and analysis carried out under sub-paragraph (3) must be carried out in accordance with a plan which has been submitted to and approved by the MMO and the PLA.

(5) The plan described in sub-paragraph (4) must include—

- (a) details of the sampling locations with surface, mid and depth levels which will provide a representative sediment assessment; and
- (b) details of an alternative method of dredging to the use of water injection dredging if the further sediment sampling and analysis carried out in accordance with sub-paragraph (3) identifies that the sediment contains contaminants which, in the reasonable opinion of the MMO or the PLA, make the use of water injection dredging unsuitable for the construction of Work no.10.

(6) The results and analysis of the further sediment sampling carried out in accordance with the plan approved under sub-paragraph (3) must be provided to the MMO and the PLA.

(7) Where the further sediment sampling and analysis carried out in accordance with sub-paragraph (3) identifies, in the reasonable opinion of the MMO or the PLA, that the sediment contains contaminants no water injection dredging must be carried out for the construction of Work no.10 and dredged material must be removed to a licenced waste disposal site.

### **Archaeology**

**13.**—(1) Other than Work no.10, no part of the authorised development with the potential to affect buried archaeological assets can be commenced until for that part a written scheme of archaeological investigation of areas of archaeological interest has been submitted to and approved by the relevant planning authority following consultation with Historic England.



(2) The scheme approved under sub-paragraph (1) must be substantially in accordance with the outline written scheme of archaeological investigation, and identify the measures to be taken to investigate, protect, record or preserve any significant archaeological remains that may be found.

(3) Any archaeological works carried out under the approved scheme must be carried out by an organisation registered with the Chartered Institute for Archaeologists or by a member of that Institute.

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

### **Landscaping and Ecological Management Plan**

**14.**—(1) Other than Work no.10, no part of the authorised development can commence until a LEMP for that part, substantially in accordance with the outline ecological management plan and illustrative landscape plan, including—

- (a) where necessary, measures to protect water voles;
- (b) ecological mitigation and enhancement measures;
- (c) details of all proposed soft landscaping works, including location, number, species, size and planting density of any proposed planting;
- (d) proposed finished ground levels;
- (e) details of existing trees to be retained, with measures for their protection during the construction period;
- (f) implementation timetables for all ecological and landscaping works; and
- (g) maintenance proposals,

has been submitted to and approved by the relevant planning authority in consultation with Natural England.

(2) The authorised development must be carried out in accordance with the approved LEMP and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

### **Construction compound restoration**

**15.**—(1) Prior to the completion of construction of Work no. 1, the undertaker must submit a plan to the relevant planning authority for approval detailing how all of the construction compounds areas which do not form part of the permanent works will be restored, including—

- (a) details of the use and condition of the land before it was used as a construction compound;
- (b) proposed finished ground levels;
- (c) details of any soft landscaping works to be undertaken as part of the restoration;
- (d) details of any hard landscaping to be undertaken as part of the restoration including paving, surfacing, gates and fencing; and
- (e) implementation timetables for the restoration works.

(2) The restoration of the construction compounds must be carried out in accordance with the approved plan.

### **Operational Noise**

**16.**—(1) Between 23.00 and 07.00 hours, noise arising from normal operation of the site may not exceed a rating level of 45 dB  $L_{Ar,Tr}$  at any residential property which is lawfully inhabited at the date of the making of this Order.

(2) The level set out in sub-paragraph (1) is to be as measured in accordance with British Standard 4142:2014+A1:2019 (Methods for rating and assessing industrial and commercial sound) and British Standard 7445-3:1991 (Description and measurement of environmental noise. Guide to application to noise limits) or any standards replacing those.

(3) Prior to the commencement of the authorised development, the undertaker must submit a plan to the relevant planning authority for approval detailing how noise monitoring will be undertaken during construction and within a six month period beginning with the date of first commercial export of electricity from Work 1A. That plan must specify a monitoring location point, which must be in as close proximity as the undertaker can lawfully access, or at a point representative of, the nearest residential property which is lawfully inhabited at the date of the making of this Order.

(4) Noise monitoring must be undertaken by the undertaker in accordance with the plan approved under sub-paragraph (3); and the results of this monitoring must be submitted by the undertaker to the relevant planning authority at the intervals set out in the plan.

(5) Where the results of the monitoring undertaken in accordance with sub-paragraphs (3) and (4), show any exceedance of the level set out in sub-paragraph (1), the undertaker must, within 10 working days, submit to the relevant planning authority for approval a mitigation plan detailing how the exceedance will be mitigated and including a timetable for carrying out any works required to deliver such mitigation.

(6) The undertaker must comply with any plan approved under sub-paragraph (5).

### **Navigational risk assessment**

**17.**—(1) Construction of Work no.10 must not commence until a final navigational risk assessment has been submitted to and approved in writing by the PLA following consultation with the Port of Tilbury London Limited.

(2) The final risk assessment submitted under sub-paragraph (1) must be substantially in the form of the preliminary navigational risk assessment.

(3) Work no. 10 must be constructed, maintained and operated in accordance with the final navigational risk assessment or any update or revision of the navigational risk assessment approved under sub-paragraph (4).

(4) No change to the operation of Work no.10, including any decommissioning, may be implemented until a revised navigational risk assessment reflecting the proposed change has been submitted to and approved by the PLA following consultation with the Port of Tilbury London Limited.

(5) Prior to any marine operation, a detailed passage plan for that marine operation must be approved the PLA following consultation with the Port of Tilbury London Limited.

(6) A passage plan submitted under sub-paragraph (5) must include the measures to reduce operational risk identified in the navigational risk assessment including but not limited to:

- (a) pilotage requirements in accordance with the applicable PLA pilotage directions;
- (b) specific procedures including holding procedures, safe tidal operating windows for the berthing operation, weather limitations, emergency response procedures and navigational constraints; and
- (c) a marine operations plan addressing interaction with the Port of Tilbury.

(7) The PLA may request any amendment to or revision of any passage plan approved under sub-paragraph (5) at any time and the marine operation to which it relates may not be commenced until the revised or amended passage plan has been approved the PLA.

(8) Any marine operation must be operated in accordance with the passage plan approved under sub-paragraph (5) or as amended or revised under sub-paragraph (6).

(9) In this requirement “marine operation” means any movement to and from the causeway by a vessel delivering an abnormal indivisible load, and includes tugs or other supporting vessels required for that movement.

### **Review of access for abnormal indivisible loads**

**18.**—(1) No later than five years from the commencement of operation of Work no.1A, the undertaker must submit a report of the review of access options for transportation of AILs to or from Work no.1 in writing to the relevant planning authority and send a copy to Highways England.

(2) A report submitted under sub-paragraph 1 must set out how the options assessed perform against the tests set out in sub-paragraph (6).

(3) If, in the opinion of the relevant planning authority, following consultation with Highways England and Port of Tilbury London Limited, an environmentally acceptable, permanent, feasible and economic alternative to the use of the causeway to be constructed as Work no. 10 for AIL access, which would not have a significant adverse effect on traffic conditions on the strategic road network, is identified in the report submitted under sub-paragraph (1), then the relevant planning authority must notify the undertaker of that decision in writing. Where such notice is issued the undertaker must;

- (a) submit applications for any consents required for that alternative AIL access within 6 months of the date of the issue of a notice under this sub-paragraph by relevant planning authority, and
- (b) advise the relevant planning authority of the outcome of any applications under this sub-paragraph which were not determined by that planning authority within five business days of the undertaker being notified of that outcome.

(4) Where all the consents required to create and use the alternative AIL access are granted, the causeway to be constructed as Work no.10 and the changes to the sea-defence wall to be carried out as Work no.11 must be decommissioned in accordance with requirement 19(4).

(5) (a) Where, in the opinion of the relevant planning authority, the review undertaken under sub-paragraph (1) does not identify an environmentally acceptable, permanent, feasible and economic alternative to the use of the causeway to be constructed as Work no.10 for AIL access, or the necessary consents to create or use such an access are not granted, then the undertaker must carry out a subsequent review within five years of the later of;

- (i) the submission of the review under sub-paragraph (1); or
  - (ii) the undertaker notifying the relevant planning authority of the refusal of consent under sub-paragraph 2(b).
- (b) Where, in the opinion of the relevant planning authority, the review undertaken under this sub-paragraph identifies an environmentally acceptable, permanent, feasible and economic alternative to the use of the causeway to be constructed as Work no.10 for AIL access which was not identified in the previous review, sub paragraphs (2) and (3) will apply as if the report had been submitted under sub-paragraph (1).
- (c) Where a subsequent review undertaken under this sub-paragraph does not, in the opinion of the relevant planning authority, identify an environmentally acceptable, permanent, feasible and economic alternative to the use of the causeway to be constructed as Work no.10 for AIL access, then a further review will be required at each five year interval as if the subsequent review had been submitted under sub-paragraph (1).

(6) In this requirement, an environmentally acceptable, permanent, feasible and economic alternative means:

- (a) that the environmental impacts of the alternative are determined by the relevant planning authority to be acceptable having regard to
  - (i) any environmental impact assessment required from and provided by the undertaker, and
  - (ii) any required assessment of the impact on protected species and habitats, and taking account of any mitigation which can be delivered without prejudicing the ability of the alternative to comply with paragraphs (b), (c) and (d) of this sub-paragraph;
- (b) that the alternative route is available and will remain so for the operational lifetime and decommissioning of Work no. 1;
- (c) that transport of AIL via the alternative route is practicable, taking into account factors including but not limited to the physical characteristics of the AILs and the route (such as load limits and clearance), the agreement of landowners and having all of the consents required to create and/or use the alternative route; and

- (d) that the alternative route costs no more than 10% more than the cost of shipment of AILs from the nearest port of delivery, berthing and unloading at the causeway.

(7) In this requirement “AIL” means abnormal indivisible load and includes the generating station engine blocks.

#### **Causeway decommissioning plan.**

**19.**—(1) Where in accordance with requirement 18, the causeway to be constructed as Work no.10 is to be decommissioned, the undertaker must, within 6 months of the undertaker receiving all of the consents for which applications were made under requirement 18(2), submit a causeway decommissioning plan to the MMO for approval in consultation with the relevant planning authority, the Environment Agency, Natural England Port of Tilbury London Limited and the PLA.

(2) Where Work no.1 permanently ceases operation and no causeway decommissioning plan has previously been approved under this requirement, the undertaker must, within 6 months of the operation of Work no.1 ceasing, submit a causeway decommissioning plan to the MMO for approval in consultation with the relevant planning authority, Environment Agency, Natural England, Port of Tilbury London Limited and the PLA.

(3) The causeway decommissioning plan must include:

- (a) a description of the decommissioning works and methods for Works no.10 and 11;
- (b) a description of environmental management measures to be employed including pollution control, traffic management and public rights of way management;
- (c) details of the reinstatement of the sea defence wall altered as part of Work no.11;
- (d) details of the restoration of mudflat and coastal saltmarsh habitat;
- (e) details of any barge or other vessel movements required and measures to avoid shipping or navigation risks; and
- (f) a timetable for implementation.

(4) Decommissioning of Works 10 and 11 must be carried out in accordance with the approved causeway decommissioning plan.

#### **Local employment and skills strategy**

**20.** No part of the authorised development can commence until a local employment and skills strategy, substantially in accordance with the outline local employment and skills strategy has been submitted to and approved by the relevant planning authority.

#### **Operational hours**

**21.** Work no. 1A (the gas fired electricity generating station) may only be operated for the purposes of generating electricity up to a maximum of 4,000 hours per calendar year.

#### **Details to accord with Environmental Statement**

**22.** Any plans, details, schemes or other documents which require approval by the discharging authority pursuant to any requirement must comply with the parameters set out in the Environmental Statement and, where applicable, the outline plans certified under article 41.

#### **Carbon capture readiness**

**23.** Until such time as the authorised development is decommissioned, the undertaker must not, without the consent of the Secretary of State—

- (a) dispose of any interest in the CCR area; or
- (b) do anything, or allow anything to be done or to occur,

which may reasonably be expected to diminish the undertaker's ability, within two years of such action or occurrence, to prepare the carbon capture readiness land for the installation and operation of carbon capture equipment, should it be deemed necessary to do so.

### **Carbon capture readiness monitoring report**

**24.**—(1) The undertaker must make a report ('carbon capture readiness monitoring report') to the Secretary of State—

- (a) on or before the date on which three months have passed from the date of Work No. 1A full commissioning; and
- (b) within one month of the third anniversary, and each subsequent three year anniversary, of that date.

(2) Each carbon capture readiness monitoring report must provide evidence that the undertaker has compiled with requirement 23—

- (a) in the case of the first carbon capture readiness monitoring report, since commencement of the authorised development; and
- (b) in the case of any subsequent report, since the making of the previous carbon capture readiness monitoring report, and explain how the undertaker expects to continue to comply with requirement 23 over the next three years.

(3) Each carbon capture readiness monitoring report must state whether the undertaker considers the retrofit of carbon capture technology is feasible explaining the reasons for any such conclusion and whether any impediments could be overcome.

(4) Each carbon capture readiness monitoring report must state, with reasons, whether the undertaker has decided to seek any additional regulatory clearances, or to modify any existing regulatory clearances, in respect of any carbon capture readiness proposals.

### **Amendments to approved plans, etc.**

**25.**—(1) With respect to any plans, details, schemes or other documents which require approval by the discharging authority pursuant to any requirement (the "approved plans"), the undertaker may submit to the discharging authority for approval any amendments to the approved plans and following any such approval by the discharging authority the approved plans are to be taken to include the amendments approved pursuant to this sub-paragraph.

(2) Approval under sub-paragraph (1) must not be given except where it has been demonstrated to the satisfaction of the discharging authority that the subject-matter of the approval sought does not give rise to any materially new or materially different environmental effects to those identified in the environmental statement.

### **Anticipatory steps**

**26.** If before this Order comes into force the undertaker or any other person has taken any step in compliance with any requirement in Part 1 of this Schedule, that step may be taken into account to determine compliance with that requirement provided that step would have been a valid step for the purpose of the requirement if it had been taken after this Order came into force.

### **Submissions and approvals**

**27.**—(1) Where, under any requirement, approval of any plans, details, schemes or other documents is required, the plan, details, scheme or other documents submitted for approval must be in writing.

(2) Where under any requirement the approval or agreement of the discharging authority or another person is required, that approval or agreement must be provided in writing.

(3) A copy of any approval or amendment to an approval issued under these requirements by a discharging authority other than the relevant planning authority must be copied to the relevant planning authority at the same time as it is issued to the undertaker.

## PART 2

### APPROVAL OF MATTERS SPECIFIED IN REQUIREMENTS

#### Applications made under requirements

**28.** Where an application has been made to the discharging authority for any agreement or approval required pursuant to a requirement included in this Order, the discharging authority must give notice to the undertaker of their decision, including the reasons, on the application, within a period of 13 weeks beginning with—

- (a) the day immediately following that on which the application is received by the discharging authority; or
- (b) such longer period as may be agreed by the undertaker and the discharging authority.

#### Further information

**29.**—(1) Where an application has been made under paragraph 28 the discharging authority has the right to request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) If the discharging authority considers further information is needed, and the requirement does not specify that consultation with a requirement consultee is required, it must, within 21 days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the requirement indicates that consultation must take place with a consultee the discharging authority must issue the consultation to the requirement consultee within 5 working days of receipt of the application. Where the consultee requires further information they must notify the discharging authority in writing specifying the further information required within 21 days of receipt of the consultation. The discharging authority must notify the undertaker in writing specifying any further information requested by the consultee within 5 working days of receipt of such a request.

(4) In the event that the discharging authority does not give such notification as specified in subparagraph (2) or (3) it is deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

#### Provision of information by Consultees

**30.**—(1) Any consultee who receives a consultation under paragraph 29(3) must respond to that request within 28 days from receipt unless sub paragraph (2) of this paragraph applies.

(2) Where any consultee requests further information in accordance with the timescales set out in paragraph 29(3) then they must respond to the consultation within 10 working days from the receipt of the further information requested.

#### Fees

**31.**—(1) Where an application is made to the discharging authority for agreement or approval in respect of a requirement the fee for the discharge of conditions as specified in the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2012<sup>(a)</sup> (or any regulations replacing the same) is to be paid by the undertaker to the discharging authority in accordance with these regulations.

(2) Any fee paid under this Schedule must be refunded to the undertaker within 4 weeks of—

- (a) the application being rejected as invalidly made.

