

Riverside Energy Park

Draft Riverside Energy Park Development Consent Order Explanatory Memorandum (with track changes)

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RIVERSIDE ENERGY PARK ORDER 202*

EXPLANATORY MEMORANDUM

1. INTRODUCTION

- 1.1 This explanatory memorandum has been prepared to explain the purpose and effect of the provisions of the draft Riverside Energy Park Order 202* (“**the Order**”) [\(3.1, Rev 2, submitted at Deadline 3\)](#), in accordance with regulation 5(2)(c) Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009. This document should be read alongside the Order and the other documents submitted in respect of this application for the Order.
- 1.2 This memorandum also seeks to identify and explain departures from the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (“**the model provisions**”). Whilst the power for the Secretary of State to designate, and the requirement to have regard to, model provisions have been removed by the Localism Act 2011, the Planning Inspectorate in its pre-submission advice recommend that a ‘track change’ version of the draft development consent order, showing the departures from the model provisions, be provided. This explanatory memorandum therefore also notes variations from the model provisions. The ‘track change’ version of the Order compared to the model provisions can be found at Appendix 1 to this document.

2. THE PURPOSE OF THE ORDER

- 2.1 Cory Environmental Holdings Limited (“**Cory**”) has made an application pursuant to the Planning Act 2008 (“**the 2008 Act**”) to the Secretary of State for a development consent order for the construction, operation and maintenance of the Riverside Energy Park (referred to in the Order as “**the authorised development**”). [Cory is the "undertaker" for the purposes of the Order.](#)
- 2.2 The Riverside Energy Park (“**REP**”) will be an integrated Energy Park comprising complementary energy generating development (with energy from waste being the largest component) and an associated electrical connection. The authorised development comprises:
- 2.2.1 REP, to be located on land immediately adjacent to [the Cory Group’s \(as defined in section 1.2 of the Funding Statement \(4.2, APP-017\)\)](#) existing Riverside Resource Recovery Facility (“**RRRF**”) situated at Norman Road in Belvedere, in the London Borough of Bexley;
- 2.2.2 electrical connection, running underground between REP and the point of connection at Littlebrook substation, in the Borough of Dartford;
- 2.2.3 a main temporary construction compound; and

2.2.4 other electrical cable route temporary construction compounds.

2.3 The primary components of REP, with a nominal rated electrical output of up to 96 megawatts (MW_e) comprise:

2.3.1 Energy Recovery Facility (“ERF”);

2.3.2 Anaerobic Digestion facility;

2.3.3 Solar Photovoltaic Installation;

2.3.4 Battery Storage; and

2.3.5 Infrastructure to provide an opportunity for local district heating for nearby residents and businesses.

2.4 The Cory Group is a leading recycling, energy recovery and resource management company, with an extensive river logistics business based in London. As part of its waste management activities, the Cory Group operates RRRF situated adjacent to the proposed REP on Norman Road, Belvedere. RRRF is a key element of London’s energy and resource management infrastructure and has been operating highly successfully since 2011.

2.5 REP will optimise the use of the Cory Group’s existing energy and river infrastructure in London, including its operational jetty, tugs and barges. REP will help meet London’s pressing need for further waste management, resource recovery and energy generation infrastructure.

2.6 The below table sets out the key policy themes for REP:

Key REP Policy Themes

Key policy themes at the core of REP and the DCO submission are:

Riverside Energy Park: Key REP Policy Themes	
✓	Generating reliable low carbon/renewable energy for London and UK
✓	Bridging the infrastructure gap in London and the South East
✓	Replacing landfill - <u>not</u> recycling – and moving waste up the Waste Hierarchy
✓	Dealing with London’s residual waste problem - in London – and achieving greater net self-sufficiency for London
✓	Maximising movement of freight by river in London and minimising traffic congestion
✓	Tackling air quality and delivering carbon positive outcomes
✓	Bringing forward private investment – and avoiding the need for public subsidy

2.7 As the authorised development comprises an onshore electricity generating station in England with a capacity of more than 50MW, it constitutes a nationally significant infrastructure project (“**NSIP**”) under section 15(2) of the 2008 Act. Accordingly, it

requires development consent under section 31 of the 2008 Act. Development consent may only be granted by order following an application to the Secretary of State under section 37 of the 2008 Act.

2.8 The development to be authorised by the Order can be summarised as follows:

In the London Borough of Bexley:

2.9 **Work Number 1A** - ERF: to provide thermal treatment of Commercial and Industrial residual (non-recyclable) waste with the potential for treatment of (non-recyclable) Municipal Solid Waste;

2.10 **Work Number 1B** - Anaerobic Digestion facility: to process food and green waste. Outputs from the Anaerobic Digestion facility would be transferred off-site for use in the agricultural sector as fertilizer or as an alternative, where appropriate, used as a fuel in the ERF to generate electricity;

2.11 **Work Number 1C** - Solar Photovoltaic Installation: to be integrated across a wide extent of the Main REP Building roof;

2.12 **Work Number 1D** - Battery Storage: to supply additional power to the local distribution network at times of peak electrical demand. This facility would be integrated into the Main REP building;

2.13 **Work Number 1E** - Main REP building enclosing and/or supporting all or part of Work Numbers 1A, 1B, 1C and 1D.

2.14 **Work Number 2** - A cooling system comprising an air-cooled condenser. The area where this Work Number is located may also be where the steam turbine and electrical generator and steam turbine building is located if not constructed and installed as part of Work Number 1A;

2.15 **Work Number 3** - Combined Heat and Power Connection ("**CHP**"): REP would be CHP Enabled with necessary infrastructure included within the REP site. The capability to provide a district heating connection could be used to serve nearby residential developments;

2.16 **Work Number 4** - Electrical substation;

2.17 **Work Numbers 5 & 6** - Supporting buildings, facilities and infrastructure;

2.18 **Work Number 7** - Installation of pipes and cables from Work Number 6;

2.19 **Work Number 8** - temporary construction compound;

In the London Borough of Bexley and the Borough of Dartford:

2.20 **Work Number 9** — ~~Works to construct and installation of~~ install an electrical connection;

In the Borough of Dartford:

2.21 **Work Number 10** - Works to connect Work Number 9 to the Littlebrook substation.

2.22 A further more detailed, description of the various elements of the authorised development is provided in Chapter 3 of the environmental statement ([Document Reference 6.13, REP2-013](#)).

The NSIP and Associated development

2.23 Pursuant to section 115 of the 2008 Act, development consent can be granted for the NSIP and associated development. Associated development is development associated with the NSIP as set out in section 115 of the 2008 Act, and having regard to guidance on associated development issued by the Secretary of State for Communities and Local Government (the “**Guidance**”). The Guidance illustrates the types of development that may qualify as associated development and sets out the defining characteristics of associated development. Associated development must not be an aim in itself. In most cases it is a type normally brought forward with the primary development, and may include measures necessary to mitigate the effects of the primary development or innovative development ideas otherwise fulfilling the principles of the Guidance. It should be proportionate to the nature and scale of the primary development.

2.24 Work Numbers 1 and 2 as described in Schedule 1 to the Order comprise the NSIP. Works Numbers 3 to 10 of Schedule 1 to the Order contain associated development to the NSIP. Work Numbers 3 to 10 are all:

2.24.1 directly associated with the NSIP, as they are all required for the construction, operation or maintenance of the NSIP, or to mitigate its impacts (paragraph 5(i) of the Guidance);

2.24.2 subordinate to the NSIP - none of them are an aim in themselves (paragraph 5(ii));

2.24.3 proportionate to the nature and scale of the NSIP (paragraph 5(iv)); and

2.24.4 of a nature which is typically brought forward alongside a generating station (paragraph 6).

2.25 Noting that there is no requirement for a development consent order to distinguish between these two categories, [Gory the undertaker](#) has therefore chosen not to differentiate the NSIP and associated development works in Schedule 1 to the Order.

Ancillary Matters

2.26 The Order also contains several ancillary matters, i.e. provisions not consisting of development.

2.27 In accordance with sections 120(3) and 122 of, and Schedule 5 to, the 2008 Act, the Order would authorise the acquisition of land and rights over land. The book of reference ([Document Reference 4.3, REP2-010](#)) sets out what land is to be acquired and what other rights and interests will be affected. The Order and the book of reference should be read together with the statement of reasons ([Document Reference 4.1, REP2-008](#)) which accompanies the application and which sets out the justification for the acquisition or interference with each relevant plot of land. The plots of land are shown on the land plans ([Document Reference 2.1, REP2-003](#)).

2.28 The Order also seeks to apply and modify statutory provisions in relation to the compulsory acquisition of land. It is for this reason that under sections 117 and 120(5) of the 2008 Act the Order must be made by way of Statutory Instrument. The draft Order is therefore in that form.

2.29 Other ancillary matters include the permanent stopping up of streets, the temporary prohibition of streets and public rights of way, and the application and disapplication of legislation relating to the authorised development.

3. THE PROVISIONS OF THE ORDER

The Order consists of 43 operative provisions, each referred to as articles, and 13 Schedules. This part of the Explanatory Memorandum refers to the “undertaker” as defined in the draft Order (see further below).

3.1 Part 1 (preliminary)

Article 1 (Citation and commencement)

3.1.1 Article 1 provides for the way in which the Order should be cited and when it takes effect.

Article 2 (I Interpretation)

3.1.2 Article 2 provides for the interpretation of the rest of the Order, including the Schedules. Article 2 makes alterations to the model provisions to accommodate the departures from the model provisions elsewhere in the Order, and to add required definitions that are relevant in the context of the authorised development, for example the “date of final commissioning.”

3.1.3 Definitions to note include:

- (a) "apparatus" is defined as having the same meaning as in Part 3 of the New Roads and Street Works Act 1991. However, for the purposes of the Order this has been expanded to include pipelines, aerial markers, cathodic protection test posts, field boundary markers, transformer rectification kiosks, electricity cables, telecommunications equipment and electricity cabinets. This is required to ensure that the definition of apparatus is sufficiently broad to encompass the nature of street works which the undertaker needs to carry out. Street works will be required predominantly for the undertaker to construct, install and maintain Work Numbers 6, 7, 8 and 9. These works are generally located on the adopted highway (including verges and railway/watercourse crossings on highway structures) but they are also located within other forms of "street", which include unadopted roads, public rights of way and footpaths. Given this, the fact that the authorised development is located in an urban area, and the need to carry out detailed micro-siting should the Order be made, the undertaker cannot rule out at this stage that the items listed in the definition are not located in, on or under the land required for Work Numbers 6, 7, 8 and 9.

(b) “commence” has been defined to exclude ~~land clearance, environmental surveys and monitoring, investigations for the purposes of assessing ground conditions, receipt and erection of construction plant and equipment, erection of construction welfare facilities, erection of any temporary means of enclosure, temporary site notices or advertisements and such other works that do not give rise to any likely significant adverse environmental effects as assessed in the environmental statement. pre-commencement works (as defined below)~~. This exclusion enables the undertaker to undertake certain preparatory works prior to the submission of relevant details for approval under the requirements contained in Schedule 2 to the Order, which the undertaker considers proportionate. The works that are excluded from the definition of “commence” are either de minimis or have minimal potential for adverse impacts. They may, in some cases, need to be carried out in order to comply with the pre-commencement requirements (for example to inform assessments and proposals required to be submitted for approval). However, the undertaker does recognise that prior to some of the works excluded being carried out, the undertaker should set out to the relevant planning authority how it intends to protect habitats and species. Therefore, requirement 4 (Pre-commencement biodiversity and landscape mitigation strategy) requires the undertaker to submit details to protect habitats and species during certain pre-commencement works. ~~Requirement 4 defines “pre-commencement works” as land and vegetation clearance, investigations for the purposes of assessing ground conditions, erection of construction welfare facilities and erection of any temporary means of enclosure.~~ With the protection of requirement 4 in place, together with requirements 11 (code of construction practice) and 13 (construction traffic management plans) also applying to the pre-commencement works, ~~the~~ undertaker considers that it should be permitted to carry out the pre-commencement works ~~excluded from the definition of “commence” and other low impact preparatory works~~ following any grant of the Order while it is working to discharge the pre-commencement requirements, thereby helping to minimise the construction timetable.

(i) The definition of “commence” used is tailored to the requirements of the authorised development, but the principle of excluding the listed activities that have minimal potential for adverse impacts or are de minimis is widely precedented (see for example the M20 Junction 10a Development Consent Order 2017, the Silvertown Tunnel Order 2018, the East Anglia ONE Offshore Wind Farm Order 2014 and the East Anglia THREE Offshore Wind Farm Order 2017).

(c) “authorised development” is used and referred to throughout the Order. As there are no ancillary works included in the Order, the concept within the model provisions of an “authorised project” has not been used in the Order (there are however “ancillary matters” as

defined in section 120(4) of the 2008 Act including compulsory purchase powers).

(d) "biodiversity units" has been added to Article 2 to ensure that requirements 4 and 5 are clear. Requirements 4 and 5 require the undertaker to calculate the off-setting value of the land affected by the authorised development so that the undertaker can provide off-site compensation. Article 2 therefore contains definitions that make it clear how the compensation is calculated. Linked definitions to "biodiversity units" are "biodiversity off-setting scheme", "Defra biodiversity off-setting metric", and "off-setting value".

~~(d)~~(e) "limits of deviation" has been added to Article 2 and will operate by reference to the works plans (~~Document Reference 2.2, REP2-004~~). These are the areas within which the authorised development can be constructed, see further below in relation to Article 3.

~~(e)~~(f) "maintain" has been added to Article 2 to make clear what activities are authorised under Article 4 (see below) during the operation of the authorised development, and in particular that it does not permit the undertaker to undertake such maintenance activities if they will give rise to any materially new or materially different environmental effects which are worse than ~~to~~ those identified in the environmental statement (~~Document Reference 6.1 - 6.3, APP-038 – APP-100 as updated by REP2-013 - 041~~).