---

(a) S.I. 2012/2920

## Appeal

32.—(1) The undertaker may appeal in the event that—

- (a) the discharging authority refuses an application for any consent, agreement or approval required by a requirement included in this Order or grants it subject to conditions; or
- (b) the discharging authority does not give notice of its decision to the undertaker within the time period specified in paragraph 28.

(2) The provisions of Sections 78 and 79 of the 1990 Act (right of appeal in relation to planning decisions) apply to any appeal under sub-section (1) as if the requirement concerned was a condition imposed on a grant of planning permission.

## SCHEDULE 3

Article 15

### TRAFFIC REGULATION SUSPENSION OF EXISTING TRAFFIC REGULATION ORDERS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Road name</i>	<i>(3)</i> <i>Title of Order</i>	<i>(4)</i> <i>Extent of suspension</i>
Thurrock Borough	Station Road	The Borough of Thurrock (Station Road (Love Lane to Princess Margaret Road) East Tilbury) (Weight Restriction) Order 1995	Suspended between Love Lane and Princess Margaret Road.

## SCHEDULE 4

Article 13

### HIGHWAYS SUBJECT TO TEMPORARY CONTROL OR RESTRICTION

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way</i>	<i>(3)</i> <i>Control or Restriction</i>
Thurrock Borough	Station Road within the two areas shown hatched in red on sheet 3 of the access, rights of way and traffic management plans	Controls on use including marshalling during construction to allow crossing of the highway for construction access. Temporary restriction on all use for up to two weeks at each location, concurrently or consecutively.
Thurrock Borough	Station Road within the area shown hatched in dark green on sheet 3 of the access, rights of way and traffic management plans	Controls on use including temporary restrictions on use and partial carriageway closures with traffic management to allow construction of new accesses.
Thurrock Borough	Footpath through common land connecting Footpath 200 at the	Controls on use the footpath where it crosses the pipeline

	location shown hatched in green on sheet 3 of the access, rights of way and traffic management plans	route including marshalling during construction and operation to allow installation and maintenance of a gas pipeline. Temporary restriction on all use and diversion during construction.
Thurrock Borough	Coast path / Footpath 146/ National cycle route 13, to the extent shown coloured pink on sheet 4 of the access, rights of way and traffic management plans	Controls on use of the path where it crosses the vehicular access route, including marshalling, to allow construction, use and maintenance of the causeway including access to and from the causeway by vehicles.

## SCHEDULE 5

Articles 22 and 28

### LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN AND IN WHICH ONLY RIGHTS ETC MAY BE ACQUIRED

<i>(1) Plot reference number shown on land plans</i>	<i>(2) Rights over land which may be acquired</i>	<i>(3) Relevant part of the authorised development for which temporary possession for construction can be taken</i>
Land Plans – Sheet 1		
01/04	Right of access, including vehicular access, to construct, operate and maintain the authorised development	All works
01/09	Right to install, use, protect, retain, inspect, maintain, repair and replace electrical cables and associated infrastructure and to take vehicular access for the same. Imposition of a restrictive covenant for the protection of electrical cables and associated infrastructure installed in the land.	Work 3
01/10	Right to install, use, protect, retain, inspect, maintain, repair and replace electrical cables and associated infrastructure and to take vehicular access for the same. Imposition of a restrictive covenant for the protection of electrical cables and associated infrastructure installed in the land.	Work 3
01/11	Right of access including vehicular access, to construct,	All works



	operate and maintain the authorised development, and to use, repair, improve or alter existing access tracks, roads or ways.	
01/14	Right of access, including vehicular access, to create and maintain replacement common land	Work 14
01/15	Right to install, use, protect, retain, inspect, maintain, repair and replace electrical cables and associated infrastructure and to take vehicular access for the same. Imposition of a restrictive covenant for the protection of electrical cables and associated infrastructure installed in the land.	Work 3
01/21	Right of access including vehicular access, to construct, operate and maintain the authorised development, and to use, repair, improve or alter existing access tracks, roads or ways.	All works
01/25	Right to install, use, protect, retain, inspect, maintain, repair and replace a gas pipeline and associated infrastructure, and to take vehicular access for the same Imposition of a restrictive covenant for the protection of gas pipeline and associated infrastructure installed in the land.	Works 4 and 8
01/30	Right of access including vehicular access, to construct, operate and maintain the authorised development, and to use, repair, improve or alter existing access tracks, roads or ways.	All works
01/31	Right of access including vehicular access, to construct, operate and maintain the authorised development, and to use, repair, improve or alter existing access tracks, roads or ways.	All works
01/33	Right of access including vehicular access, to construct, operate and maintain the authorised development, and to construct access tracks,	All works

	roads or ways, use, repair, improve or alter existing access tracks, roads or ways and improve or alter existing drains.	
01/34	Right of access including vehicular access, to construct, operate and maintain the authorised development, and to construct access tracks, roads or ways, use, repair, improve or alter existing access tracks, roads or ways and improve or alter existing drains.	All works
01/35	Right of access including vehicular access, to construct, operate and maintain the authorised development, and to construct access tracks, roads or ways, use, repair, improve or alter existing access tracks, roads or ways and improve or alter existing drains.	All works
01/36	Right of access including vehicular access, to construct, operate and maintain the authorised development, to construct new access road and a new junction use, repair, improve or alter existing access tracks, roads or ways and improve or alter existing drains.	All works
01/37	Right of access including vehicular access, to construct, operate and maintain the authorised development, and to construct access tracks, roads or ways, use, repair, improve or alter existing access tracks, roads or ways and improve or alter existing drains.	All works
Land Plans – Sheet 2		
02/01	Right of access, including vehicular access, to create and maintain habitat creation and enhancement land	Work 2
02/02	Right of access, including vehicular access, to create and maintain habitat creation and enhancement land	Work 2
02/04	Right of access, including vehicular access, to create and	Work 14

	maintain replacement common land	
02/08	Right of access, including vehicular access, to create and maintain replacement common land	Work 14
02/09	Right of access, including vehicular access, to create and maintain replacement common land	Work 14
02/10	Right of access, including vehicular access, to create and maintain replacement common land and habitat creation and enhancement land, and to use, repair, improve or alter existing accesses, tracks, roads or ways	Works 2 and 14
02/11	Right of access, including vehicular access, to create and maintain replacement common land and habitat creation and enhancement land, and to use, repair, improve or alter existing accesses, tracks, roads or ways	Works 2 and 14
02/13	Right to install, use, protect, retain, inspect, maintain, repair and replace a gas pipeline and associated infrastructure, and to take vehicular access for the same Imposition of a restrictive covenant for the protection of gas pipeline and associated infrastructure installed in the land.	Works 4 and 8
Land Plans – Sheet 3		
03/01	Right to install, use, protect, retain, inspect, maintain, repair and replace a gas pipeline and associated infrastructure, and to take vehicular access for the same Imposition of a restrictive covenant for the protection of gas pipeline and associated infrastructure installed in the land.	Works 4 and 8
03/02	Right to install, use, protect, retain, inspect, maintain, repair and replace a gas pipeline and associated infrastructure, and to take vehicular access for the same Imposition of a restrictive covenant for the	Work 4

	protection of gas pipeline and associated infrastructure installed in the land.	
03/03	Right to install, use, protect, retain, inspect, maintain, repair and replace a gas pipeline and associated infrastructure, and to take vehicular access for the same Imposition of a restrictive covenant for the protection of gas pipeline and associated infrastructure installed in the land.	Work 4
03/04	Right to install, use, protect, retain, inspect, maintain, repair and replace a gas pipeline and associated infrastructure, and to take vehicular access for the same Imposition of a restrictive covenant for the protection of gas pipeline and associated infrastructure installed in the land.	Work 4
03/05	Right to install, use, protect, retain, inspect, maintain, repair and replace a gas pipeline and associated infrastructure, and to take vehicular access for the same Imposition of a restrictive covenant for the protection of gas pipeline and associated infrastructure installed in the land.	Work 4
03/06	Right to install, use, protect, retain, inspect, maintain, repair and replace a gas pipeline and associated infrastructure, and to take vehicular access for the same Imposition of a restrictive covenant for the protection of gas pipeline and associated infrastructure installed in the land.	Work 4
03/08	Right to install, use, protect, retain, inspect, maintain, repair and replace a gas pipeline and associated infrastructure, and to take vehicular access for the same Imposition of a restrictive covenant for the protection of gas pipeline and associated	Work 4

	infrastructure installed in the land.	
03/09	Right to install, use, protect, retain, inspect, maintain, repair and replace a gas pipeline and associated infrastructure, and to take vehicular access for the same Imposition of a restrictive covenant for the protection of gas pipeline and associated infrastructure installed in the land.	Work 4
Land Plans – Sheet 4		
04/01	Right of access including vehicular access, to construct, operate and maintain the authorised development, and to use, repair, improve or alter existing access tracks, roads or ways.	All works
04/03	Right of access including vehicular access, to construct, operate and maintain the authorised development, and to use, repair, improve or alter existing access tracks, roads or ways.	All Works
Land Plans – Sheet 5		
05/01	Right of access, including vehicular access, to construct, operate and maintain the authorised development.	All Works
05/02	Right of access, including vehicular access, to construct, operate and maintain the authorised development.	All Works
05/03	Right of access, including vehicular access, to construct, operate and maintain the authorised development.	All Works
05/04	Right of access including vehicular access, to construct, operate and maintain the authorised development, and to use, repair, improve or alter existing access tracks, roads or ways and to construct new access road and a new junction to existing access road	All Works
05/07	Right of access including vehicular access, to construct, operate and maintain the authorised development, and	All Works

	to use, repair, improve or alter existing access tracks, roads or ways and to construct new access road and a new junction to the public highway.	
--	---------------------------------------------------------------------------------------------------------------------------------------------------	--

## SCHEDULE 6

Article 28

### LAND OF WHICH ONLY TEMPORARY POSSESSION MAY BE TAKEN

<i>(1) Location</i>	<i>(2) Plot Reference Number shown on land plans</i>	<i>(3) Purpose for which temporary possession may be taken</i>	<i>(4) Relevant part of the authorised development</i>
Land Plans – Sheet 3			
Road forming public highway and private road shown coloured yellow on the access, rights of way and traffic management plans	03/07	To allow a temporary diversion of a public right of way	Work 4
Station Road, Public Highway at Station Road, East Tilbury	03/10	To create a new access from the public highway including temporary partial closure of the highway and traffic management	Works 4 and 5
Land Plans – Sheet 5			
Fort Road, public highway at Fort Road, Tilbury	05/06	To allow the creation of a new access from the public highway including temporary partial closure of the highway and traffic management.	Work no. 15
Fort Road, public highway at Fort Road, Tilbury	05/08	To allow the creation of a new access from the public highway including temporary partial closure of the highway and traffic management.	Work no. 15

**MODIFICATION OF COMPENSATION AND COMPULSORY  
PURCHASE ENACTMENTS FOR CREATION FOR NEW RIGHTS  
AND IMPOSITION OF RESTRICTIVE COVENANTS**

**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 respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or imposition of a restrictive covenant as they apply as respects compensation for the compulsory purchase of land and interests in land.

2. Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the following modification:

For section 5A(5A) (relevant valuation date) of the 1961 Act substitute—

“(5) (a) If—

- (a) the acquiring authority enters on land for the purposes of exercising a right in pursuance of a notice of entry under section 11(1) of the Compulsory Purchase Act 1965 (as modified by paragraph 4(5) of Schedule 7 to the Thurrock Flexible Generation Plant Development Consent Order 20[•] (the “Thurrock Flexible Generation Plant Order”));
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the Compulsory Purchase Act 1965 (as substituted by paragraph 4(8) of Schedule 7 to the Thurrock Flexible Generation Plant Order) to acquire an interest in the land; and
- (c) the acquiring authority enter on and take possession of that land, the authority is deemed for the purposes of subsection (3)(a) to have entered on that land when it entered on that land for the purpose of exercising that right.”

3. Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications;

- (a) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 4(3)—
- (b) for “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from or imposed on”; and
- (c) for “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable”.
- (d) Application of Part 1 of the 1965 Act

4.—(1) Part 1 of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 26 (application of Part 1 of the Compulsory Purchase Act 1965) to the acquisition of land under article 19 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 22 (compulsory acquisition of rights)—

- (a) with the modifications specified in paragraph 4(2); and
- (b) with such other modifications as may be necessary.

(2) The modifications referred to in sub-paragraph (1) are as follows.

---

(a) 1973 c.26.

- (a) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—
  - (i) the right acquired or to be acquired, or the restriction imposed or to be imposed; or
  - (ii) the land over which the right is or is to be exercisable, or the restriction is or is to be enforceable.

(3) For section 7 (measure of compensation in case of severance) of the 1965 Act substitute—

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

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

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

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

(5) Section 11 (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right or restriction, as well as the notice of entry required by subsection (1) of that section (as it applies to a compulsory acquisition), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A(a) (powers of entry: further notices of entry), 11B(b) (counter-notice requiring possession to be taken on specified date), 12 (unauthorised entry) and 13 (refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

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

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 24(3) is also modified so as to enable the acquiring authority in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

(8) For Schedule 2A of the 1965 Act substitute—

---

(a) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c.22).  
(b) Section 11B was inserted by section 187(2) of the above Act.



## COUNTER-NOTICE REQUIRING PURCHASE OF LAND NOT IN NOTICE TO TREAT

### **Introduction**

5.—(1) This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or a restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 24 (application of the 1981 Act) of the Thurrock Flexible Generation Plant Development Consent Order 20[•] in respect of the land to which the notice to treat relates.

(2) But see article 25 (acquisition of subsoil only) of the Thurrock Flexible Generation Plant Development Consent Order 20[•] which excludes the acquisition of subsoil only from this Schedule.

(3) In this Schedule, “house” includes any park or garden belonging to a house.

### **Counter-notice requiring purchase of land**

6. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the acquiring authority to purchase the owner’s interest in the house, building or factory.

7. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

### **Response to counter-notice**

8. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

9. The authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

10. If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

11. If the authority do not serve notice of a decision within the decision period it is to be treated as if it had served notice of a decision to withdraw the notice to treat at the end of that period.

12. If the authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

### **Determination by the Upper Tribunal**

13. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right of the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

- 14.** In making the determination, the Upper Tribunal must take into account—
- (a) the effect of the acquisition of the right or the imposition of the covenant,
  - (b) the use to be made of the right or covenant proposed to be acquired or imposed, and
  - (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

**15.** If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the acquiring authority ought to be required to take.

**16.** If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in that land.

**17.—(1)** If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the acquiring authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph it must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawing of the notice.

**18.** Any dispute as to the compensation is to be determined by the Upper Tribunal.”

## SCHEDULE 8

Article 35

### DEEMED MARINE LICENCE

#### PART 1

#### GENERAL

##### **Interpretation**

**1.—(1)** In this licence—

“the 2008 Act” means the Planning Act 2008;

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“commence” means beginning to carry out any part of a licensed activity and “commenced” and “commencement” is to be construed accordingly;

“condition” means a condition in Part 2 of this licence and references in this licence to numbered conditions are to the conditions with those numbers in Part 2;

“licensed activity” means any of the activities specified in paragraph 3 of this licence;

“Mean High Water Springs ” means the average of high water heights occurring at the time of spring tides;

“statutory historic body” means Historic England or its successor in function

“notice to mariners” means a notice issued by the undertaker to mariners to inform them of issues that affect the safety of navigation;

“Marine Management Organisation” or “MMO” means the body created under the 2009 Act which is responsible for the monitoring and enforcement of this licence

“the Order” means the Thurrock Flexible Generation Plant Development Consent Order 2020<sup>(a)</sup>;

“the River” means so much of the river Thames and the Thames estuary as is within the UK marine area; and

“the UK marine area” has the meaning given to it in section 42 (UK marine area) of the 2009 Act;

“the undertaker” means Thurrock Power Limited, company number 10917470, whose registered office is at 1st Floor, Kensington Church Street, London, W8 7LP, their agents and sub-contractors and any transferee pursuant to article 8 of the Order.

(2) Unless otherwise indicated—

- (a) all times are taken to be Greenwich Mean Time (GMT);
- (b) all co-ordinates are taken to be latitude and longitude degrees and minutes to two decimal places.

## **Contacts**

2. All notifications sent by the undertaker to the MMO must be sent using the MMO’s Marine Case Management System (MCMS) web portal.