(i) The definition has been drafted to directly reflect the nature and context of the authorised development, which will need to be properly maintained, managed and protected throughout its operational lifetime. The drafting, therefore, reflects this operational period and likely framework of maintenance that will be required whilst enabling technological and practice advancement and improvements within identified environmental performance standards. Therefore, some flexibility must be built in to what maintenance of the authorised development will involve, particularly to keep up with changing standards and controls and advances in technology.

(ii) For the purposes of the authorised development, examples of the activities anticipated to be covered are listed below:

(1) **Maintenance and inspection:** The ERF would be designed to operate for approximately 8,000 hours per year. Typically, each boiler line would undergo one planned minor outage (approx. 7 days in duration) and one planned major outage (approx. 14 days in duration) per year, which can be conducted without taking the entire plant offline. Statutory inspections on common plant (necessitating a full shut down for approx. 3 days) are required at least every two years. Additionally, the turbine and

generator would typically be taken out of service for up to 8 days per year for inspections and maintenance.

- (2) **Repair / Refurbish / Replaced:** Through the planned maintenance regime and indeed through any unplanned maintenance required due to plant failures, it is likely that some plant and equipment, particularly those with moving parts, will need to be repaired or refurbished or indeed replaced.
 - (3) **Adjust and Alter:** Through the planning maintenance regime, and indeed outside the planned maintenance regime, there may be a need to adjust or alter elements comprising the authorised development to respond to changing conditions.
 - (4) **Remove:** Adjustment and replacement activities will require plant, equipment and material to be removed.
 - (5) **Reconstruct:** If, for example, a moving part has to be dismantled in order to be repaired or refurbished, then that part will need to be reconstructed.
 - (6) **Improve:** Technology will improve over the life of the authorised development and therefore there may be opportunities to "improve" the workings of the plant and equipment by, for example, the removal of an old moving part and replacing it with a new, more efficient moving part.
- (iii) As is made clear by the definition, these activities apply to any part of the authorised development, but would not permit the undertaker from removing the whole of the authorised development and replacing it with an improved version. Furthermore, the development consent granted by virtue of Article 3 and Schedule 1 does not extend beyond the "authorised development" and the Order limits. In addition, the activities are restricted to those that do not give rise to materially new or materially different environmental effects from which are worse than those assessed in the environmental statement.

(f)(g) "Order land" is defined as land required for, or is required to facilitate, or is incidental to, or is affected by, the authorised development shown on the land plans (~~Document Reference 2.1, REP2-003~~). This land is coloured pink (land to be permanently acquired), blue (land in which the undertaker can create and acquire new rights) and blue hatched (special category land that the undertaker can create and acquire rights). In addition, the land plans identify where the creation and acquisition of rights is limited to footbridge level, road level or railway level. The land plans also

shows the land over which temporary possession may be taken and land that is excluded from both the Order itself and the compulsory acquisition powers in the Order.

(h) “Order limits” references the Order limits as shown on the works plans (~~Document Reference~~ 2.2, REP2-004) – the extent to which the authorised development may be carried out.

~~(g)~~(i) “pre-commencement works” is defined as operations consisting of land and vegetation clearance (including the removal of topsoil and any mowing, coppicing, felling and pruning), environmental surveys and monitoring, investigations for the purpose of assessing ground conditions (including the making of trial boreholes), receipt and erection of construction plant and equipment, erection of construction welfare facilities, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and any other works that do not give rise to any likely significant adverse environmental effects as assessed in the environmental statement.

~~(h)~~(j) “undertaker” is defined as both Cory Environmental Holdings Limited and Riverside Energy Park Limited. Riverside Energy Park Limited is a 100% wholly owned subsidiary of Cory Environmental Holdings Limited and has been incorporated to act as a special purpose vehicle for the purposes of the investment in the authorised development. For this reason, both Cory Environmental Holdings Limited and Riverside Energy Park Limited are drafted as the “undertaker” for the authorised development given both companies would be taking the authorised development forward. The Cory Group corporate structure is illustrated in Appendix A to the Funding Statement (~~Document Reference~~ 4.2, APP-017). The definition of “undertaker” also refers to those who may take the benefit of the Order pursuant to Articles 78 and 98 (see further below).

3.1.4 Paragraph (2) explains the definition of rights over land and clarifies the purpose of the power within the Order to impose restrictive covenants.

3.1.5 Paragraphs (3) and (4) define measurements and areas as approximate. This is required as, for example, in the book of reference (~~Document Reference~~ 4.3, REP2-010) the plot areas are given in square metres, and each measurement is rounded up to the nearest whole square.

3.1.6 Paragraph (5) ties references to numbered works to those as numbered in Schedule 1 to the Order. The paragraph makes it clear that where reference is made to a number, such as numbered work 1, that reference is to the entirety of the numbered work in question, so numbered work 1A to 1E inclusive.

3.1.7 Paragraphs (6), (7), (8) and (9) provide additional definitions as to how references to certain words and phrases are to be interpreted.

3.2 Part 2 (Principal Powers)

Article 3 (~~D~~evelopment consent granted by the Order)

- 3.2.1 This Article confers the principal power to construct the authorised development. Schedule 1 describes the authorised development in detail, split into numbered works, each of which represents a different part of the authorised development.
- 3.2.2 Article 3(2) requires that the works authorised by the Order are situated within the areas shown on the works plans (~~Document Reference~~-2.2, [REP2-004](#)) and within limits of deviation which are also specified on the works plans.
- 3.2.3 Article 3(3) permits a downwards vertical deviation not exceeding 2 metres.
- 3.2.4 The purpose of this Article is to provide the undertaker with a necessary, but proportionate, degree of flexibility when constructing the authorised development, reducing the risk that the authorised development as approved cannot later be implemented for reasons which, at the time the application was made and the development consent was granted, could not reasonably have been foreseen. It also gives a proportionate amount of flexibility for the detailed design of the scheme, within the set limits.
- 3.2.5 This Article should also be read alongside requirement 3 in Schedule 2 of the Order, which provides for maximum and minimum parameters for certain key elements of the authorised development. This approach, whilst going beyond the model provisions, reflects a standard approach used in orders made under the Transport and Works Act 1992 and in recent development consent orders for onshore generating stations, including, for example, the Progress Power (Gas Fired Power Station) Order 2015 and the Wrexham Gas Fired Generating Station Order 2017. Limits of deviation and parameters are appropriate in the current Order as they serve to precisely define the authorised development by reference to the works plans, whilst preserving a sensible amount of flexibility in the implementation of the authorised development to allow for variances in ground conditions and choice of appropriate equipment and technology. The environmental statement (~~Document Reference~~-6.1 - 6.3, [APP-038 – APP-100 as updated by REP2-013 - 041](#)) accompanying the application for development consent has assessed the authorised development within the full envelop provided by the limits of deviation.

Article 4 (~~M~~aintenance of the authorised development)

- 3.2.6 This Article provides for the maintenance of the authorised development. Article 4(1) closely reflects the terms of the model provisions. Article 4(2) restricts maintenance to the Order limits in order to provide a defined parameter within which this power can be exercised.
- 3.2.7 A definition of "maintain" has been included in Article 2 so that it is clear what the term involves (see above for the explanation). The environmental statement (~~Document Reference~~-6.1 - 6.3, [APP-038 – APP-100 as updated by REP2-013 - 041](#)) accompanying the application for development consent has assessed maintenance as defined in the Order.

Article 5 (Operation of the authorised development)

3.2.8 This Article permits the operation and use of the generating station comprised in the authorised development and is included pursuant to section 140 of the 2008 Act. Article 5(2) specifically preserves the need for any other operational consent that may be needed to operate the generating station in addition to the Order.

Article 6 (Disapplication of legislative provisions)

3.2.9 This Article provides (in reliance on section 120(5)(a) of the 2008 Act (what may be included in order granting development consent)) for the disapplication of certain additional consents, permits or requirements which would otherwise apply under public general legislation. Section 120(5)(a) provides that an order granting development consent may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the Order.

3.2.10 ~~Sub-paragraphs (1)(a), (b) and (2) provide for the disapplication of consents ordinarily required from the Environment Agency under the Water Resources Act 1991 and the Environmental Permitting (England and Wales) Regulations 2016 ("the EP Regulations"). Specifically, these are the requirements for abstractions, together with the requirements for approval under flood defence byelaws made, or deemed to have been made, under the Water Resources Act 1991 and consents in respect of a 'flood risk activity' under the EP Regulations. These are consents for activities which may be a necessary part of constructing the authorised development. To provide certainty that the authorised development can proceed, the Order disapplies the requirement for a separate statutory consent to be obtained from the Environment Agency in relation to these activities. The requirement for a separate consent will be replaced by protective provisions for the protection of the Environment Agency in Part 4 of Schedule 10.~~

3.2.11 In accordance with section 150 of the 2008 Act, the consent of the Environment Agency to the inclusion of these provisions in the Order ~~will be~~ is required. The Environment Agency has consented to the disapplication of the legislative provisions set out in Articles 6(1) and 6(2)-6 of the Order, which is recorded in a Statement of Common Ground between the undertaker and the Environment Agency (an advanced draft of which was submitted into the Examination at Deadline 2 (8.01.03, REP2-050). and accordingly, the Agency's consent is being sought by the undertaker.

3.2.12 Paragraph (3) is included in the Order to address the overlap between the Order and the extant planning permission for the Riverside Energy from Waste Facility (known as the Riverside Resource Recovery Facility). The extant planning permission for the Riverside Resource Recovery Facility was made under the Town and Country Planning Act 1990 (reference 16/02167/FUL) by the relevant planning authority on 4 October 2017 (the "Planning Permission"). ~~Cory~~The undertaker has reviewed the Planning Permission and an inconsistency is likely to arise between the Order and the Planning Permission in respect of Conditions 1, 7, 22 and 23 of the Planning Permission:

- (a) Condition 1 requires the Riverside Resource Recovery Facility to be operated in accordance with the details contained in the application of 29 September 1999 as varied. Given the inconsistency between the Order and Conditions 7, 22 and 23 referred to below, there would therefore be an inconsistency with Condition 1 in that regard.
- (b) Condition 7 requires the jetty and pier to remain available at all times for the operation of the Riverside Resource Recovery Facility and for no other purpose. This Condition is included in Article 6(3) to make it clear that there would be no breach of Condition 7 as a result of the jetty and pier being used for REP.
- (c) Condition 22 requires a scheme for an ecological and management plan to be implemented during the operation of the Riverside Resource Recovery Facility. REP is located on areas which would give rise to a conflict with the ecological and management plan. Accordingly, this Condition is included in Article 6(3) to make it clear that there would be no breach of Condition 22 and no enforcement action can be taken.
- (d) Condition 23 requires bottom ash storage containers to be stored on the designated storage area. REP is located on areas which would give rise to a conflict with the designated ash storage area. Accordingly, this Condition is included in Article 6(3) to make it clear that there would be no breach of Condition 23 and no enforcement action can be taken.

3.2.13 Paragraph (3) is broadly comparable to the approach taken in the Drax Power (Generating Stations) Order and the approach taken in relation to inconsistency with local legislation in the National Grid (Hinkley Point C Connection Project) Order 2016.

3.2.14 Paragraph (4) is included in the Order to make it clear that following the end of temporary uses on plots 02/44 and 02/49 as shown on the Land Plans (2.1, REP2-003), a new planning permission is not required for the resumption of the extant use as permitted under the planning permission made by the relevant planning authority under the Town and Country Planning Act 1990 for those plots (reference 15/02926/OUTM). Paragraph (4) applies the right to revert as granted by section 57(2) of the Town and Country Planning Act 1990.

~~3.2.14~~ 3.2.15 Paragraph (5) seeks to dissaply ~~A disapplication is also sought in respect of~~ the temporary possession provisions of the Neighbourhood Planning Act 2017. This is required as the relevant sections of the Neighbourhood Planning Act 2017 have not been brought into force and subsidiary regulations to that Act have not yet been made, and there is therefore no certainty as to the requirements of the new temporary possession regime. As such, this enables the temporary possession regime created by this Order to be applied. This approach has recently been accepted by the Secretary of State in the Silvertown Tunnel Order 2018.

3.2.16 Section 120(5) of the 2008 Act provides that a development consent order may:

- (a) "apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order;
- (b) make such amendments, repeals or revocations of statutory provisions of local application as appear to the [Secretary of State] to be necessary or expedient in consequence of a provision of the order or in connection with the order;
- (c) include any provision that appears to the [Secretary of State] to be necessary or expedient for giving full effect to any other provision of the order;
- (d) include incidental, consequential, supplementary, transitional or transitory provisions and savings."

3.2.17 The term 'statutory provision' is defined in section 120(6) of the 2008 Act as meaning "a provision of an Act or of an instrument made under an Act."

3.2.18 Section 120(5) is therefore wide enough to:

- (a) exclude statutory provisions under an Act and Regulations, as is being sought under Articles 6(1), (2) and (5);
- ~~(b)~~ apply a statutory provision under an Act, as is being sought under Article 6(4) (applying the right to revert under section 57(2) of the Town and Country Planning Act 1990); and
- (c) –exclude conditions contained on a planning permission as is being sought under Article 6(3). A planning permission is an an instrument made under an Act (the Town and Country Planning Act 1990) and its provisions (i.e. its conditions) are therefore 'statutory provisions' for the purposes of section 120(5)(a). Equally, if the Secretary of State considers it more appropriate, the disapplication can be promoted under section 120(5)(b) of the 2008 Act. In order to utilise section 120(5)(b) of the 2008 Act, the Secretary of State must be satisfied that the amendment is necessary or expedient. The undertaker considers that Article 6(3) is necessary to ensure that the Riverside Resource Recovery Facility is not placed in breach of its planning permission due to inconsistencies with the authorised development. As stated above, this provides clarity (to the extent there is inconsistency) in terms of enforcement and which consent has effect.