Except where otherwise indicated, the main point of contact with the MMO and the address for email and postal returns and correspondence are:

- (a) Marine Management Organisation, Marine Licensing Team,  
Lancaster House,  
Hampshire Court,  
Newcastle upon Tyne,  
NE4 7YH;  
Tel - 0300 123 1032; Fax - 0191 376 2681;  
Email – [marine.consents@marinemanagement.org.uk](mailto:marine.consents@marinemanagement.org.uk)  
Marine Management Organisation, MMO Lowestoft  
Pakefield Road,  
Lowestoft,  
Suffolk,  
NR33 0HT;  
Tel – 0208 026 6094;  
Email – [lowestoft@marinemanagement.org.uk](mailto:lowestoft@marinemanagement.org.uk)

## **Details of licensed marine activities**

3.—(1) Subject to the licence conditions in Part 2, this licence authorises the undertaker (and any agent, contractor or subcontractor acting on their behalf) to carry out any licensable marine activities under section 66 (licensable marine activities) of the 2009 Act which—

- (a) form part of, or are related to, the licensed activities; and
- (b) are not exempt from requiring a marine licence by virtue of any provision made under section 74 (exemptions specified by order) of the 2009 Act.

(2) In this paragraph “the licensed activities” mean—

- (a) Work No 10 being the construction and use of gated causeway which causeway is to be constructed of solid foundations, a minimum of 2 layers of geotextile and crushed rock

---

(a) S.I. 2021 [ ] [ ]

infill, 500 mm thick precast concrete pad running surface over well graded gravel bedding layer with side slopes comprising rock filled reno mattress within the following parameters;

**Table 1**

<i>Dimension</i>	<i>Parameter</i>
Length	195m $\pm 5\%$
Width	24m $\pm 5\%$
Height	2.7m $\pm 5\%$ at saltmarsh edge above existing ground surface +4 m AOD $\pm 5\%$ at sea wall
Area of footprint	5,380 m <sup>2</sup>
Maximum volume of material to be removed	2,900m <sup>3</sup>
Volume of rock to be deposited as part of construction	8,500 m <sup>3</sup>

(b) creation by dredging and use of a berthing pocket within the following parameters:

**Table 2**

<i>Dimension</i>	<i>Parameter</i>
Length	200m $\pm 5\%$
Width	70m $\pm 5\%$
Depth	2.1m $\pm 5\%$
Area to be dredged	14,200 m <sup>2</sup>

(c) activities to—

- (i) alter, clean, modify, dismantle, refurbish, reconstruct, remove, relocate or replace any work or structure (including River walls);
  - (ii) carry out excavations (including archaeological investigation excavation) and clearance (excluding clearance or detonation of ordnance), deepening, scouring, cleansing, dumping and pumping operations;
  - (iii) use, appropriate, sell, deposit or otherwise dispose of any materials (including liquids but excluding any wreck within the meaning of the Merchant Shipping Act 1995(a)) obtained in carrying out any such operations;
  - (iv) remove and relocate any vessel or structure sunk, stranded, abandoned, moored or left (whether lawfully or not);
  - (v) temporarily remove, alter, strengthen, interfere with, occupy and use the banks, bed, foreshore, waters and walls of the River;
  - (vi) construct, place and maintain works and structures including piled fenders and protection piles but not including groynes;
  - (vii) to place, alter, divert, relocate, protect, remove or maintain services, plant and other apparatus and equipment belonging to statutory undertakers, utility companies and others in, under or above land, including mains, sewers, drains, pipes, cables, lights and bollards;
- (d) such other works as may be necessary for the purposes of, or in connection with or in consequence of, the construction, maintenance or use of the authorised development, including works comprising geotechnical investigation and archaeology investigation (including the drilling of boreholes, taking of samples and opening of trenches and pits for such investigations); and works for the accommodation or convenience of vessels (including but not limited to berthing and mooring facilities, ladders, buoys, bollards, fenders, rubbing strips and fender panels, fender units and pontoons); and

- (e) activities to carry out works and development of whatever nature, as may be necessary or expedient for the purposes of, or for purposes associated with or ancillary to, the operation and maintenance of the authorised development

(3) The grid coordinates for the area of the River within which the undertaker may carry out licensed activities are specified below and more particularly shown on the works plans—

**Table 3**

<i>Point reference</i>	<i>British National Grid Co-ordinates</i>	
	<i>Easting</i>	<i>Northing</i>
1	566452	175450
2	566480	175428
3	566511	175407
4	566538	175396
5	566549	175412
6	566562	175421
7	566577	175425
8	566798	175432
9	566806	175419
10	566824	175350
11	566822	175323
12	566809	175308
13	566573	175288
15	566400	175349
14	566375	175417
16	566397	175426
17	566410	175440
18	566417	175444
19	566428	175443

## PART 2

### CONDITIONS APPLYING TO CONSTRUCTION ACTIVITIES

#### Notifications regarding licensed activities

4.—(1) The undertaker must inform the MMO, UK Hydrographic Office and HM Coastguard in writing—

- (a) at least 5 business days prior to the commencement of the first licensed activity; and
- (b) within 5 business days following the completion of the final licensed activity, of the commencement or the completion (as applicable).

5.—(1) The undertaker must provide the following information to the MMO—

- (a) the name and function of any agent or contractor appointed to engage in any licensed activity within seven days of appointment; and
- (b) details of any vessel being used to carry on any licensed activity on behalf of the undertaker, together with details of the vessel owner or operating company not less than 24 hours before the commencement of the licensed activity in question.

(2) The necessary contact details are as follows:

- (a) The Source Data Receipt team,  
UK Hydrographic Office,

Taunton,  
Somerset,  
TA1 2DN;  
Tel - 01823 337900;  
Email - sdr@ukho.gov.uk

(3) MCA HQ,

Spring Place,  
105 Commercial Road,  
Southampton,  
SO15 1EG;  
Tel – 02038172000;  
Email - nmoccontroller@hmcg.gov.uk

(4) Any changes to details supplied under subparagraph (1) must be notified to the MMO in writing prior to the agent, contractor or vessel engaging in the licensed activity in question.

(5) Only those persons notified to the MMO in accordance with this condition are permitted to carry out a licensed activity.

6. The undertaker must ensure that a copy of this licence has been read and understood by any agents and contractors, together with any masters or transport managers responsible for the vessels that will be carrying out any licensed activity on behalf of the undertaker, as notified to the MMO under condition 10.

7. Copies of this licence must be available for inspection at the following locations—

- (a) the undertaker's registered office;
- (b) the undertaker's registered office
- (c) any site office located at or adjacent to the construction site and used by the undertaker or its agents and contractors responsible for the loading, transportation or deposit of the authorised deposits; and
- (d) on board each vessel or at the office of any transport manager with responsibility for vessels from which authorised deposits or removals are to be made.

8. The undertaker must request that the masters or transport managers responsible for the vessels that will be carrying out any licensed activity on behalf of the undertaker as notified to the MMO under condition 5 make a copy of this licence available for inspection on board such vessels during the carrying out of any licensed activity.

**Construction method statement**

9.—(1) The undertaker must submit a method statement for approval by the MMO, in consultation with the Environment Agency and Natural England, at least 6 weeks prior to the commencement of any licensed activity.

(2) The method statement must include the following details—

- (a) the detailed construction methodology to be employed by the licence holder in carrying out the licensed activity; and
- (b) a programme of works including timings and durations, method of delivery of material to site and plant to be used during the works.

(3) The undertaker must not commence the licensed activity until the MMO has approved in writing the submitted method statement.

(4) The licensed activity must be carried out in accordance with the approved method statement, unless otherwise agreed in writing by the MMO.

### **Marine pollution contingency plan**

**10.**—(1) The undertaker must submit a marine pollution contingency plan for approval by the MMO at least 6 weeks prior to the commencement of any licensed activity.

(2) The marine pollution contingency plan must set out the undertaker's assessment of the likely risks which could arise as a result of a spill or collision during construction and operation of the authorised development and the methods and procedures the undertaker intends to put in place to address them.

(3) The MMO must consult the Environment Agency and the PLA on the marine pollution contingency plan before approving it.

(4) The undertaker must not commence the licensed activity until the MMO has approved in writing the submitted marine pollution contingency plan.

(5) The licensed activity must be carried out in accordance with the approved marine pollution contingency plan, unless otherwise agreed in writing by the MMO.

### **Concrete and cement**

**11.** The undertaker must not discharge waste concrete slurry or wash water from concrete or cement into the River. The undertaker must site concrete and cement mixing and washing areas at least 10 metres from the River and surface water drains to minimise the risk of run off entering the River.

### **Spills, etc.**

**12.** The undertaker must—

- (a) store, handle, transport and use fuels, lubricants, chemicals and other substances so as to prevent releases into the marine environment, including bunding of 110% of the total volume of all reservoirs and containers;
- (b) report any oil, fuel or chemical spill within the marine environment to the MMO Marine Pollution Response Team within 12 hours [in line with the approved marine pollution contingency plans if one is available], by contacting 0300 200 2024, (within office hours) or 07770 977 825 (outside office hours) or 0345 051 8486 at all times if other number are unavailable, or [dispersants@marinemanagement.org.uk](mailto:dispersants@marinemanagement.org.uk); and
- (c) store all waste in designated areas that are isolated from surface water drains and open water and are bunded.

### **Coatings and treatments**

**13.** The undertaker must ensure that any coatings and any treatments are suitable for use in the River and are used in accordance with either guidelines approved by the Health and Safety Executive or the Environment Agency.

### **Sediment sampling**

**14.**—(1) The undertaker must, prior to the commencement of the licensed activities, carry out further sediment sampling of the river bed and analysis of those samples.

(2) The further sediment sampling and analysis carried out under sub-paragraph (1) must be carried out in accordance with a plan which has been submitted to and approved by the MMO and the PLA.

(3) The plan described in sub-paragraph (2) must include—

- (a) details of the sampling locations with surface, mid and depth levels which will provide a representative sediment assessment; and
- (b) details of an alternative method of dredging to the use of water injection dredging if the further sediment sampling and analysis carried out in accordance with sub-paragraph (2) identifies that the sediment contains contaminants which, in the reasonable opinion of the

MMO or the PLA, make the use of water injection dredging unsuitable for the licensed activities.

(4) The results and analysis of the further sediment sampling carried out in accordance with the plan approved under sub-paragraph (2) must be provided to the MMO and the PLA.

(5) Where the further sediment sampling and analysis carried out in accordance with sub-paragraph (2) identifies, in the reasonable opinion of the MMO or the PLA, that the sediment contains contaminants no water injection dredging must be carried out for the licensed activities and dredged material must be removed to a licenced waste disposal site.

### **Marine archaeology**

**15.**—(1) No licensed activity with the potential to affect buried archaeological assets can be commenced until a written scheme of marine archaeological investigation has been submitted to and approved by the MMO.

(2) The scheme approved under sub-paragraph (1) must be substantially in accordance with the outline marine written scheme of archaeological investigation, and identify the measures to be taken to investigate, protect, record or preserve any significant archaeological remains that may be found.

(3) Any archaeological works carried out under the approved scheme must be carried out by an organisation registered with the Chartered Institute for Archaeologists or by a member of that Institute.

(4) Any archaeological works must be carried out in accordance with the approved marine written scheme of archaeological investigation.

### **Bird Monitoring**

**16.**—(1) No part of the licensed activities can commence until a plan for the carrying out of foreshore bird passage and wintering bird survey and monitoring and including:

- (a) details of pre-commencement surveys to be carried by the undertaker;
- (b) details of the monitoring to be carried out by the undertaker during construction;
- (c) details of post-construction monitoring to be carried by the undertaker; and
- (d) how the results of surveys and monitoring are to be provided to Natural England,

has been submitted to and approved by the MMO in consultation with Natural England.

(2) The surveys and monitoring must be carried out in accordance with the approved details in accordance with recognised codes of good practice.

### **Saltmarsh colonisation and mudflats monitoring programme**

**17.** Construction of Work no.10 must not commence until a monitoring programme for saltmarsh colonisation and mudflat habitats has been submitted to and approved by the MMO in consultation with Natural England and the PLA.

### **Post-construction**

**18.**—(1) The undertaker must remove all temporary structures, waste and debris associated with the construction activities within 6 weeks following completion of the final construction activity.



## PART 3

### PROCEDURE FOR THE DISCHARGE OF CONDITIONS

#### **Meaning of “application”**

**19.** In this Part, “application” means a submission by the undertaker for any approval required under the conditions of the deemed marine licence set out in Part 2 of this Schedule.

#### **Further information regarding application**

**20.—**(1) The MMO may request in writing such further information from the undertaker as is necessary to enable the MMO to consider the application.

(2) If the MMO does not make a request under sub-paragraph (1) within 20 business days of the day immediately following that on which the application is received by the MMO, it is deemed to have sufficient information to consider the application and is not entitled to request further information after this date without the prior agreement of the undertaker.

#### **Determination of application**

**21.—**(1) In determining the application the MMO may have regard to—

- (a) the application and any supporting information or documentation;
- (b) any further information provided by the undertaker in accordance with paragraph 16; and
- (c) such other matters as the MMO thinks relevant.

(2) Having considered the application the MMO must—

- (a) grant the application unconditionally;
- (b) grant the application subject to the conditions as the MMO thinks fit; or
- (c) refuse the application.

#### **Notice of determination**

**22.—**(1) Subject to sub-paragraph (2) or (3), the MMO must give notice to the undertaker of the determination of the application within 65 business days of the day immediately following that on which the application is received by the MMO.

(2) Where the MMO has made a request under paragraph 18, the MMO must give notice to the undertaker of the determination of the application no later than 35 business days of the day immediately following that on which the further information is received by the MMO.

(3) The MMO and the undertaker may agree in writing a longer period of time for the provision by the MMO of a notice under sub-paragraph (1).

(4) Where the MMO refuses the application the refusal notice must state the reasons for the refusal.

(5) Where notice is not given by the MMO in accordance with sub-paragraph (1) or (2) the application is deemed to have been refused.

#### **Arbitration not to apply**

**23.** Article 45 (Arbitration) does not apply to any decision made by the MMO under this Schedule.

## PROTECTIVE PROVISIONS

## PART 1

## FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWAGE UNDERTAKERS

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

2. In this Part of this Schedule—

“alternative apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that utility undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter within the meaning of Part 1 of the Gas Act 1986(b) for the purposes of gas supply;
- (c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
  - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991(c); and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreement to adopt sewers, drains or sewage disposal works at future date) of that Act(d),

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) 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 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;

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

“utility 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;
- (c) a water undertaker within the meaning of the Water Industry Act 1991; and
- (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

---

(a) 1989 c. 29.

(b) 1986 c. 44.

(c) 1991 c. 56.

(d) Section 104 was amended by section 42(3) of the Flood and Water Management Act 2010 (c. 29).

### **Land not affected by this Part**

3.—(1) This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

(2) This Part of this Schedule does not apply to any apparatus belonging to National Grid as defined in Part 4 of this Schedule.

### **Apparatus in restricted streets**

4. Regardless of the temporary restriction of any highway under the powers conferred by article 13 (temporary restriction of use of streets), a utility undertaker is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

### **Acquisition of land**

5. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

### **Removal of apparatus**

6.—(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 or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility 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 utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility 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 the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 45 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 45 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that the undertaker desires itself to execute any work, or part of any

work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) 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.

### **Facilities and rights for alternative apparatus**

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 45 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question 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, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus**

8.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6(2), the undertaker must submit to the utility undertaker in question a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) are to be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If a utility undertaker, in accordance with sub-paragraph (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 1 to 3 and 5 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(5) Nothing in this paragraph 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 instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances.

(7) In relation to works which will or may be situated on, over, under or within 10 metres measured in any direction of any electricity apparatus, the plan to be submitted to the utility undertaker under sub-paragraph (1) must be detailed, include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which they are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal;
- (d) the position of all electricity apparatus; and
- (e) by way of detailed drawings, every alteration proposed to be made to such apparatus.

### **Expenses and costs**

**9.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker all expenses reasonably incurred by that utility 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 6(2).

(2) The value of any apparatus removed under the provisions of this Part of this Schedule must be deducted from any sum payable under sub-paragraph (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 45 (arbitration) to be necessary then, if such placing involves cost 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 utility undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

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

**10.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 6(1) or 6(2) any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by a utility undertaker on behalf of the undertaker or in accordance with a plan approved by a utility undertaker or in accordance with any requirement of a utility undertaker or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(4) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker and, if such consent is withheld, the undertaker has the sole conduct of any settlement or compromise of any proceedings necessary to resist the claim or demand.