Article 7 (~~benefit of this Order~~Port of London Act 1968)

3.2.19 This Article makes it clear that the undertaker is not relieved from any obligations to obtain any permit or licence under the Port of London Act 1968 in respect of works or operations carried out within the Thames under the powers of the Order.

Article 8 (~~B~~benefit of this Order)

3.2.133.2.20 This Article makes it clear that it is the undertaker who may take the benefit of the Order. The "undertaker" is defined in Article 2 as both Cory

Environmental Holdings Limited and Riverside Energy Park Limited (as explained in Article 2 above).

3.2.143.2.21 Article 87(2) provides that Work Numbers 6(a) (but only in so far as Work Number 6(a) relates to Work Number 9), 9 and 10 are for the benefit of the undertaker and London Power Networks. This is because Work Numbers 6(a), 9 and 10 are the electrical connection, which may be installed by London Power Networks.

3.2.153.2.22 Article 87 is subject to Article 89, summarised below.

Article 98 (*Consent to transfer benefit of the Order*)

3.2.163.2.23 This Article makes detailed provision for the transfer of the benefit of the Order and supplements Article 87. Under Article 89, the consent of the Secretary of State is needed before the undertaker can transfer the benefit of the Order, but such consent is not required where:

- (a) the transferee or lessee is the holder of a licence under section 6 of the Electricity Act 1989; or
- (b) where the compensation provisions for the acquisition of rights or interests in land or for effects on land have been discharged or are no longer relevant.

3.2.173.2.24 The undertaker notes the drafting in Article 7 of The National Grid (Richborough Connection Project) Development Consent Order 2017 and corrections made by The National Grid (Richborough Connection Project) (Correction) Order 2018 (“the Richborough Order”). However, the undertaker does not consider the approach taken in the Richborough Order, which is for an overhead 400kV electric line, is applicable to a generating station with an underground electrical connection. Indeed, the undertaker considers that the Secretary of State has made this difference clear in his decisions on The Wrexham Gas Fired Generating Station Order 2017 and the Richborough Order, given both were being determined at the same time (the former was made on 18 July 2017 and the latter made on 3 August 2017). Article 98 is based on the notification procedure contained in Article 7 of the Wrexham Gas Fired Generating Station Order 2017.

3.2.183.2.25 The justification for the provisions in Article 89(4) is that in such cases, the transferee or lessee will either be of a similar financial and regulatory standing to the undertaker so as to protect the provision for compensation for rights or interests in land that are compulsorily acquired pursuant to the Order, or there are no outstanding actual or potential compulsory acquisition claims. Article 98(5) provides that where the consent of the Secretary of State is not needed, the undertaker must still notify the Secretary of State in writing prior to the transfer or grant of the benefit of the provisions of the Order. Articles 89(6) to (8) provide further detail on the notification that is to be given.

Article 109 (*Guarantees in respect of payment of compensation*)

~~3.2.193.2.26~~ This Article relates to the funding mechanism for compulsory acquisition. This requires that before the powers in Articles ~~242~~, ~~234~~, ~~265~~, ~~310~~, ~~342~~ and ~~332~~ of the Order are exercised, the undertaker must put in place either a guarantee or an alternative form of security. This wording follows, as is applicable to the authorised development, that used in the Wrexham Gas Fired Generating Station Order 2017.

3.3 Part 3 (Streets)

Article ~~110~~ (~~S~~street works)

3.3.1 This Article is a model provision intended to permit in certain streets (as specified in Schedule 3) the carrying out of street works for the purposes of the authorised development. Article ~~110~~(3) brings in sections 54 to 106 of the New Roads and Street Works Act 1991 to apply to any street works carried out pursuant to ~~A~~article ~~110~~(1). This provides protection for the street authority for the street in question.

Article ~~142~~ (~~P~~power to alter layout, etc., of streets)

3.3.2 This Article allows the undertaker to alter the layout of a street or carry out any works in the street as are set out in Schedule 4. Article ~~124~~(2) allows for the alteration of the layout of any street for the purposes of construction, operation or maintenance, subject to obtaining the consent of the street authority and to the restoration of such streets to the reasonable satisfaction of the street authority.

Article ~~123~~ (~~T~~temporary prohibition or restriction of use of streets and public rights of way)

3.3.3 This Article provides for the temporary prohibition of the use, restriction of the use, alteration or diversion, of streets and public rights of way for the purposes of carrying out the authorised development. The Article largely follows the approach in the model provision in that it applies generally, and also specifically to certain streets and public rights of way (set out in Schedule 5 to the Order). There are consultation requirements before this power can be exercised (in respect of streets and public rights of way set out in Schedule 5) and consent requirements in respect of any other street and public right of way.

3.3.4 Article ~~123~~(2) confers a power on the undertaker, where the use of a street has been temporarily prohibited or restricted under the power in Article ~~123~~, to use such a street as a temporary working site.

3.3.5 Similar wording has been used in other made Orders, including Article 11 of the Wrexham Gas Fired Generating Station Order 2017, Article 12 of the Meaford Gas Fired Generating Station Order 2016, Article 12 of Progress Power (Gas Fired Power Station) Order 2015 and Article 11 of the Hirwaun Generating Station Order 2015.

Article ~~143~~ (~~P~~permanent stopping up of streets)

3.3.6 This Article is an amended model provision which provides for the permanent stopping up of the streets specified in Schedule 6.

Article 154 (Access to works)

3.3.7 This Article is a model provision which permits the undertaker to form new or to improve existing means of access in the locations specified in Parts 1 and 2 of Schedule 4. For clarity, temporary and permanent means of access are dealt with separately. Other means of access or works can also be provided in other locations reasonably required for the authorised development.

Article 156 (Agreements with street authorities)

3.3.8 This Article is a model provision which authorises street authorities and the undertaker to enter into agreements relating to the construction of a street or the carrying out of works in the street and the alteration and diversion of the street. In addition to the model provisions, it provides for such agreements to deal with the strengthening, improvement or repair of any streets, which is common in many similar orders. Similar wording has been used in other made Orders, including the Hirwaun Generating Station Order 2015, the Progress Power (Gas Fired Power Station) Order 2015 and the Wrexham Gas Fired Generating Station Order 2017.

Article 176 (Traffic regulation)

3.3.9 This Article allows, with the consent of the traffic authority, the undertaker to regulate traffic on roads (defined as a public highway maintained by and at the expense of the traffic authority) to the extent that is necessary for the purposes of or in connection with the construction of the authorised development. The Article gives effect to any permission, prohibition or restriction on stopping, parking, waiting, loading or unloading of vehicles on any road and other provision as to the direction or priority of vehicular traffic on any road.

3.3.10 The Article also makes it clear that any prohibition, restriction or other provision made by the undertaker under Article 132 has effect as if duly made by the traffic authority under the Road Traffic Regulation Act 1984 or the local authority under the Road Traffic Regulation Act 1984.

3.3.11 The Article is not in the general model provisions but there is a precedent for it in the Wrexham Gas Fired Generating Station Order 2017 (Article 14), which referred in its Explanatory Memorandum to its use in other made orders (including Article 37 of the Network Rail (Hitchin (Cambridge Junction)) Order 2011 and Article 38 of the Network Rail (Norton Bridge Areas Improvements) Order 2014).