### **Cooperation**

**11.** Where in consequence of the proposed construction of any part of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 6(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 8, the undertaker must 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 utility undertaker's undertaking and each utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

**12.** Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaker in respect of any apparatus in land belonging to the undertaker on the date on which this Order is made.

### **Provision for Anglian Water Services Limited**

**13.** Nothing in this Part of this Schedule applies to Anglian Water Services Limited

## **PART 2**

### **FOR THE PROTECTION OF ANGLIAN WATER SERVICES LIMITED**

**14.—(1)** For the protection of Anglian Water, the following provisions have effect, unless otherwise agreed in writing between the undertaker and Anglian Water.

(2) In this Part—

“Anglian Water” means Anglian Water Services Limited (company number 02366656);

“apparatus” means any works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage and

(a) any drain works vested in Anglian Water under The Water Industry Act 1991,

(b) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102 (4) of The Water Industry Act 1991 or an agreement to adopt made under section 104 of that Act, and includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any sewer, drain, or works (within the meaning of section 219 of that Act) and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“alternative apparatus” means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in not less efficient a manner than previously;

“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; and

“plan” includes sections, drawings, specifications and method statements.

(3) The undertaker may not interfere with, build over or near to any apparatus within the Order limits or 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 the standard protection strips which are the strips of land falling the following distances to either side of the medial line of any relevant pipe or apparatus; 2.25 metres where the diameter of the pipe is less than 150 millimetres, 3 metres where the diameter of the pipe is between 150 and 450 millimetres and 6 metres where the diameter of the pipe exceeds 750 millimetres unless otherwise agreed in writing with Anglian Water, such agreement not to be unreasonably withheld or delayed, and such provision being brought to the attention of any agent or contractor responsible for carrying out any work on behalf of the undertaker.

(4) The alteration, extension, removal or re-location of any apparatus may not be implemented until—

- (a) any requirement for any permits under the Environmental Permitting (England and Wales) Regulations 2016 or other legislation and any other associated consents are obtained, and any approval or agreement required from Anglian Water on alternative outfall locations as a result of such re-location are approved, such approvals from Anglian Water not to be unreasonably withheld or delayed; and
- (b) the undertaker has made the appropriate application required under the Water Industry Act 1991 together with a plan and section of the works proposed and Anglian Water has agreed all of the contractual documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld or delayed; and such works to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

(5) In the situation, where in exercise of the powers conferred by the Order, the undertaker acquired any interest in any land in which apparatus is placed and such apparatus is to be relocated, extended, removed or altered in any way no alteration or extension may take place until Anglian Water has established to its reasonable satisfaction, contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus.

(6) Regardless of any provision in this Order or anything shown on any plan, the undertaker must not acquire any apparatus otherwise than by agreement, and before extinguishing any existing rights for Anglian Water to use, keep, inspect, renew and maintain its apparatus in the Order land, the undertaker will, with the agreement of Anglian Water, create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for Anglian Water such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 45 (arbitration).

(7) If in consequence of the exercise of the powers conferred by the Order the access to any apparatus is materially obstructed the undertaker must provide such alternative means of access to such apparatus as will enable Anglian Water to maintain or use the apparatus no less effectively that was possible before such obstruction.

(8) If in consequence of the exercise of the powers conferred by the Order, previously unmapped sewers, lateral drains or other apparatus are identified by the company, notification of the location of such assets will immediately be given to Anglian Water and afforded the same protection of other Anglian Water assets.

(9) If for any reason or in consequence of the construction of any of the works referred to in paragraphs (4) to (6) and (8) above 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 Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Anglian Water in making good any damage or restoring the supply; and
- (b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs incurred by Anglian Water, by reason or in consequence of any such damage interruption.

(10) Notwithstanding the provisions of article 16(2), for any sewer or drain which forms part of the statutory undertaking of Anglian Water, any dispute will not be treated as a dispute under s106 of the Water Industry Act 1991, but will be settled by arbitration in accordance with article 45 (arbitration).

(11) Where the detailed design for any part of the authorised development includes any proposal to interact with, connect to or interfere with any asset belonging to Anglian Water, the undertaker must consult Anglian Water on the proposed design before it is submitted for approval under requirement 4 of Schedule 2. The undertaker must have regard to any response to consultation provided by Anglian Water and must include a copy of any response within the submission seeking approval of the detailed design.

### PART 3

#### FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORK

**1.** For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

**2.** In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003( );

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act;

“electronic communications code network” means—

so much of an electronic communications network or infrastructure 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 (application of the electronic communications code) of the 2003 Act; and

an electronic communications network which the undertaker 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;

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7 (infrastructure system) of that code; and

“operator” means the operator of an electronic communications code network.

**3.** The exercise of the powers conferred by article 30 (statutory undertakers) is subject to Part 10 (undertaker’s works affecting electronic communications apparatus) of the electronic communications code.

**4.—(1)** Subject to sub-paragraphs (2) to (4), if as a result of the authorised development or its construction, or of any subsidence resulting from the authorised development—

(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 the authorised development), 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 cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other



expenses, loss, damages, penalty or costs incurred by it by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that 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 notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker and, if such consent is withheld, the undertaker has the sole conduct of any settlement or compromise of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 45 (arbitration).

**5.** 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 (street works in England and Wales) of the 1991 Act; or
- (b) any damages, or any interruptions, caused by electro-magnetic interference arising from the construction or use of the authorised development.

**6.** Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus in land belonging to the undertaker on the date on which this Order is made.

## PART 4

### FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

**1.**—(1) The following provisions apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

**2.** In this part of this Schedule—

“the Agency” means the Environment Agency;

“construction” includes executing, placing, altering, replacing, relaying and removal and excavating and “construct” and “constructed” are to be construed accordingly;

“drainage work” means (i) any main river and includes any land which provides or is expected to provide flood storage capacity for any main river and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring and (ii) any sea defence;

“fishery” means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, spawning ground, habitat or food of such fish;

“main river” means all watercourses shown as such on the statutory main river maps held by the Agency and the Department for Environment Food and Rural Affairs including any structure or appliance for controlling or regulating the flow of water in or out of the channel;

“plans” includes sections, drawings, specifications, calculations and method statements;

“sea defence” means any bank, wall, embankment (and any berm, counterwall or cross-wall connected to any such bank, wall or embankment), barrier, tidal sluice and other defence, whether natural or artificial, against the inundation of land by sea water or tidal water, including natural or artificial high ground which forms part of or makes a contribution to the efficiency of the defences of the Environment Agency’s area against flooding, but excludes any sea defence works which are for the time being maintained by a coast protection authority under the provisions of the Coast Protection Act 1949 or by any local authority or any navigation, harbour or conservancy authority.

“specified work” means

- (a) so much of any work or operation authorised by this Order as is in, on, under, over or within 8 metres of a main river or is otherwise likely to—
  - (i) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
  - (ii) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;
  - (iii) cause obstruction to the free passage of fish or damage to any fishery;
  - (iv) affect the conservation, distribution or use of water resources; or
  - (v) affect the conservation value of the main river and habitats in its immediate vicinity;
- (b) so much of any work or operation authorised by this Order as is in, on under, over or within 16 metres of a sea defence which is likely to endanger the stability of, cause damage to or reduce the effectiveness of that sea defence, or interfere with the Agency’s access to or along that sea defence;

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

**3.—**(1) Before beginning to construct any specified work, the undertaker must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 11.

(3) Any approval of the Agency required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been refused if it is neither given nor refused within 2 months of the submission of the plans or receipt of further particulars if such particulars have been requested by the Agency for approval and
- (c) may be given subject to such reasonable requirements as the Agency may have for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

(5) If the Agency refuses any approval required under this paragraph then the refusal must be accompanied by a statement of the grounds for refusal.

**4.—**(1) Without limiting paragraph 3 but subject always to the provisions of that paragraph as to reasonableness, the requirements which the Agency may have under that paragraph include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

**5.—**(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 3, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved or settled under this Part of this Schedule; and
- (b) to the reasonable satisfaction of the Agency,

and the Agency is entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If the Agency reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of the specified work to which the protective works relate.

(4) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Agency may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this part of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(5) Subject to sub-paragraph (6), if, within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (4) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any expenditure reasonably incurred by the Agency in so doing is recoverable from the undertaker.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined in accordance with paragraph 11.

**6.—**(1) Subject to sub-paragraph (6) the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the Order Land and on land possessed by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to sub-paragraph (5), if, within a reasonable period, being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is reasonably necessary for such compliance and any reasonable expenditure incurred by the Agency in so doing are recoverable from the undertaker.

(4) If there is any failure by the undertaker to obtain consent or comply with conditions imposed by the Agency in accordance with these Protective provisions the Agency may serve written notice requiring the undertaker to cease all or part of the specified works and the undertaker must cease the specified works or part thereof until it has obtained the consent or complied with the condition unless the cessation of the specified works or part thereof would cause greater damage than compliance with the written notice.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 11.

(6) This paragraph does not apply to

- (a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of the Order from doing so; and
- (b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule.

**7.** If by reason of the construction of any specified work or of the failure of any such work, the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the impairment or damage and recover any expenditure reasonably incurred by the Agency in so doing from the undertaker.

**8.—(1)** If by reason of construction of a specified work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must provide such alternative means of access that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction within 24 hours of the undertaker becoming aware of such obstruction.

**9.—(1)** The undertaker must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in a fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to a fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) If within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the undertaker fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and any expenditure incurred by the Agency in so doing are recoverable from the undertaker.

(4) Subject to paragraph 11, in any case where immediate action by the Agency is reasonably required in an emergency in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the Applicant any expenditure incurred in so doing provided that notice specifying those steps is served on the Applicant as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

**10.** The undertaker shall indemnify the Agency in respect of all costs, charges and expenses which the Agency may incur —

- (a) in the examination or approval of plans under this Schedule;
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and
- (c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

**11.—(1)** The Applicant is responsible for and shall indemnify the Agency against all costs and losses not otherwise provided for in this Schedule which may be incurred or suffered by the Agency by reason of—

- (a) the construction, operation or maintenance of any specified works comprised within the authorised works or the failure of any such works comprised within them; or
- (b) any act or omission of the Applicant, its employees, contractors or agents or others whilst engaged upon the construction, operation or maintenance of the authorised works or dealing with any failure of the authorised works.

(2) For the avoidance of doubt, in sub-paragraph (1)—

“costs” includes—expenses and charges; staff costs and overheads; and legal costs;

“losses” includes physical damage.

(3) The Applicant shall indemnify the Agency against all liabilities, claims and demands arising out of or in connection with the authorised works or otherwise out of the matters referred to in sub-paragraph (1)(a) and (b).

(4) For the avoidance of doubt, in sub-paragraph (3)—

“claims” and “demands” include as applicable—

(a) costs (within the meaning of sub-paragraph (2)) incurred in connection with any claim or demand;

(b) any interest element of sums claimed or demanded;

“liabilities” includes—

(a) contractual liabilities;

(b) tortious liabilities (including liabilities for negligence or nuisance);

(c) liabilities to pay statutory compensation or for breach of statutory duty;

(d) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).

(5) The Agency must give to the undertaker reasonable written notice of any such claim or demand as is referred to in sub-paragraph (1) as soon as reasonably practicable after it becomes aware of such claim or demand, and no settlement or compromise of any such claim or demand is to be made without the prior agreement of the Undertaker which agreement may not be unreasonably withheld or delayed.

(6) The fact that any work or thing has been executed or done by the Undertaker in accordance with a plan approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the Undertaker from any liability under the provisions of this Part of this Schedule.

(7) Nothing in this paragraph imposes any liability on the undertaker with respect to any costs, charges, expenses, damages, claims, demands or losses to the extent that they are attributable to the neglect or default of the Agency, its officers, servants, contractors or agents.

**12.** Any dispute arising between the undertaker and the Agency under this part of this Schedule will, if the parties agree, be determined by arbitration under article 45 (arbitration), but otherwise will be determined by the Secretary of State for Environment, Food and Rural Affairs or its successor and the Secretary of State for Business Energy and Industrial Strategy or its successor acting jointly on a reference to them by the undertaker or the Agency, after notice in writing by one to the other.

## PART 5

### FOR THE PROTECTION OF NATIONAL GRID

#### **Application**

**1.** (1) For the protection of National Grid as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 10 (consent to transfer benefit of Order) –

(a) any agreement of the type mentioned in subparagraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid (but without prejudice to paragraph 11(3)(b) of this Part of this Schedule).

## Interpretation

2. In this Part of this Schedule—

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

“apparatus” means

- (a) any electric lines or electrical plant as defined in the Electricity Act 1989(a), belonging to or maintained by National Grid;
- (b) any mains, pipes or other apparatus belonging to or maintained by National Grid for the purposes of gas supply;

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

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” and “commencement” in this Part of this Schedule shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (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 National Grid’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 National Grid including construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid” means:

(a) National Grid Electricity Transmission Plc (Company Number 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989; and

(b) National Grid Gas plc (Company Number 02006000) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

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

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

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or
- (c) includes any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Grid’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22 and/or activity that is referred to in development near overhead lines EN43-8 and the Health and Safety Executive’s (HSE) guidance note 6 “Avoidance of Danger from Overhead Lines”).

“undertaker” means the undertaker as defined in article 2(1) of this Order;

### **On Street Apparatus**

**3.** Except for paragraphs 4 (*Apparatus of statutory undertakers in temporarily restricted streets*), 8 (*retained apparatus: protection for electricity undertaker*) and 9 (*retained apparatus: protection for gas undertaker*), 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 National Grid, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

### **Apparatus of statutory undertakers in temporarily restricted streets**

**4.** Despite the temporary stopping up or diversion of any highway under article 13 (temporary restriction of use of streets), National Grid may at all times take all necessary access across any such highway and execute and do all such works and things in, on or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the restriction or diversion was in that highway

### **Acquisition of land**

**5.** (1) Notwithstanding any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid otherwise than by agreement (such agreement not to be unreasonably withheld).

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid or affect the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected

in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

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

(4) Any agreement or consent granted by National Grid under paragraph 9 or 10 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

### **Removal of apparatus**

**6.**—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid 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 National Grid in accordance with sub-paragraph (2) to (5).

(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 National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Grid to its reasonable satisfaction (taking into account paragraph 8(1) below) the necessary facilities and rights

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

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

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

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and



subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

### **Facilities and rights for alternative apparatus**

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid 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 undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker 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 National Grid 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 the matter may be referred to arbitration in accordance with paragraph 15 (*Arbitration*) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus: protection of electricity undertaker**

8.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (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 sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (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 any 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 any cable route;

- (f) written details of the operations and maintenance regime for any cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers; and
- (h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of at least 26 tonnes in weight.

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

(5) Any approval of National Grid required under sub-paragraphs (4)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and,
- (b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid 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, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where under sub-paragraph (6) National Grid 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 National Grids' satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and National Grid shall give notice its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (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 7(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised development, 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 sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (12) at all times.

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

### **Retained apparatus: protection of gas undertaker**

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

(1) The plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

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

(2) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until National Grid has given written approval of the plan so submitted.

(3) Any approval of National Grid required under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (4) or (6); and,
- (b) must not be unreasonably withheld.

(4) In relation to any work to which sub-paragraphs (1) and/or (2) apply, National Grid 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 for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(5) Works executed under sub-paragraphs (1) or (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (4), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (4) or (6) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(6) Where National Grid 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 National Grids' satisfaction prior to the commencement of any specified works for which protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(7) If National Grid in accordance with sub-paragraphs (4) or (6) 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 7(2).

(8) 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 specified 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.

(9) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances and comply with sub paragraph (10) at all times;

(10) At all times when carrying out any works authorised under the Order National Grid must comply with National Grid'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".

(11) 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 National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 10.

### Expenses

**10. (1)** Save where otherwise agreed in writing between National Grid and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably and properly incurred by National Grid 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 execution of any authorised works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid;
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 7(3); or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

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

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

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 15 (*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 National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that 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) Any amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

## Indemnity

**11.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid 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 National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid and including Network Code Claims other than arising from any default of National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Grid 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 sub-paragraph (1) shall impose any liability on the undertaker in respect of-

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents;
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Grid 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 [●] (*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 sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 11.

(4) National Grid must give the undertaker reasonable 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 considering their representations.

(5) National Grid must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

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

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

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

### **Enactments and agreements**

**12.** Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid 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 part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 7(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 9) or (10), the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid shall use its best endeavours to co-operate with the undertaker for that purpose.

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

### **Access**

**14.** If in consequence of the agreement reached in accordance with paragraph 5(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

**15.** Save for differences or disputes arising under paragraph 6(2), 6(4) 7(1), 8 and 9 any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must,

unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 45 (arbitration).

## **Notices**

**16.** Notwithstanding article 42 (service of notices), any plans submitted to National Grid by the undertaker pursuant to this Part must be sent to Plant Protection at [plantprotection@cadentgas.com](mailto:plantprotection@cadentgas.com) or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

## **PART 6**

### **FOR THE PROTECTION OF THE PORT OF LONDON AUTHORITY**

#### **Part to have effect unless otherwise agreed**

**1.** The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and the PLA, for the protection of the PLA.

#### **Interpretation**

**2.** In this part of this Schedule—

“1968 Act” means the Port of London Act 1968;

“construction” means execution, placing, altering, replacing, relaying, removal and renewal and, its application to a specified work which includes or comprises any operation, means the carrying out of that operation, and “construct” and “constructed” have corresponding meanings;

“navigational risk assessment” means assessment of any potential risk of the specified works, and must contain the following information:

- (a) existing navigational features including extent of authorised channels, existing navigational structures and constraints;
- (b) tidal characteristics;
- (c) existing river uses;
- (d) general navigational arrangements;
- (e) existing site specific issues;
- (f) existing navigational risks;
- (g) proposed navigational strategies;
- (h) delivery schedules; and
- (i) such other details as agreed between the undertaker and the PLA;

“permanent work” means any work or structure forming part of the authorised development that is required for the construction, maintenance and operation of the authorised development that is on, in, under or over the surface of the land below the level of mean high water springs forming part of the river;

“plans” includes navigational risk assessments, plans, sections, drawings, elevation, specifications, calculations, construction programmes, method statements, hydraulic information and the causeway decommissioning plan, relating to the construction, carrying out and, where appropriate, removal of any specified work;

“scour and accretion monitoring and mitigation strategy” means a scour and accretion monitoring and mitigation strategy for the specified works to be submitted to the PLA under paragraph 11(1), including, but not limited to, results and clarification of existing and further

works, and the extent, frequency, and form of the monitoring and mitigation for scour and accretion;

“specified function” means any function of the undertaker under this Order (except for any function under article 19 (compulsory acquisition of land), 22 (compulsory acquisition of rights) or 25 (acquisition of subsoil, etc. only)) the exercise of which may affect the river Thames or any function of the PLA

“specified work” means any permanent or temporary work or operation, constructed or carried out under this Order that is, or may be on, in, under or over the surface of land below mean high water level forming part of the river including

- (a) any projection over the river by booms, cranes or similar plant or machinery whether or not they are situated within the Order limits;
- (b) the placing or maintenance of apparatus, plant, or equipment;
- (c) Any surveying work undertaken pursuant to article 17 (Authority to survey and investigate the land) or maintenance works undertaken pursuant to article 5 (Maintenance of authorised development) which would if not for the provisions of this Order require a licence pursuant to section 66 of the 1968 Act;
- (d) any such work or operation (including any suspension or extinguishment of public rights of navigation under article 37 (Works in the river Thames: conditions)) that affects the river or any function of the PLA, whether or not that work or operation is in, over or under the river;
- (e) but does not include maintenance dredging; and

“temporary work” means any work or structure forming part of the authorised development other than Work no 10, that is not required for the operation of the authorised development and which is on, in, under or over the surface of the land below the level of the mean high water springs forming part of the river;

## **Approvals**

**3.—**(1) The undertaker must not commence;

- (a) the construction of
- (b) the carrying out of, or
- (c) an operation for maintenance of

any specified work or the exercise of any specified function until plans of that work or function, and any further particulars the PLA may reasonably require, which may include a scour and accretion monitoring and mitigation strategy relating to that work, its proposals for any lighting and laying down of buoys, to secure the navigational safety of the river in the vicinity of the specified work (including any area over which the public right of navigation is to be suspended), have been approved in writing by the PLA.

(2) The undertaker must submit to the PLA plans of the specified work or specified function together with all relevant information necessary to enable the PLA to determine whether approval should be given and, if so, whether conditions should be imposed. The PLA may, within 35 business days starting with the day on which plans and information described in sub-paragraph (1) are submitted under this sub-paragraph, reasonably require the undertaker to provide such further particulars as it considers necessary to reach its determination.

(3) Subject to sub-paragraph (6), an application for approval under this paragraph is deemed to have been refused if it is neither given nor refused within 65 business days of:

- (a) the date on which plans and information were submitted under sub-paragraph (2); or
- (b) the provision of further information under that sub-paragraph;

whichever is the later.



(4) Any approval of the PLA required under this paragraph must not be unreasonably withheld but may be given subject to such reasonable modifications, terms and conditions as the PLA may make for the protection of—

- (a) traffic in, or the flow or regime of, the river Thames;
- (b) the use of its land, or the river Thames, for the purposes of performing its functions; or
- (c) the performance of any of its functions connected with environmental protection.

(5) Conditions made under sub-paragraph (4) may include conditions as to—

- (a) the proposed location of any temporary work and its dimensions or the location where the specified function is proposed to be exercised;
- (b) the length of time that any temporary work may be kept in place;
- (c) the programming of temporary works or the exercise of the specified functions
- (d) the removal of any temporary work and the undertaking by the undertaker of any related work or operation that the PLA considers to be necessary for the purpose of removing or preventing any obstruction to navigation;
- (e) the relocation, provision and maintenance of works (other than a specified work), moorings, apparatus and equipment necessitated by the specified work or specified function; and
- (f) the expiry of the approval if the undertaker does not commence construction or carrying out of the approved specified work or exercise of the specified function within a prescribed period.

(6) An approval of the PLA under this paragraph will not be deemed to have been unreasonably withheld if approval within the time limit specified by sub-paragraph (3) has not been given pending the outcome of any consultation on the approval in question that the PLA is obliged to carry out in the proper exercise of its functions.

(7) An approval of the PLA under this paragraph is evidence that the plans to which the approval related have been approved only as affecting the PLA, the PLA's functions and the River in relation to those functions, and does not imply approval or endorsement of the plans for any other purpose.

#### **General provisions as to construction of works including inspection**

4.—(1) The construction or carrying out of any specified work or specified function will, once commenced, be carried out by the undertaker with all reasonable dispatch and to the reasonable satisfaction of the PLA so that river traffic, the flow or regime of the river Thames and the exercise of the PLA's functions will not suffer more interference than is reasonably practicable.

(2) Any person so authorised by the PLA is entitled at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey any specified work.

(3) As soon as reasonably practicable following the completion of any specified work, the undertaker must provide to the PLA as built drawings of any those works in a form and scale to be agreed between the undertaker and the PLA to show the position of those works in relation to the river Thames.

#### **Notifications**

5.—(1) The undertaker must inform the PLA in writing of the intended start date and the likely duration of the carrying out of specified work at least 10 business days prior to the commencement of the first specified work.

(2) The undertaker must serve notice in writing of any transfer made pursuant to Article 8 (Consent to transfer of the benefit) upon the PLA together with a copy of the instrument or deed effecting such transfer within 10 business days of any such transfer.

(3) The undertaker must within 7 days after the completion of any sale, agreement or other transaction in relation to which any powers, rights and obligations of the undertaker are transferred to another party, notify the PLA in writing, and the notice must include particulars of the other party

to the transaction, the general nature of the transaction and details of the extent, nature and scope of the works or functions sold, transferred or otherwise dealt with.

#### **Discharges etc.**

**6.**—(1) The undertaker must not without the consent of the PLA exercise the powers conferred by article 16 (discharge of water) so as to—

- (a) deposit in or allow to fall or be washed into the river Thames any gravel, soil or other material;
- (b) discharge or allow to escape either directly or indirectly into the river Thames any offensive or injurious matter in suspension or otherwise; or
- (c) directly or indirectly discharge any water into the river Thames.

(2) Any consent of the PLA under this paragraph will not be unreasonably withheld but may be given subject to such terms and conditions as the PLA may reasonably impose.

(3) Any such consent is deemed to have been refused if it is neither given nor refused (or is refused but without an indication of the grounds for refusal) within 35 business days of the day on which the request for consent is submitted under paragraph sub-paragraph (1)

(4) Article 16 (discharge of water) has effect subject to this paragraph.

(5) The undertaker must not, in the exercise of the powers conferred by article 16 (discharge of water), damage or interfere with the beds or banks of any watercourse forming part of the river Thames unless such damage or interference is approved as a specified work under this Order or determined under paragraph [19] or is otherwise approved in writing by the PLA.

#### **Navigational lights, buoys, etc**

**7.**—(1) The undertaker must during construction, at or near any specified work, any other work below mean high water level of which the undertaker is in possession or a location where a specified function is being exercised, exhibit such lights, lay down such buoys and take such other steps for preventing danger to navigation as the PLA may from time to time reasonably require.

(2) After the completion of Work no. 10 the undertaker must at the outer extremity of that work exhibit every night from sunset to sunrise such lights, if any, and take such other steps, if any, for the prevention of danger to navigation as the PLA may from time to time direct.

(3) The PLA must give the undertaker not less than 20 business days written notice of a requirement under sub-paragraphs (1) and (2) except in the case of emergency when the PLA will give such notice as is reasonably practicable.

(4) Without prejudice to section 133 of the 1968 Act (Lights detrimental to navigation), the undertaker must comply with the directions of the Harbour Master from time to time with regard to the lighting on the specified work, or the screening of such lighting, so as to ensure that it is not a hazard to navigation on the river Thames.

(5) The undertaker must not in the exercise of the powers conferred by this Order, interfere with any marks, lights or other navigational aids in the river Thames without the consent of the PLA, and must ensure that access to such aids remains available during and following construction of any specified work.

#### **Removal, etc of the PLA's moorings and buoys**

**8.**—(1) Subject to paragraph 8(2), if by reason of the construction of any specified work it is reasonably necessary for the PLA to incur the cost of—

- (a) temporarily or permanently altering, removing, re-siting, repositioning or reinstating existing moorings or aids to navigation (including navigation marks or lights) owned by the PLA;
- (b) laying down and removing substituted moorings or buoys; or
- (c) carrying out dredging operations for any such purpose;

not being costs which it would have incurred for any other reason, the undertaker must pay the costs reasonably so incurred by the PLA.

(2) The PLA will give to the undertaker not less than 20 business days' notice of its intention to incur such costs, and take into account any representations which the undertaker may make in response to the notice within 10 business days of the receipt of the notice.

### **Removal of temporary works**

**9.**—(1) On completion of the construction or carrying out of any part of a permanent work, authorised by this Order the undertaker must—

- (a) as soon as reasonably practicable after such completion seek approval under paragraph 3 for the removal required by sub-paragraph (b); and
- (b) as soon as reasonably practicable after the grant of that approval under paragraph 3 remove—
  - (i) in the case of completion of part, any temporary work (other than a residual structure) carried out only for the purposes of that part of the permanent work;
  - (ii) on completion of all the specified works, any remaining temporary work (other than a residual structure); and
  - (iii) in either case, any materials, plan and equipment used for such construction,

and must make good the site of the permanent work to the reasonable satisfaction of the PLA.

(2) For the purposes of the undertaker making good the site in accordance with sub-paragraph (1)(b), the PLA may require that—

- (a) any residual structure is cut off by the undertaker at such level below the bed of the river Thames as the PLA may reasonably direct; and
- (b) the undertaker takes such other steps to make the residual structure safe as the PLA may reasonably direct.

(3) as soon as reasonably practicable after the undertaker has complied with the PLA's requirements under sub-paragraphs (1) and (2) in relation to any residual structure, the PLA will grant the undertaker a works licence for that structure under section 66 (licencing of works) of the 1968 Act, and the terms of the licence are to reflect such requirements.

(4) For the avoidance of doubt, article 10 (disapplication of legislation etc.) will not apply to a residual structure which will, accordingly, be subject to sections 66 to 75 of the 1968 Act.

(5) In this paragraph "residual structure" means any part of a temporary work that the PLA agrees cannot reasonably be removed by the undertaker on completion of the construction of the permanent work.

### **Obstruction in the river Thames**

**10.**—(1) If any pile, stump or other obstruction to navigation becomes exposed as a result of constructing any specified work (other than a pile, stump or other obstruction on the site of a structure comprised in any permanent work), the undertaker will, as soon as reasonably practicable after the receipt of notice in writing from the PLA requiring such action, remove it from the river Thames or, if it is not reasonably practicable to remove it—

- (a) cut the obstruction off at such level below the bed of the river Thames as the PLA may reasonably direct; or
- (b) take such other steps to make the obstruction safe as the PLA may reasonably require.

(2) If after such reasonable period as may be specified in a notice under this paragraph the undertaker has failed to begin taking steps to comply with the requirements of the notice, or after beginning has failed to make reasonably expeditious progress towards their implementation, the PLA may carry out the works specified in the notice and any expenditure reasonably incurred by it in so doing will be recoverable from the undertaker.

### **Scour monitoring and mitigation**

**11.**—(1) The undertaker must submit a scour and accretion monitoring and mitigation strategy to the PLA for approval, such determination to be given by the expiry of 20 business days from receipt of the submission made under this paragraph.

(2) Prior to the commencement of any specified work, a scour and accretion monitoring and mitigation plan must be prepared by the undertaker in accordance with the scour and accretion monitoring and mitigation strategy approved under paragraph 11(1) or otherwise determined, and the scour and accretion monitoring and mitigation plan must be submitted to the PLA for approval within 35 business days starting on the day on which such submission is received by the PLA under this paragraph.

(3) The scour and accretion monitoring and mitigation strategy and scour and accretion monitoring and mitigation plan must include the investigation of the sluice as shown on PLA chart 337 Gravesend Reach (Lower), location 566500, 175250.

(4) Following the any submission of a scour and accretion monitoring and mitigation plan under sub-paragraph (2), the approval process in paragraph 3 will apply to such submission as if it were a submission under that paragraph.

(5) The carrying out of any specified work may proceed only in accordance with the scour and accretion monitoring and mitigation plan as approved by the PLA under paragraph 11(2).

### **Survey of river bed**

**12.**—(1) The PLA may, at the undertaker's expense, (such expense to be that which is reasonably incurred), carry out a survey (or externally procure the carrying out of a survey) for the purpose of establishing the condition of the river Thames—

- (a) before the commencement of construction or carrying out of the first specified work to be commenced following approval under paragraph 3, a survey of such parts of the river Thames as might be affected by sedimentation or scouring that might result from the construction of the specified works if they were to be constructed, such survey being for the purpose of establishing the condition of the river Thames at the time the survey is carried out;
- (b) before the commencement of construction or carrying out of any specified work approved under paragraph 3, a survey of such parts of the river Thames as might be affected by sedimentation or scouring resulting from that specified work, such survey being for the purpose of establishing the condition of the river Thames at the time the survey carried out;
- (c) during the construction or carrying out of any specified work, such surveys of the river Thames (for the purpose of ascertaining the effect of that scheduled work on the river Thames) as are stipulated in the scour and accretion monitoring and mitigation strategy or the relevant scour and accretion monitoring and mitigation plan; and
- (d) after completion of, respectively, all the specified works constructed or carried out under this Order, a survey of the specified works completed as constructed or carried out (for the purpose of establishing the condition of the river Thames and the effect that the specified works are having on sedimentation or scouring, the flow and regime of the river Thames, the navigation of the river Thames or the protection of structures within the river Thames or the exercise of the PLA's functions) as are stipulated in the scour and accretion monitoring and mitigation strategy or the relevant scour and accretion monitoring and mitigation plan.

(2) The PLA must make available to the undertaker the results of any survey carried out under this paragraph.

(3) The PLA must not under this paragraph carry out a survey of any part of the river Thames in respect of which the undertaker has provided to the PLA survey material which the PLA is satisfied established the condition of the river Thames, and in the case of a survey under sub-paragraph (1)(c), the effect of the specified works and the specified functions.

(4) A survey carried out under this paragraph is the property of the PLA.