3.4 Part 4 Supplemental Powers

Article 187 (Discharge of water)

3.4.1 This Article is a model provision and sets out the circumstances in which the undertaker is entitled to discharge water into a sewer, watercourse or drain, and its purpose is to establish statutory authority for doing so.

3.4.2 The effect of this Article is that discharge can only be done with the consent of the owner, but consent cannot be withheld unreasonably.

- 3.4.3 Paragraph (6) makes clear that this Article does not obviate the need for an environmental permit for such discharge where this is relevant.
- 3.4.4 The reference from the model provisions to section 85 of the Water Resources Act 1991 has been deleted as this section has now been repealed and has been replaced with a reference to the Environmental Permitting (England and Wales) Regulations 2016 instead.
- 3.4.5 This Article has precedent in many orders, including, for example, the A14 Cambridge to Huntingdon Improvement Scheme Order 2016 and is necessary for the authorised development in order to establish and regulate the undertaker's authority to discharge water.

Article 189 (Authority to survey and investigate the land)

- 3.4.6 This Article gives the undertaker the power to enter certain land for the purpose of surveying and investigating. It provides that the undertaker must give 14 days' notice before exercising the power of entry, and that compensation is payable for any loss or damage caused.
- 3.4.7 This Article is based on the model provisions, although Article 189(1) has been extended to land "which may be affected by the authorised development" as surveys may need to be undertaken on such land to monitor the impacts of the authorised development (for example noise monitoring at residential receptors).
- 3.4.8 Article 198(6) applies section 13 of the Compulsory Purchase Act 1965 (refusal to give possession to acquiring authority) thereby providing an enforcement mechanism (by way of a warrant) where entry onto land under the article is refused. This is considered necessary so that there is no delay in the implementation of the authorised development.

Article 209 (Protective work to buildings)

- 3.4.9 The purpose of this Article (which is included in the model provisions and the majority of made orders to date) is to allow the undertaker to undertake protective works such as underpinning to buildings affected by the authorised development and to set out the procedure that will apply in those circumstances.
- 3.4.10 Article 209(11) applies section 13 of the Compulsory Purchase Act 1965, thereby providing an enforcement mechanism (by way of a warrant) where entry onto, or possession of, land under the article is refused.
- 3.4.11 Given the urban area in which the authorised development is to be constructed, the Article is necessary to make appropriate provision to carry out protective works in the unlikely event that the need to do so arises.

Article 210 (Felling or lopping of trees)

- 3.4.12 This Article allows any tree or shrub ~~that is near any part of the authorised development~~ within, -or overhanging land within, the Order limits to be felled or lopped, or have its roots cut back, if it is considered to obstruct the construction, operation or maintenance of the authorised development or

endanger anyone using it. Compensation is payable for any loss or damage caused.

- 3.4.13 The Article is included to ensure that the undertaker has adequate powers to construct, operate and maintain the authorised development. The undertaker does not have any other statutory powers available to it in order to fell or lop trees or shrubs and so the Article is considered necessary to ensure that trees or shrubs do not obstruct the construction, operation or maintenance of this nationally significant infrastructure.

3.5 **Part 5 (powers of acquisition)**

Article 212 (Compulsory acquisition of land)

- 3.5.1 This Article provides for the compulsory acquisition of such land as is required for the authorised development (or to facilitate the authorised development or is incidental to the authorised development). Article 224 makes consequential provision for the extinguishment of rights in the land in order to ensure that they cannot impact on implementation or use of the authorised development. The Article broadly follows the model provision, although reference to compensation for the extinguishment or suspension of a private right of way has been deleted as this is dealt with in Article 265 (private rights). A similar approach was taken in the Wrexham Gas Fired Generating Station Order 2017.

- 3.5.2 Article 22(3) makes it clear that the powers in this Article are subject to the powers and restrictions in Article 234 (compulsory acquisition of rights), Article 245 (acquisition of subsoil only) and Article 310 (temporary use of land for carrying out the authorised development). This ensures that, where relevant, the undertaker can acquire only new rights or can only take temporary possession of land, and cannot acquire the freehold interest in that land.

Article 223 (Time limit for exercise of authority to acquire land compulsorily)

- 3.5.3 This Article gives the undertaker five years to issue ‘notices to treat’ or to execute ‘general vesting declarations’ to acquire the land that is subject to the power of compulsory acquisition. These are the two procedural methods by which the process of compulsorily acquiring land may be undertaken should the Order be made. Five years from the date of the Order “coming into force” has been used to align with the date from which the undertaker may exercise any powers of compulsory acquisition that may be contained within the Order. Five years is an appropriate time limit as it is consistent with the time limit for commencing the authorised development set out in requirement 1 of Schedule 2 to the Order.
- 3.5.4 The Article also provides that land subject to the power of temporary possession for the carrying out of the authorised development, under Article 310 (temporary use of land for carrying out the authorised development), may not be occupied after the end of that same period unless the land is already being occupied by the undertaker in exercise of the powers of the Order. Such an Article is included in the model provisions and the majority of made orders to date.

Article 234 (Compulsory acquisition of rights)

- 3.5.5 This Article allows for rights over land to be acquired as well as (or instead of) the land itself, and also for new rights to be created over land.
- 3.5.6 It provides for such rights as may be required to be acquired by the undertaker over land which it is authorised to acquire under Article 224 (compulsory acquisition of land). The public benefit of this is that it would allow the undertaker, if appropriate, to reduce the area of outright acquisition and rely on the creation and acquisition of rights instead. A provision of this kind is usual in Transport and Works Act Orders and Hybrid Bills, and has been followed in a number of development consent orders, for example the Network Rail (North Doncaster Chord) Order 2012, the Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) Order 2013 and the A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014.
- 3.5.7 Paragraph (2) provides that, for the land described in Schedule 7, the undertaker's powers of compulsory acquisition are limited to the acquisition of such rights, and the imposition of such restrictive covenants, as may be required for the purposes of the authorised development as specified in Schedule 7.
- 3.5.8 The power to impose restrictive covenants is necessary to enable the undertaker to secure protection for, in particular, the electrical connection from potentially damaging land use taking place above. The nature of the restrictions are described in Schedule 7 to the Order as a right to prevent any works on or uses of the land which may interfere with, damage or restrict access to the relevant infrastructure, including a right to prevent or remove the buildings, structures, works and other things.
- 3.5.9 Paragraph (3) provides that, where the undertaker needs only to acquire rights over land, it shall not be obliged to acquire any greater interest in that land.
- 3.5.10 Paragraph (4) introduces Schedule 8 which modifies the compulsory purchase and compensation provisions under general legislation. The modifications do not affect the entitlement to compensation, but generally ensure that the compensation code applies equally to the additional categories of acquisition covered by the Order – the creation of new rights and the imposition of restrictive covenants in particular. For the purpose of section 126(2) of the 2008 Act, the relevant compensation provisions are modified only to the extent necessary to ensure that they apply properly to the acquisition of rights, and not to affect the amount of compensation to which landowners would be entitled.
- 3.5.11 The undertaker confirms that this Article and Schedule 8 have been drafted to take account of the Housing and Planning Act 2016 and the precedent in this regard created by the Silvertown Tunnel Order 2018 and followed in recently made orders such as the A19/A184 Testo's Junction Alteration Development Consent Order 2018.