### **Sedimentation, etc: remedial action**

**13.**—(1) This paragraph applies if any part of the river Thames has become or is likely to become subject to sedimentation, scouring or other changes in the flow or regime of the river Thames which—

- (a) is wholly or partly caused by a specified work or a specified function during the period beginning with the commencement of construction of that work or function and (subject to sub-paragraph (4)) ending with the expiration of six years after the date of completion of all the specified works comprised in the authorised development; and
- (b) for the safety of navigation or for the protection of any works in the river Thames, should in the reasonable opinion of the PLA be removed or made good.

(2) The undertaker must either—

- (a) pay to the PLA any additional expense to which the PLA may reasonably be put in dredging the river Thames to remove the sedimentation or in making good the scouring so far as (in either case) it is attributable to either or both the specified work and the specified function; or
- (b) carry out the necessary dredging or work to make good the scouring at its own expense and subject to the prior approval of the PLA which may be subject to reasonable conditions but which may not be unreasonably withheld or delayed;

and the expenses payable by the undertaker under this paragraph include any additional expenses accrued or incurred by the PLA in carrying out surveys or studies which may be agreed with the undertaker in connection with the implementation of this paragraph.

(3) At any time before the expiry of the period of 6 years after the completion of all the specified works comprised in the authorised development (“the completion date”) the PLA may serve notice on the undertaker stating that in the opinion of the PLA the river Thames or any part of it may, after the expiry of that period, become subject to sedimentation, scouring, or other changes in its flow or regime wholly or partly caused by a specific work or specified function. Any such notice must specify—

- (a) the additional period (not exceeding 10 years after the completion date) during which the provisions of sub-paragraph (1) and (2) ought to apply; and
- (b) the PLA’s reasons for reach that opinion.

(4) On receipt of any such notice the undertaker may serve a counter-notice within 30 business days beginning on the day the notice was received, such notice to include details of the undertaker’s objection to the PLA’s notice or any conditions it may wish to impose on compliance by the undertaker with the PLA’s notice.

(5) In the event that the PLA and the undertaker cannot agree the matters raised the PLA’s notice and the undertaker’s counter-notice within two months from the service of the undertaker’s counter-notice, either party may refer the matter to arbitration under paragraph 19 of this Part.

(6) If the undertaker fails to serve a counter-notice or if it serves a counter-notice and the matter is either agreed between the PLA and the undertaker or determined pursuant to sub-paragraph (5), then the provisions of sub-paragraphs (1) and (2) will apply during such additional period as is specified in the PLA’s notice or as may be so agreed or determined.

### **Protective action**

**14.**—(1) If any specified work or the exercise of any specified function is constructed or carried out—

- (a) otherwise than in accordance with the requirements of this Part of this Schedule or with any condition in an approval given pursuant to paragraph 3; or
- (b) during construction or carrying out is found to give rise to sedimentation, scouring, currents or wave action that is detrimental to traffic in, or the flow or regime of, the river Thames,

then the PLA may by notice in writing require the undertaker at its own expense to comply with the remedial requirements specified in the notice.

(2) If the undertaker does not comply with a notice under sub-paragraph (1), or is unable to do so then the PLA may in writing require the undertaker to—

- (a) remove, alter or pull down the specified work, and where that work is removed to restore the site of that work (to such extent as the PLA reasonably requires) to its former condition; or
- (b) take such other action as the PLA may reasonably specify for the purpose of remedying the non-compliance to which the notice relates.

(3) If a specified work gives rise to environmental impacts over and above those anticipated by any environmental document, the undertaker must, in compliance with its duties under any enactment take such action as is necessary to prevent or mitigate those environmental impacts and in doing so must consult and seek to agree the necessary measures with the PLA.

(4) If—

- (a) the PLA becomes aware that any specified work is causing an environmental impact over and above those anticipated by any environmental document the PLA must notify the undertaker of that environmental impact, the reasons why the PLA believes that the environmental impact is being caused by a specified work and of the measures that the PLA reasonably believes are necessary to counter or mitigate that environmental impact.

(5) The undertaker must implement the measures that the PLA has notified to the undertaker or such other measures as agreed between the undertaker and the PLA.

(6) In this paragraph, “environmental document” means—

- (a) the environmental statement; and
- (b) any other document containing environmental information provided by the undertaker to the PLA for the purposes of any approval under paragraph 3.

#### **Abandoned or decayed works**

**15.**—(1) If a specified work is abandoned or falls into decay, the PLA may by notice in writing require the undertaker to take such reasonable steps as may be specified in the notice either to repair or restore that work, or any part of it, or to remove that specified work and (to such extent and within such limits as the PLA reasonably requires) restore the site of that work to its condition prior to the construction of that work.

(2) If a specified work is in such condition that it is, or is likely to become, a danger to or an interference with navigation in the river Thames, the PLA may by notice in writing require the undertaker to take such reasonable steps as may be specified in the notice

- (a) to repair and restore the work or part of it or
- (b) if the undertaker so elects, to remove the specified work and (to such extent as the PLA reasonably requires) to restore the site of the work to its former condition.

(3) If on the expiration of such reasonable period as may be specified in a notice under this paragraph the work specified in the notice has not been completed to the satisfaction of the PLA, the PLA may undertake that work and any expenditure reasonably incurred by the PLA in so doing is recoverable from the undertaker.

#### **Disapplication of legislation, etc**

**16.** Subject to article 10 (disapplication of legislation, etc.) the exercise in, under or over the river Thames by the undertaker of any of its functions under this Order is subject to—

- (a) any enactment relating to the PLA;
- (b) any byelaw, direction or other requirement made by the PLA or the Harbour Master under any enactment; and
- (c) any other exercise by the PLA or the Harbour Master of any function conferred by or under any enactment.

### **Permanent works where land not acquired**

**17.**—(1) Notwithstanding any rule of law, Work no.10 constructed in, on under or over land that is not acquired by the undertaker will remain vested in the undertaker and will not be annexed to the land.

(2) The PLA, following construction, will grant to the undertaker a licence under section 66 of the 1968 Act in respect of any work to which sub-paragraph (1) applies and such licence may be granted for a consideration to be agreed or assessed in accordance with section 67 of the 1968 Act and on such terms as the PLA thinks fit.

### **Indemnities, costs and exercise of DCO powers and compensation**

**18.**—(1) The undertaker will be responsible for and make good to the PLA all financial costs or losses not otherwise provided for in this Part of this Schedule which may reasonably be incurred or suffered by the PLA by reason of—

- (a) the construction or operation of the authorised development or the failure of any works comprised within it;
- (b) the exercise of any specified function;
- (c) anything done in relation to a mooring or buoy pursuant to paragraph 7; or;
- (d) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction or operation of the authorised development or dealing with any failure of the authorised development; and
- (e) the undertaker will indemnify the PLA from and against all claims and demands arising out of or in connection with the authorised development or any such failure, act or omission.

(2) The fact that any act or thing may have been done—

- (a) by the PLA on behalf of the undertaker; or
- (b) by the undertaker, its employees, contractors or agents in accordance with plans or particulars submitted to or modifications or conditions specified by the PLA, or in a manner approved by the PLA, or under its supervision or the supervision of its duly authorised representative;

will not (if it was done or required without negligence on the part of the PLA or its duly authorised representative, employee, contractor or agent) excuse the undertaker from liability under the provisions of this paragraph.

(3) In complying with the indemnity provisions pursuant to this paragraph the undertaker's liability will either be limited to a sum to be agreed between the parties or unlimited

(4) The PLA must give the undertaker reasonable notice of any such claim or demand as is referred to in sub-paragraph (1), and no settlement or compromise of any such claim or demand will be made without the prior consent of the undertaker.

### **Disputes**

**19.** Any dispute arising between the undertaker and the PLA under this Part of this Schedule will be determined by arbitration in accordance with article 45 (arbitration) unless otherwise agreed in writing by the undertaker and the PLA.

### **Restriction on powers of compulsory acquisition**

**20.** Nothing contained in Part 5 (powers of acquisition and possession of land) of this Order authorises the acquisition of any interest in, or the acquisition or extinguishment of any right in, on or over and Order land if the interest or right is at the time of the proposed acquisition vested in the PLA.

### **Consideration for dredged material**

**21.**—(1) The undertaker must pay to the PLA for material dredged by the undertaker under this Order from so much of the river Thames of which the freehold is vested in the PLA, consideration calculated at a rate agreed between them and otherwise in accordance with this paragraph.

(2) The undertaker must pay consideration under sub-paragraph (1) as respects material dredged in the course of the construction of the authorised development based on the quantity of such material that—

- (a) is not used for the construction of the authorised development; and
- (b) is sold by the undertaker or by any person exercising any powers under this Order.

### **As built drawings**

**22.** As soon as reasonably practicable following the completion of construction of the permanent specified works, the undertaker must provide to the PLA as built drawings of those works in a form and scale to be agreed between the undertaker and the PLA and the PLA to show the position of those works in relation to the river Thames.

### **Maintenance dredging**

**23.** For the avoidance of doubt, section 73 of the 1968 Act applies to any maintenance dredging carried out by the undertaker.

## **PART 7**

### **FOR THE PROTECTION OF NETWORK RAIL**

#### **Part to have effect unless otherwise agreed**

**1.** The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail, for the protection of Network Rail in relation to the construction, operation and maintenance of the authorised development.

#### **Interpretation**

**2.** In this Part of this Schedule -

“access road” means Work No. 6;

“gas pipeline” means Work No. 4;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“Low Street level crossing” means the public access railway level crossing located on the London, Tilbury and Southend railway line at Station Road, Tilbury.

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of powers under section 8 (licences) of the Railways Act 1993;

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at 1 Eversholt Street, London, NW1 2DN) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes within the Order limits, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging



proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail Infrastructure Limited within the Order limits and -

- (a) any station, land, works, apparatus and equipment belonging to Network Rail Infrastructure Limited or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail Infrastructure Limited for the purposes of such railway or works, apparatus or equipment; and

“Specified Work” means so much of the construction and maintenance of:

- (a) Work No. 4 as is situated upon, across, under, over or within 200 metres of railway property
- (b) Work No. 6 as is situated upon, across, under, over or within 15 metres of railway property;
- (c) Work No. 7 as is situated upon, across, under, over or within 15 metres of railway property;

together the “set-off distances”; and

- (d) in any other case, any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

“water pipeline” means Work No. 7.

“Walton Common level crossing” means private access railway level crossing located on the London, Tilbury and Southend railway line approximately 0.6 miles south-west of Low Street level crossing.

**3.** Where under this Part of this Schedule Network Rail is required to give its consent, agreement or approval in respect of any matter, that consent, agreement or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

**4.—(1)** The undertaker must not exercise the powers conferred by—

- (a) article 19 (discharge of water);
- (b) article 23 (compulsory acquisition of land);
- (c) article 24 (compulsory acquisition of rights);
- (d) article 25 (acquisition of subsoil only);
- (e) article 26 (power to override easements and other rights);
- (f) article 28 (temporary use of land for carrying out the authorised development);
- (g) article 29 (temporary use of land for maintaining the authorised development);

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not commence construction of any works that would affect Network Rail’s access to the operational railway unless the exercise of such powers is with the consent of Network Rail.

**5.—(1)** The undertaker must not under the powers of this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail. Where Network Rail is asked to give its consent pursuant to this sub-paragraph, such consent must not be unreasonably withheld but may be given subject to any conditions Network Rail require to secure the safety of the railway property and its users.

(2) The undertaker must before commencing construction of any Specified Work supply to Network Rail proper and sufficient plans of that work for the reasonable approval 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 or settled by arbitration under article 43 (arbitration).

(3) The approval of the engineer under sub-paragraph (2) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated disapproval of those plans and the grounds of disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer is deemed to have approved the plans as submitted.

(4) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a Specified Work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the Specified Work to be constructed, Network Rail must construct it without unreasonable delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(5) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a Specified Work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation, de-commissioning and removal of works, apparatus and equipment necessitated by a Specified Work and the comfort and safety of passengers who may be affected by the Specified Works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unreasonable delay and the undertaker must not commence the construction of the Specified Works until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

**6.—**(1) Any Specified Work and any protective works to be constructed by virtue of sub-paragraph 5(4) must, when commenced, be constructed:

- (a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of a Specified Work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonably and properly incurred expenses to which Network Rail may be put and compensation for any loss which it may properly sustain by reason of any such damage, interference or obstruction.

(3) 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 negligence of Network Rail or its servants, contractors or agents, or any liability on Network Rail with respect to any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

**7.** The access road junction at Station Road must not be less than 70 metres from the stop-line of the Low Street level crossing and the undertaker must not commence use of the access road until Thurrock Council have installed the illuminated signage designed in consultation with Network Rail

Limited within the local highway boundary as mitigation for the location of the access road junction at Station Road.

**8.—**(1) The undertaker must enter into an asset protection agreement with Network Rail in relation to Works No. 4, 6 and 7 to secure:

- (a) that no works within the set-off distance shall be carried out without Network Rail's prior approval of the plans, specification, method statement and programme of works (including design information and construction methodology) and such approval is not to be unreasonably delayed or withheld but may be given subject to any conditions Network Rail require to secure the safety of railway property and its users;
- (b) full access rights, during both the construction and operation phases, are retained for the benefit of Network Rail to enable the carrying out of all necessary maintenance, repair, renewal, inspection and enhancement works;
- (c) recovery of Network Rail's legal and professional fees, costs and disbursements incurred in connection with the proposals to carry out the works and any other costs incurred by Network Rail arising out of the construction, operation and maintenance of the works; and
- (d) no work will be carried out unless and until all consents, licences, registrations and authorisations (including any statutory or regulatory consents) are in place.

**9.—**(1) The undertaker must not submit:

- (a) the Detailed Design of any part of Works No. 4, 6 or 7 outside of the set-off distances which would have any impact (adverse or otherwise) on railway property;
- (b) the Construction Traffic Management Plan; or
- (c) the Construction Worker Travel Plan

to the relevant planning authority in accordance with requirement 4 of Schedule 2 (Detailed Design), requirement 6 of Schedule 2 (Construction Traffic Management Plan) and requirement 7 of Schedule 2 (Construction Worker Travel Plan) without having first consulted with Network Rail in accordance with subparagraph (3).

(2) The Detailed Design information provided to Network Rail for consultation purposes under paragraph 9(1)(a) must include (but not be limited to):

- (a) any potential impacts on water courses arising as a consequence of that Work which may affect existing water courses running underneath railway property; and
- (b) details of the proposed lighting design.

(3) The undertaker must provide Network Rail with a draft of the relevant plan in accordance with paragraph 9(7) below, and Network Rail must within a period of 28 days beginning with the date on which the draft plan is received by Network Rail serve written notice on the undertaker confirming:

- (a) any comments on the draft Detailed Design, draft Construction Traffic Management Plan or draft Construction Worker Travel Plan; or
- (b) any reasonable amendments to the draft Detailed Design, draft Construction Traffic Management Plan or draft Construction Worker Travel Plan as requested by Network Rail; or
- (c) that further information is required in order for Network Rail to make its comments and/or reasonable amendments (in which case this paragraph 9(3) shall apply to such further information from the date of its receipt by Network Rail)

(4) Provided that the obligations in paragraph 9(7) have been satisfied by the undertaker, in the event that Network Rail fails to serve written notice in accordance with paragraph 9(3) within 28 days of receipt no further consultation with Network Rail shall be required.

(5) The undertaker must

- (a) take into consideration any amendments which are reasonably requested by Network Rail and are technically feasible and which have been notified to the undertaker by Network Rail in the notice given pursuant to paragraph 9(3)(b) and use reasonable endeavours to

accommodate or agree with Network Rail any reasonable amendments to include in the draft plan it submits to the relevant planning authority and finalises in accordance with requirement 4 of Schedule 2 (Detailed Design), requirement 6 of Schedule 2 (Construction Traffic Management Plan) and requirement 7 of Schedule 2 (Construction Worker Travel Plan);

- (b) include any amendments which are requested by Network Rail and are essential in order to secure the safety of railway property and its users and which have been notified to the undertaker by Network Rail in the notice given pursuant to paragraph 9(3)(b);
- (c) not submit any written details to the relevant planning authority or finalise a plan which Network Rail has not been consulted on in accordance with paragraphs 9(3) or if relevant which has not been amended in accordance with any requirements of Network Rail as detailed at paragraph (5) (b).