Article 254 (Acquisition of subsoil only)

3.5.12 This Article permits the undertaker to acquire only the subsoil of land which is to be compulsorily acquired, and gives the undertaker the ability to minimise the extent of interests acquired from owners. This Article is appropriate in the context of cables or pipes to be laid underground as part of the authorised development, where acquisition of the 'entire' freehold may not be required. This is a model provision.

Article 265 (Private rights)

3.5.13 This Article applies to extinguish private rights generally. This enables the undertaker to take land with a clear, unencumbered title, thereby minimising impediments to the delivery of the authorised development. It also provides for the extinguishment of private rights over such parts of the Order land as are already in the ownership of the undertaker, when any activity authorised by the Order interferes with or breaches those rights. In respect of land subject to the compulsory acquisition of rights or imposition of restrictive covenants, existing rights are extinguished only to the extent that the continued exercise of the existing right would be inconsistent with the enjoyment by the undertaker of the rights acquired, or restrictive covenants imposed, compulsorily. This approach is proportionate and draws on the precedents of Rookery South (Resource Recovery Facility) Order 2011, the Wrexham Gas Fired Generating Station Order 2017 and many other made orders.

Article 276 (statutory authority Power to override easements and other rights)

3.5.14 This Article provides a power to override easements and other rights and reflects the terms of section 120(3) and (4) of the 2008 Act, and paragraphs 2 and 3, Part 1 of Schedule 5 of the 2008 Act. This Article has precedent in, for example, Article 32 of the Thame Water Utilities Limited (Thame Tideway Tunnel) Order 2014 and Article 24 of the Silvertown Tunnel Order 2018. This Article is supplementary to Articles 22 (compulsory acquisition of land) and 28 (compulsory acquisition of rights) and is necessary and expedient to give full effect to development consent under Article 3. The Article makes it clear that any "authorised activity", as defined in paragraph (2), is authorised notwithstanding that it may interfere with any easement, liberty, privilege, right or advantage annexed to land and affecting other land, including any natural right to support, or breach any restriction as to the user of land arising by virtue of contract. Compensation is also payable under section 7 and section 10 of the Compulsory Purchase Act 1965 for any such interference or breach.

~~that by virtue of section 158 of the 2008 Act in carrying out or using the development authorised by the Order and doing anything else authorised by the Order, the undertaker may interfere with any easement, liberty, privilege, right or advantage annexed to land and affecting other land, including any natural right to support, or breach any restriction as to the user of land arising by virtue of contract. It also provides that by virtue of section 152 of the 2008 Act, compensation may be payable under section 7 and section 10 of the Compulsory Purchase Act 1965 for any such interference or breach. This is not a model provision, but is added to clarify the position with regard to rights burdening land required for the authorised development. It has precedent, for example, in the Rookery South (Resource Recovery Facility) Order 2011 and Wrexham Gas Fired Generating Station Order 2017. The reference~~

~~to restrictions as to use of land arising in contracts was included in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014.~~

~~It is to be noted that Sections 203, 204 and 205 of the Housing and Planning Act 2016 do not apply, as the undertaker does not fall within the definition of 'specified authority' under section 205(1) of the Housing and Planning Act 2016.~~

~~3.5.14—~~

Article ~~278~~ (~~A~~application of the Compulsory Purchase (Vesting Declarations) Act 1981)

3.5.15 This Article applies the provisions of the Compulsory Purchase (Vesting Declarations) Act 1981 to compulsory acquisition under the Order. Vesting declarations are one of two procedures for the compulsory acquisition of land (the other being by means of serving a notice to treat). Vesting declarations allow title in the land concerned to pass to the acquiring authority more quickly than using the notice to treat method. They also enable several parcels of land to be acquired under the same legal instrument and therefore more efficiently than under the notice to treat procedure.

3.5.16 Such an article has been included in the model provisions and the majority of orders made to date but the drafting used in the Order has been adapted to incorporate and reflect the changes brought about by the Housing and Planning Act 2016. These modifications have precedent in the Silvertown Tunnel Order 2018.

Article ~~298~~ (~~M~~modification of Part 1 of the Compulsory Purchase Act 1965)

3.5.17 This Article modifies the provisions of Part 1 of the Compulsory Purchase Act 1965 as applied to the Order by section 125 of the 2008 Act. This provision reflects recent changes introduced by the Housing and Planning Act 2016. Paragraphs (1) to (3) amend the provisions of the Compulsory Purchase Act 1965 so they are consistent with the terms of the Order and paragraph (4) makes it clear that the notice periods introduced by the Housing and Planning Act 2016 do not apply to the temporary possession or use of land under Articles 30 or 31 of this Order. These modifications have broad precedent in Schedule 14 to the High Speed Rail (London - West Midlands) Act 2017, the Wrexham Gas Fired Generating Station Order 2017 and the Silvertown Tunnel Order 2018.

Article ~~3029~~ (~~R~~ights under or over streets)

3.5.18 This Article is a model provision which allows the undertaker to enter on and appropriate interests within streets where required for the purposes of the authorised development without being required to acquire that land. Provision is made for the payment of compensation in certain circumstances (with slight refinements to the wording of the model provisions). This refined wording has precedent in the Progress Power (Gas Fired Power Station) Order 2015.

3.5.19 The purpose of this Article is to allow the undertaker to appropriate and use land above or below streets within the Order limits, without having to acquire the street or any right or easement in it. The exercise of this power without acquisition is prohibited in the circumstances set out in paragraph (3).

Compensation is payable for any loss or damage caused to an owner or occupier of land affected by the power of appropriation where no acquisition has taken place.

- 3.5.20 This Article has been included in the model provisions and the majority of orders made to date, such as the Progress Power (Gas Fired Power Station) Order 2015. It is considered that the Article remains necessary for the authorised development.

Article 310 (Temporary use of land for carrying out the authorised development)

- 3.5.21 This Article allows the land specified in Schedule 9 to be temporarily used for the carrying out of the authorised development. There are clear limits on the length of time that the undertaker can use land in this way and provisions around giving 14 days' notice and restoration of the land following the temporary works.

- 3.5.22 Wording has been added to paragraph (1)(a)(ii) in order to allow Article 301 to be applicable in the context of land which may be the subject of compulsory acquisition, prior to any such compulsory acquisition taking place. New wording has also been added to paragraphs (3) and (4) to take in to account that the undertaker may, pursuant to Article 301(1)(a)(ii) temporarily use land that it may, eventually, compulsorily acquire. Should the undertaker compulsorily acquire the land that it is in temporary possession of, then the undertaker should remain in possession of such land and paragraph (1)(d) clarifies that the undertaker will be able to carry out the works authorised by the Order on such land. Wording has therefore been deleted in paragraph (8) to dovetail with the new drafting in paragraph (1). This wording closely follows that included within The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014. Wording has been added at paragraph (9) to make clear that the Article does not preclude the creation or acquisition of new rights, imposition of restrictions or acquisition of rights in the subsoil of any part of the Order land. It has precedent in the Wrexham Gas Fired Generating Station Order 2017.