(6) In the event that the undertaker does not include any amendments which are reasonably requested by Network Rail in accordance with paragraph 9(5)(a) the undertaker must provide written justification for not doing so and must submit the written justification to the relevant planning authority.

(7) Each notice and all other information required to be sent to Network Rail must:

- (a) be sent to the Company Secretary and General Counsel at Network Rail Infrastructure Limited, 1 Eversholt Street, London, NW1 2DN via Royal Mail plc's special delivery service (or if this service is no longer being provided an appropriate recorded delivery postal service) and marked for the attention of the London North Western Route Level Crossing Manager; and
- (b) contain a clear statement on its front page that the matter is urgent and Network Rail must respond within 28 days of receipt.

(8) In the event that any subsequent amendments are made to the Construction Traffic Management Plan or the Construction Worker Travel Plan following consultation with Network Rail, in so far as such amendments impact on railway property, the undertaker must not submit any written details to the relevant planning authority or finalise any amendments to the Construction Traffic Management Plan or the Construction Worker Travel Plan without further consultation with Network Rail.

**10.** The undertaker must -

- (a) at all times afford reasonable facilities to the engineer for access to a Specified Work or protective work 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.

**11.** Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as the undertaker may reasonably require with regard to such works or the method of constructing them.

**12.—(1)** If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a Specified Work or during a period of 24 months after the completion of the Specified Work are necessary as a direct consequence of the construction or operation of the authorised development, in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable and proper cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably and properly incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a Specified Work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the Specified Work which

in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the Specified Work is to be constructed, Network Rail must assume construction of that part of the Specified Work and the undertaker must, notwithstanding any such approval of a Specified Work under paragraph 5(4), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that Specified Work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 12(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

**13.** The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail:

- (a) in constructing any part of a Specified Work on behalf of the undertaker as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a Specified Work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watchkeepers and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a Specified Work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a Specified Work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the Specified Works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a Specified Work.

**14.** If at any time after the completion of a Specified Work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the Specified Work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that Specified Work in such state of maintenance as not adversely to affect railway property.

**15.** The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a Specified Work in the vicinity of any railway belonging to Network Rail unless the undertaker has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

**16.** Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a Specified Work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

**17.—(1)** Subject to paragraph 17(3) the undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Network Rail -

- (a) by reason of the construction or maintenance of a Specified Work or the failure thereof; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a Specified Work;
- (c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development over Low Street level crossing; or
- (d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development over Low Street level crossing by the undertaker or any person in its employ or of its contractors or others,

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a Specified Work or any such failure, act or omission and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision does not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the undertaker reasonable notice of any such claim or demand as soon as is reasonably practicable and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

(3) Network Rail must provide evidence to the undertaker that shows on the balance of probability that any costs, charges, damages or expenses claimed under sub-paragraph (1) have been incurred as a result of any act or omission of the undertaker or any person in its employ or of its contractors or others.

(4) The sums payable by the undertaker under sub-paragraph (1) may include a sum equivalent to the relevant costs.

(5) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(6) The obligation under sub-paragraph (4) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (5).

(7) In this paragraph -

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a Specified Work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 (licences) of the Railways Act 1993.

**18.** Network Rail must, on receipt of a request from the undertaker, provide the undertaker free of charge with written estimates of the costs, charges, expenses, future costs forecasts and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 17) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

**19.** In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

**20.** The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 8 (consent to transfer benefit of Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate) -

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

**21.** Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 (the provision of railway services) of the Railways Act 1993.

**22.** Any dispute arising between the undertaker and Network Rail under this Part of this Schedule will be determined by arbitration in accordance with article 45 (arbitration) unless otherwise agreed in writing by the undertaker and Network Rail.

## PART 8

### FOR THE PROTECTION OF THE PORT OF TILBURY LONDON LIMITED

**1.** The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and PoTLL.

**2.** In this Part of this Schedule

“CMAT berth” means the consented constructed aggregates and materials berth constructed and operated as part of the Tilbury 2, located on the river Thames to the west of the causeway;

“causeway” means the causeway to be constructed and operated as Work 10 of this Order;

“detailed design information” means the following drawings, specifications and other information which must be in accordance with the Works Plans and include details of:

- (a) earthworks;
- (b) road pavements;
- (c) kerbs, footways and paved areas;
- (d) traffic signs and road markings;
- (e) landscaping, planting and any boundary features;
- (f) utility diversions;
- (g) a schedule of timings for the works, including dates and durations for any closures of any part of any public or private highway or street;
- (h) traffic management proposals including any diversionary routes; and
- (i) a schedule of condition of any affected highway or street.

“highway” has the same meaning as in the 1980 Act;

“NRA” means the preliminary navigational risk assessment for the operation of the Thurrock Flexible Power Generation Plant Causeway, Revision R03-00 prepared by Nash Maritime limited and dated 11 December 2020;

“Port” means and land with the Port of Tilbury which is in the ownership of control of PoTLL and specifically including the private highways and access roads within the Port which are included within the Order limits.

“PoTLL” means the Port of Tilbury London Limited.

“street” has the same meaning as in the 1991 Act;

**3.—(1)** Before exercising any power under articles 11, 14, 17, 30 and 31 of this Order which involves works to or interference with any land, highway or street within the Port, the undertaker must

submit to PoTLL for its approval Detailed Design Information. No works within the Port may be carried out except in accordance with the Detailed Design Information submitted to and approved by the PoTLL unless otherwise agreed between the undertaker and PoTLL.

(2) If within 56 days after the Detailed Design Information has been submitted to PoTLL, PoTLL has not approved or disapproved them, it is deemed to have approved the Detailed Design Information as submitted.

(3) In exercising the powers conferred by the Order in relation to any highway or street through the Port, the undertaker must have regard to the potential disruption of traffic which may be caused, and seek to minimise such disruption so far as is reasonably practicable. The undertaker must not at any time prevent or unreasonably impede access by emergency service vehicles to any property.

(4) Where the undertaker carries out any works to any highway or street within the Port it must make good any defects on those works notified to it by PoTLL within the period of 12 months after the date of its removal from occupation of that area of highway or street.

(5) The undertaker may, at its sole discretion and in place of carrying out any works to remedy any defects under sub-paragraph (5), pay to PoTLL, a sum equal to the cost to PoTLL, of carrying out the required works as calculated by PoTLL (acting reasonably).

4. Any person duly appointed by PoTLL for this purpose may at all reasonable times, on giving to the undertaker such notice as may in the circumstances be reasonable, enter upon and inspect any part of the authorised development which is within the Port; and the undertaker must give to such person all reasonable facilities for such inspection and, if the duly appointed person is of the opinion that the construction of the work poses danger to any property of the Port or person within the Port, the undertaker must adopt such measures and precautions as may be reasonably practicable for the purpose of preventing any damage or injury.

#### **Temporary possession**

5. The undertaker may not exercise any power of temporary possession granted under articles 28 and 29 of this Order over any land or interest within the Port without first obtaining the written consent of PoTLL.

#### **Closure of the Port**

6.—(1) PoTLL may at any time close the Port and exclude access by the undertaker (including access under any power granted by this Order, under any access right howsoever acquired and as provided for in any agreement between the undertaker and PoTLL) where PoTLL reasonably considers that it is necessary to do so in response to; a request from an emergency service or government agency, any emergency or accident, or an imminent threat to health or safety of persons or of damage to property.

(2) PoTLL must inform the undertaker of any closure of the Port as soon as reasonably practicable, including details of the location and extent of the closure and where known, the anticipated duration of the closure.

#### **Marine Operations Plan**

7. The undertaker will agree a marine operations plan with PoTLL, which will be included in the passage plan to be approved by the PLA under requirement 17. The marine operations plan will include:

- (a) a deconfliction process for the use of the causeway, the Port and the CMAT berth; and
- (b) a prohibition on causeway marine operations at the times when a CMAT berth arrival or departure by a large vessel (e.g. Panamax bulk carriers such as Yeoman Bridge) is scheduled.



### **Port Passage Plan**

8. Where transshipment use of the Port by the undertaker is authorised by PoTLL (on such commercial terms as may be agreed), the undertaker may not commence such use unless and until a port passage plan is approved by PoTLL as the statutory harbour authority.

### **Indemnity**

9. The undertaker indemnifies PoTLL from and against all costs, loss or claim arising out of or incidental to any breach or non-observance of the undertaker's obligations under these Protective Provisions, the Construction Traffic Management Plan and the Construction Worker Management Plan.

### **Disputes**

10. Any difference arising between the undertaker and PoTLL under this Part of this Schedule (other than in difference as to the meaning or construction of this Part of this Schedule) will be resolved by arbitration under article 45 (arbitration).

## **PART 9**

### **FOR THE PROTECTION OF HIGHWAYS ENGLAND COMPANY LIMITED**

#### **Application**

1. The provisions of this Part of this Schedule apply for the protection of Highways England and have effect unless otherwise agreed in writing between the undertaker and Highways England.

#### **Interpretation**

2. In this Schedule "strategic road network" means any part of the road network including trunk roads, special roads or streets for which Highways England is the highway authority.

#### **Approvals**

3. Any approval of Highways England under this Order may be given subject to such reasonable requirements or conditions as Highways England may make for the protection of the strategic road network.

#### **Construction of the authorised development**

4.—(1) The undertaker must comply with Highways England's road space booking procedures (in accordance with Highways England's Asset Management Operational Requirements including Network Occupancy Management System used to manage road space bookings and network occupancy) prior to exercising a power under article 13 or article 15 of this Order in relation to the strategic road network and no power for which a road space booking is required shall be exercised without a road space booking having first been secured.

(2) Following any closure or partial closure of any part of the strategic road network for the purposes of carrying out the authorised development, the undertaker must give Highways England the opportunity to carry out a site inspection in order for Highways England to satisfy itself that that part of the strategic road network is, in its opinion, safe for traffic and the undertaker must comply with any requirements of Highways England prior to reopening that part of the strategic road network.

(3) Nothing in this Part of this Schedule prevents Highways England from carrying out any work or taking any such action as it reasonably believes to be necessary as a result or in connection with of the carrying out or maintenance of the authorised development without prior notice to the undertaker in the event of an emergency or to prevent the occurrence of danger to the public and Highways England may recover from the undertaker any reasonable expenditure incurred by Highways England in so doing.

### **Payments**

**5.—**(1) The undertaker must pay to Highways England a sum equal to the whole of any costs and expenses which Highways England incurs (including costs and expenses for using internal or external staff) in relation to approvals and/or consultation sought under articles 13 and 15 of this Order including—

- (a) the checking and approval of the information required to determine approvals under articles 13 and 15;
- (b) all legal and administrative costs in relation to (a) above;
- (c) any value added tax which is payable by Highways England in respect of such costs and expenses and for which it cannot obtain reinstatement from HM Revenue and Customs,

together comprising “the HE costs”.

(2) The undertaker must pay to Highways England upon demand and prior to such costs being incurred the total costs that Highways England believe will be properly and necessarily incurred by Highways England in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the authorised development.

(3) Highways England must consult the undertaker on any traffic regulation order proposed under sub-paragraph (2) prior to work commencing on any statutory procedure or preparation, including providing the undertaker with an explanation of why Highways England considers that the order is necessary to carry out or for effectively implementing the authorised development.

(4) Highways England must give the undertaker a final account of the costs referred to in sub-paragraph (1) above within 91 days of the issue of Highways England’s determination of an approval sought under article 13 or article 15.

(5) Within 28 days of the issue of the final account—

- (a) if the final account shows a further sum as due to Highways England the undertaker must pay to Highways England the sum shown due to it;
- (b) if the account shows that the payment or payments previously made by the undertaker have exceeded the costs incurred by Highways England, Highways England must refund the difference to the undertaker.

(6) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 3% above the Bank of England base lending rate from time to time being in force for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

### **Interaction with the Lower Thames Crossing**

**6.—**(1) The undertaker must use reasonable endeavours to avoid any conflict arising between the carrying out, maintenance and operation of the authorised development and the Lower Thames Crossing. For the purposes of this sub-paragraph—

- (a) “conflict” does not include any overlap in the land to be occupied or developed by the undertaker and the Lower Thames Crossing or any overlap in the Order Limits and application of compulsory powers under this Order and any order granted for the Lower Thames Crossing, or any difference between anything required by a requirement of any

order granted after the date of the making of this Order for the construction and operation of the Lower Thames Crossing and the provisions of this Order.

- (b) “reasonable endeavours” means—
- (i) undertaking consultation with Highways England on detailed design and programming of works for the authorised development so that the plans as submitted for approval under the requirements do not unreasonably impede or interfere with the construction of the Lower Thames Crossing;
  - (ii) having regard to the anticipated programme of works for the Lower Thames Crossing and any reasonable requirements of Highways England as regards any works to be undertaken on Work no. 4 within the area where the Lower Thames Crossing main highway is to be constructed;
  - (iii) providing a point of contact for continuing liaison and co-ordination throughout the construction and operation of the authorised development; and
  - (iv) complying with sub-paragraph (2) below,

and may include seeking approval of an amendment of any document or plan approved under a requirement for any Work where construction of that Work has not been commenced by the undertaker, but does not include the undertaker being required to seek any amendment to or variation of this Order or delay programme critical works once the authorised development has commenced.

- (2) The undertaker must co-operate with Highways England so as to reasonably ensure—
- (a) the co-ordination of construction programming, land assembly, and the carrying out of works in connection with the authorised development and the Lower Thames Crossing;
  - (b) that, notwithstanding any provision of this Order and subject to reasonable notice being provided by Highways England, access to the Order land including secure working areas for the purposes of constructing the Lower Thames Crossing is not removed, prevented or prohibited by the undertaker for Highways England and its agents and/or contractors, including at—
    - (i) Station Road which is in the vicinity of plot 03/05 of the Land Plans;
    - (ii) Substation Road which is in the vicinity of plots 01/27, 01/28, 01/29, 04/01, 04/03, 04/05 and 04/06 of the Land Plans;
    - (iii) the Walton Common; and
    - (iv) the Tilbury Green common land and Footpath 200; and
- (3) Without limitation to the generality of sub-paragraphs (1) and (2)—
- (a) Work No. 4 must, unless otherwise agreed with Highways England, be constructed so that jointing blocks are installed at locations which are reasonably convenient to enable a diversion which does not conflict with the Lower Thames Crossing; and
  - (b) the undertaker must not discharge water or any other samples or materials to the Bowaters sluice (in the vicinity of plot 01/24 of the Land Plans) unless otherwise agreed with Highways England.
- (4) The undertaker must as soon as is reasonably practicable provide Highways England with—
- (a) as built drawings in connection with Works Nos. 2, 4, 6, 7, 12(a) and 12(d) following the completion of those works; and
  - (b) in relation to the Walton Common—
    - (i) a copy of the application for certification under article 33(1);
    - (ii) confirmation that the local planning authority has certified or has refused to certify the application referred to in sub-paragraph (i);
    - (iii) a copy of the application to amend the register of common land made under article 33(4);
    - (iv) confirmation that the register of common land has been amended following an application referred to in sub-paragraph (iii); or

- (v) details of any application made to deregister that common land and any determination of such an application under the Commons Act 2006.

(5) In this paragraph “Lower Thames Crossing” means the project which comprises a new road connecting Kent, Thurrock and Essex through a tunnel beneath the river Thames as well as improvements to the M25, A2 and A13, which is being promoted by Highways England and is proposed to be consented under section 22 of the 2008 Act.

### **Expert determination**

7.—(1) Article 45 (*arbitration*) of the Order does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert’s appointment;
- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
- (c) issue a decision within 42 days of receipt of the submissions under sub-paragraph (b); and
- (d) give reasons for the decision.

(5) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 45.

(6) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

## **PART 10**

### **FOR THE PROTECTION OF RWE GENERATION UK LIMITED**

1. The provisions of this part of this Schedule have effect for the protection of RWE Generation UK Plc unless otherwise agreed in writing between the undertaker and RWE Generation UK Plc.

2. In this Part of this Schedule:

“the road” means the existing road owned by RWE which runs through the site shown as plots 01/04, 01/11, 01/19, 01/20, 01/21, 01/22, 01/30, 04/01, 04/02, 04/03, 04/05 and 04/06 on sheets 1 and 4 of the Land Plans;

“the proposed road” means an access road for abnormal indivisible loads which runs through the site shown as plots 01/04, 01/11, 01/33, 01/34, 01/35, 01/36, 01/37, 05/01, 05/02, 05/03, 05/04, 05/05, 05/06, 05/07 and 05/08 on sheets 1 and 5 of the Land Plans;

“existing apparatus” means any pipes, cables, drainage systems or associated equipment belonging to RWE within the Order land;

“environmental permit” means the environmental permit held by RWE in relation to the site with reference EP3433LZ;

“functions” includes powers and duties;

“in”: in a context referring to the existing apparatus or alternative apparatus being in land, includes a reference to apparatus under, over or on land;

“plan” includes all designs, drawings, specifications and method statements necessary to describe the works to be executed;

“RWE” means RWE Generation UK Plc, company number 03892782 of Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire, SNS 6PB or any of its entities or successor entities;

“RWE Undertaking” means any land and existing apparatus belonging to RWE including but not limited to the site, the existing apparatus and the land subject to the environmental permit including any rights, liabilities and duties of RWE;

“specified powers” means the powers conferred by articles 11 (street works); 13 (temporary restriction of use of streets); 14 (access to works); 15 (traffic regulation); 17 (authority to survey and investigate the land); 18 (removal of human remains); 27 (rights under or over streets); 28 (temporary use of land for carrying out the authorised development); 29 (temporary use of land for maintaining the authorised development) of the Order;

“specified works” means any authorised works under the Order which are undertaken within 3m of the road or proposed road (or 15m of any apparatus within the site) or which may have an adverse impact on the RWE Undertaking and includes invasive investigatory works;

“the site” means the former Tilbury B Power Station site located to the East of Tilbury Town as shown on sheets 1 and 4 of the Land Plans.

### **Exercise of Powers**

3.—(1) At least 56 days before the undertaker exercises any or all of:

- (a) the specified powers in respect of the site and the affected highways or streets within the site; or
- (b) the specified powers in respect of the RWE Undertaking (insofar as that Undertaking is located outside of the site);

the undertaker must submit to RWE details of the works to be undertaken in reliance on those powers.

(2) Any specified powers in respect of the RWE Undertaking (insofar as that Undertaking is located outside of the site) must not be exercised without the undertaker first consulting RWE on the details submitted pursuant to paragraph (1) and taking account of any consultation response.

### **Existing apparatus**

4.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any existing apparatus is placed, that existing apparatus must not be removed and any right of RWE to use, maintain, or renew that existing apparatus in that land must not be extinguished until a replacement is installed and available for use by RWE.

(2) Any replacement apparatus must fulfil the same functions as the apparatus being replaced and must be no less advantageous in nature to RWE than the apparatus being replaced.

(3) Not less than 56 days before starting the execution of specified works, the undertaker must submit to RWE a plan, section and description of the works to be executed.

(4) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (3), and RWE is entitled to watch and inspect the execution of those works, and the undertaker must supply RWE with any additional information concerning such works as RWE may reasonably require.

(5) 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 any works, a new plan, section and description instead of the plan, section and description previously submitted, and having

done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraphs (3) and (4) in a case of emergency, but in that case it must give to RWE notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently.

(7) The undertaker must pay to RWE the proper and reasonable expenses reasonably incurred by RWE in, or in connection with, the inspection, alteration or protection of any existing apparatus.

**5.—**(1) Subject to sub-paragraphs (3) and (4) if by reason, or in consequence, of the construction, use, operation or failure of any specified works or in consequence of the construction, use, operation, 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 the undertaker) in the course of carrying out such works, any damage is caused to any existing apparatus or property of RWE, or to the road, or there is any interruption in any service provided by RWE the undertaker must—

- (a) bear and pay on demand the proper and reasonable cost reasonably and properly incurred by RWE in making good such damage or restoring operations, services or supply; and
- (b) indemnify RWE for any other expenses, direct loss, demands, proceedings, damages, claims penalty or costs incurred by or recovered from RWE, by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by RWE on behalf of the undertaker or in accordance with any requirement of RWE or its supervision does not (subject to sub-paragraph (4)) excuse the undertaker from liability under subparagraph (1).

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any loss, damage, injury or interruption to the extent that it is attributable to the neglect or default of RWE, its officers, servants, contractors or agents.

(4) RWE must give the undertaker reasonable notice (being not less than 28 days) of any claim or demand, and no settlement or compromise may be made without the consent of the undertaker (not to be unreasonably withheld or delayed) which, if it reasonably withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

### **Road, proposed road and RWE Undertaking**

**6.—**(1) The undertaker must give RWE no less than 56 days' written notice of the intended commencement of any specified works and must include with this notification a plan and description of the works to be commenced and a programme for these works.

(2) Subject to sub-paragraphs (3), (4), (6) and (7), the undertaker must permit RWE, its successors in title, occupiers, tenants and invitees of the site pedestrian and vehicular access at all times and for all purposes along the road and proposed road in common with the undertaker.

(3) The undertaker must give RWE not less than 28 days' notice of any exercise of powers under article 11 (Street works), article 13 (Temporary restriction of use of streets), article 14 (access to works) and article 15 (traffic regulation) which would restrict access by RWE, its successors in title, occupiers, tenants and invitees to the road and/or the proposed road. Where access to the road along an existing route is prevented or restricted by the undertaker, the undertaker must ensure that suitable alternative is available for use by RWE, its successors in title, occupiers, tenants and invitees for the whole period of the closure or restriction before exercising any power.

(4) Save in the case of emergency, the undertaker may not prevent or restrict RWE from using the road (or any alternative access provided under these protective provisions).

(5) The undertaker must ensure that the road or a suitable alternative is open for emergency access to the site at all times.

(6) If the undertaker requires to undertake any specified works which will break open the surface of the road or involve any temporary closure of the road then the undertaker must provide 7 days written notice of such works to RWE and acting reasonably must have regard to (and accommodate

so far as reasonably practicable) any requests from RWE in respect of this period of works, including measures, where practicable to minimise disruption and facilitate access to the site.

(7) Where any temporary closure of the road is required, a suitable alternative access to the site must be provided to RWE, its occupiers, tenants and invitees which is no less convenient to access the site than the road for the whole period of the closure. The undertaker must have regard to any requests from RWE (acting reasonably) in relation to the location of the alternative access road.

(8) The undertaker must keep the road (or alternative access if one is provided) clean and tidy and free of obstructions at all times.

7.—(1) If at any time RWE require the relocation, variation or alteration of the road or the proposed road, then RWE shall serve written notice on the undertaker informing them of this fact and identifying the proposed relocation, alteration or variation of the road or proposed road within the Site.

(2) Subject to

- (a) agreement by the undertaker (not to be unreasonably withheld or delayed) that the proposed relocation, alteration or variation of the road or the proposed road within the site is acceptable; and
- (b) RWE meeting any costs of the undertaker associated with the proposed relocation, alteration or variation of the road and/or the proposed road within the site including alterations of connections to access roads outside the Site; and
- (c) RWE granting the undertaker the necessary rights for the proposed relocation, alteration or variation of the road or proposed road,

then RWE must undertake the relocation, alteration or variation of the road or proposed road within a reasonable time agreed between the parties.

### **Flood Defences and Site Security**

8.—(1) The undertaker must consult RWE on the detailed design for the flood defences and gate in the flood defence wall (forming part of Work No 11) prior to undertaking these works.

(2) The undertaker must take into account any reasonable comments and suggestions from RWE in relation to the design of the flood defences and gate in the flood defence wall (forming part of Work No. 11).

### **General**

9. Any difference or dispute arising between the undertaker and RWE under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and RWE, be determined by arbitration in accordance with article 45 of this Order.

10. The undertaker and RWE must each act reasonably in connection with the implementation of this Part of this Schedule.

### **Notices**

11. Any plans or notices submitted to RWE by the undertaker pursuant to this Part must be sent to RWE c/o the Company Secretary at its registered address on Windmill Hill Business Park, Whitehill Way, Swindon, SN5 6PB or such other address as RWE may from time to time appoint instead for that purpose and notify to the undertaker in writing.\_

## PART 11

### FOR THE PROTECTION OF THURROCK COUNCIL

1. The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and Thurrock Council.

2. In this Part of this Schedule—

“costs” will include the reasonable costs to the Council of the time of its own officers as well as costs expended;

“illuminated signage” means two illuminated highway signs to be installed within the boundary of the local highway (Station Road) to the south of the Station Road Level Crossing to provide warning of the level crossing, and any associated works including provision of an electrical connection;

“Consents” means approvals, consents, licences, permissions, or registrations;

“RSA” or “Road Safety Audit” means a review of the proposed design or any works and any road safety impacts carried out in accordance with DMRB or such other standard as the undertaker and the Council may agree;

“the Council” means, Thurrock Council;

“highway” means a highway vested in or maintainable by the Council as highway authority under the 1980 Act; and

“specified work” means the works under the Order to create new junctions to the public highway at Station Road and Fort Road, and the installation of Work no. 4 (the gas pipeline) in or under station Road.

#### **Road condition surveys**

3. The Council will, at the cost of the undertaker, procure or undertake road conditions surveys on the following highways:

- (a) St Andrews Road, between Tilbury Port Gate 1 and Ferry Road junction;
- (b) Port Access Road between Ferry Road Junction and Fort Road (including connection road);
- (c) Fort Road, between Port Access Road and Coopers Shaw Road/Gunn Hill Junction;
- (d) Coopers Shaw Road between Fort Road and Station Road, and
- (e) Station Road between Cooper Shaw Road and the site entrance.

4.—(1) The undertaker will notify the Council of

- (a) the anticipated date of commencement of development under this Order; and
- (b) the anticipated construction programme and date of completion of the authorised development;

not less than 3 months prior to that anticipated date of commencement of development under this Order.

(2) The Council will provide a proposed scope setting out the number (having regard to the construction programme notified to it by the undertaker), content and format of road conditions surveys to the undertaker for comment no later than 4 weeks after being notified under subparagraph (1). The proposed scope will include live data monitoring to provide 24/7 speed and volume counts. The Council must have regard to any reasonable comments made by the undertaker within 2 weeks of receipt of that proposed scope in finalising the scope of the road conditions surveys.

(3) The first road condition survey must be undertaken prior to the anticipated commencement of HGV movements for the authorised development, and further surveys must be undertaken at 3 month intervals from the date of the first surveys until the completion of the construction phase of the authorised development. A final survey must be undertaken within 28 days of the Council being notified by the undertaker that the construction of the authorised development has been completed.



5.—(1) The Council will invoice the undertaker for the reasonable anticipated costs of all of the planned road conditions surveys set out in the scope following the finalisation of the scope.

(2) Where the costs incurred by the Council exceed the sum invoiced under sub-paragraph (1) because the development did not complete in accordance with the programme notified to the Council under paragraph 4(1)(a), the Council may, following the carrying out of the final survey under sub-paragraph 4(3), invoice the undertaker for the costs incurred in excess of the sum invoiced under sub-paragraph (1).

### **HGV route remediation**

6. The undertaker must maintain and provide to the Council [at 3 month intervals] from the date of commencement of development under this Order until the authorised development is completed, records of the number of HGVs using the local highway to access the authorised development and details of which route such HGVs used.

7.—(1) The Council will, having regard to the road condition surveys, identify any need for remediation of the highway on the following roads:-

- (a) St Andrews Road, between Tilbury Port Gate 1 and Ferry Road junction;
- (b) Port Access Road between Ferry Road Junction and Fort Road (including connection road);
- (c) Fort Road, between Port Access Road and Coopers Shaw Road/Gunn Hill Junction;
- (d) Coopers Shaw Road between Fort Road and Station Road, and
- (e) Station Road between Cooper Shaw Road and the site entrance.

(2) Where a need for remediation works or measures is identified under sub-paragraph (1), the Council must prepare a schedule of the works or measures required and of the cost of the delivery of those works or measures.

(3) The Council will invoice the undertaker for a portion of the costs of the works or measures identified under sub-paragraph (2) proportionally with the undertaker's HGV use of the roads as compared to the overall HGV movements in percentage terms as established by the road condition surveys. For example, where the undertaker's HGV use is 10% of all HGV use of the highways listed in sub-paragraph (1), the undertaker will be liable to the Council for 10% of the costs of the identified remediation works and measures.

8.—(1) Where the undertaker's HGV use deviates from the anticipated route (being the highways listed in paragraph (3)), the Council may, acting reasonably, take such action by way of the making of traffic regulation orders or traffic management, as it considers is necessary to prevent HGV use of unsuitable highways or to protect the safety or amenity of other highway users and properties adjacent to highways.

(2) Where the Council takes action under sub-paragraph (1) it may invoice the undertaker for the reasonably incurred costs of that action.

(3) Reasonably incurred costs under sub-paragraph (2) will include the costs of promoting and making any traffic regulation order, but not the costs of any public inquiry held to consider such an order, defending any legal challenge to an order, or any cost incurred in meeting any claim for compensation.

### **Specified works**

9.—(1) The undertaker will allow and facilitate an appropriately qualified officer of the relevant highway authority to participate in the design process for any Work authorised by this Order which involves a specified work, and will have reasonable regard to any views of that officer in finalising

the detailed design of that Work, provided always that any such view shared by the officer will not be an instruction, requirement or authorisation under this Order.

(2) The undertaker must, before commencing any specified work, provide to the Council for approval the proposed details for the specified works and a total estimate of the cost for all of the specified works.

(3) Following approval under sub-paragraph (2), the Council will issue to the undertaker an invoice for 6% of the total estimate of the costs for all of the specified works as approved, which sum will be used to cover the Council's reasonable fees, costs, charges and expenses in approving the plans for and in supervising construction of the specified works.

**10.**—(1) Any officer of the Council duly appointed for the purpose may at all reasonable times, on giving to the undertaker such notice as may in the circumstances be reasonable, enter upon and inspect any part of the authorised development which—

(a) is in, over or under any highway, or

(b) which may affect any highway;

during the carrying out of the work, and the undertaker will give to such officer all reasonable facilities for such inspection and, if the officer is of the opinion that the construction of the work poses danger to any highway or to any property of the relevant highway authority on or under any highway, the undertaker will adopt such measures and precautions as may be reasonably practicable for the purpose of preventing any damage or injury to the highway.

(2) Any officer of the Council exercising the right to inspect works under sub-paragraph (1) must comply with all reasonable health and safety requirements and instructions of the undertaker in doing so.

**11.** The undertaker must, if reasonably required by the Council, provide and maintain during such time as the undertaker may occupy any part of a highway for the purpose of the construction of any part of the authorised development, temporary ramps for vehicular or pedestrian traffic and any other traffic measures required to protect the safety of road users in accordance with chapter 8 of the Traffic Signs Manual as may be necessary.

#### **Level crossing warning illuminated signage**

**12.**—(1) The illuminated signage is to be located in the vicinity of the new junction to be formed from the new access road (Work No. 6 authorised by this Order) on to Station Road.

(2) The Council will prepare a design for the illuminated signage in consultation with Network Rail Limited within 8 weeks of being requested to do so by the undertaker, or 8 weeks from the date of receipt of the notice of commencement of the authorised development, whichever is the earlier.

(3) The Council must obtain any Consents required to install the illuminated signage.

(4) The Council is responsible for approving, procuring, carrying out, supervising and, inspecting any works associated with installing the illuminated signage.

(5) The Council must carry out any RSAs which are required in relation to the design and installation of the illuminated signage.

(6) The Council must use best endeavours to carry out the works to install the illuminated signage no later than 6 months from the date of commencement of the authorised development.

(7) The Council will invoice the undertaker for its reasonably incurred costs under this paragraph as soon as reasonably practicable following installation of the illuminated signage

#### **Payment of invoices**

**13. 11.** Any invoice issued by the Council under this part of this schedule is payable within 30 days of issue.

## **Disputes**

**14. 12.** Any difference in arising between the undertaker and the Council under this Part of this Schedule (other than in difference as to the meaning or construction of this Part of this Schedule) will be resolved by arbitration under article 45 (arbitration).

### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order authorises Thurrock Power Limited to construct, operate and maintain a new gas fired generating station and battery storage facility at Tilbury, Thurrock, Essex and carry out all associated works.

The Order also makes provision in connection with the maintenance of the authorised development.

The Order would permit Thurrock Power Limited to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

A copy of the plans, environmental statement and other documents mentioned in this Order and certified in accordance with article 41 of this Order (certification of plans, etc.) may be inspected free of charge during working hours at Thurrock Power Limited, 145 Kensington Church St, Kensington, London W8 7LP.