Article 312 (Temporary use of land for maintaining the authorised development)

- 3.5.23 This Article provides for the temporary use of land for maintenance of the authorised development. There are clear limits on the length of time that the undertaker can use land in this way, provisions around giving 28 days' notice and restoration of the land following the temporary possession.

- 3.5.24 This Article is broadly based on the model provision and provides for the payment of compensation for that temporary use of the land. The maintenance period has been adapted from the model provision to apply to the period 5 years beginning with the date of final commissioning as opposed to the date on which the authorised development is opened for use as this is more appropriate for this type of development. Similar wording has been used in other made Orders for gas fired generating stations, including the Hirwaun Generating Station Order 2015, the Progress Power (Gas Fired Power Station) Order 2015 and the Wrexham Gas Fired Generating Station Order 2017.

Article 323 (Statutory undertakers)

- 3.5.25 This Article allows the undertaker to extinguish rights of statutory undertakers, and remove and reposition their apparatus. Reference is made to the Order land so that this power is not restricted to apparatus which has been specifically shown on the land plans and described in the book of reference (~~Document Reference~~ 4.3, REP2-010). In practice it is impracticable to show and describe all such apparatus and so a general power for the extinguishment of rights and the removal or relocation of apparatus belonging to statutory undertakers over or within any of the Order land is required.
- 3.5.26 As the land where this power may be exercised is shown on the land plans, and the beneficiaries of such rights are identified in the book of reference, the requirements of regulations 5(2)(i)(iii) and 7(1)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 are satisfied.
- 3.5.27 This Article has precedent in a number of made orders, for example, the Wrexham Gas Fired Generating Station Order 2017.
- 3.5.28 The exercise of this Article is subject to the protective provisions contained in Schedule 10.

Article ~~343~~ (Apparatus and rights of statutory undertakers in stopped up streets)

- 3.5.29 This Article governs what happens to statutory utilities' apparatus (pipes, cables, etc.) under streets that are stopped up by the Order. Without the Article, the statutory utility would not have access to the apparatus, since there would no longer be a right of way along the street. The Article is a model provision but has been amended in that paragraph (2) onwards has been deleted from the model provision to avoid duplication with the protective provisions contained in Schedule 10.

Article ~~354~~ (Recovery of costs of new connections)

- 3.5.30 This Article (which reflects the model provisions) provides that if a gas, water, electricity or sewerage undertaker's or public communications provider's apparatus is removed thereby interrupting the service to owners or occupiers of premises, their costs incurred in obtaining a new service can be recovered from the undertaker.

3.6 Part 6 (miscellaneous and general)

Article ~~365~~ (Application of landlord and tenant law)

- 3.6.1 This Article is a model provision which would override landlord and tenant law so far as it would prejudice the operation of any agreement for leasing the whole of the authorised development or the right to operate the same or any agreement entered into by the undertaker for the construction, maintenance, use or operation of the authorised development.
- 3.6.2 This provision is required to ensure that there is no impediment to the construction, use or maintenance of the authorised development.

Article ~~367~~ (Operational land for the purposes of the 1990 Act)

3.6.3 This Article is a model provision which has the effect of ensuring that the land on which the authorised development is constructed is not excluded from being "operational land" under the Town and Country Planning Act 1990 by the effect of section 263 of that Act. A similar provision has been included in other made Orders for gas fired generating stations, including the Hirwaun Generating Station Order 2015, the Progress Power (Gas Fired Power Station) Order 2015 and the Wrexham Gas Fired Generating Station Order 2017.

Article 387 (Defence to proceedings in respect of statutory nuisance)

3.6.4 This Article provides that no one shall be able to bring statutory nuisance proceedings under the Environmental Protection Act 1990 in respect of fumes, gas, dust, steam, smell, accumulations or deposits which are prejudicial to health or a nuisance, artificial light, noise or any other statutory nuisances created in the course of carrying out construction or maintenance of the authorised development or which is an unavoidable consequence of the authorised development.

Article 398 (Protective provisions)

3.6.5 This Article provides for Schedule 10, which protects the interests of certain statutory undertakers, to have effect.

Article 4039 (Certification of plans etc.)

3.6.6 This Article is a model provision which provides for the submission of various document and plans (as listed in Schedule 11) to the Secretary of State in order that they may be certified as being true copies.

Article 410 (Service of notices)

3.6.7 This Article, governs how any notices that may be served under the Order are deemed to have been served properly. In particular it allows service by email with the consent of the recipient, and deals with the situation of service on an unknown landowner. The provision is necessary because the service of notice provisions under sections 229 and 230 of the 2008 Act only apply to notices served under the 2008 Act itself and do not apply to notices served under the Order. This Article has precedent in a number of orders, for example, the Wrexham Gas Fired Generating Station Order 2017.

Article 412 (Procedure in relation to certain approvals etc.)

3.6.8 This Article provides that Schedule 12 (procedure in relation to certain approvals etc.) is to have effect in relation to all consents, agreements or approvals contemplated by any provision of the Order. The exception to this is Schedule 10 (protective provisions) or any dispute under Article 2049(6) (disputes over the necessity or expediency of protective works), to which Article 412(3) and Article 424(4) apply.

3.6.9 Schedule 12 has been used in various development consent orders and can be seen in a similar form in the Wrexham Gas Fired Generating Station Order 2017. Schedule 12 reflects Advice Note 15 (July 2018).

- 3.6.10 In summary, Schedule 12 ensures that any consents, agreements or approvals (a) cannot be unreasonably withheld or delayed; and (b) are deemed to be granted after a period of 9 weeks if no decision is made, beginning with the day any application for a consent, agreement or approval is made. The purpose of Article 4~~1~~² and Schedule 12 is to draw together the usual provisions for consents, agreements and approvals under the Order, rather than including them for each consent, agreement or approval required under the Order which the undertaker considers is repetitive.
- 3.6.11 Under Article 4~~2~~¹(3), any difference or dispute arising under Schedule 10 or Article ~~20~~¹⁹(6) is to be referred to arbitration in accordance with the arbitration rules set out in Schedule 13.

Article 4~~3~~² (No double recovery)

- 3.6.12 This Article provides that compensation is not payable both under this Order and any other enactment, contract or other rule of law. It follows that well established principle of equivalence that a claimant is compensated for no more and no less than their loss.
- 3.6.13 This Article has precedent in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014, the National Grid (Richborough Connection Project) Development Consent Order 2017 and the North London Heat and Power Generating Station Order 2017.

~~Article 43 (special category land)~~

- ~~3.6.14 Under section 132 of the 2008 Act, an order granting development consent is subject to Special Parliamentary Procedure when it authorises compulsory acquisition of a right over land to which section 132 applies (i.e. a common, open space or fuel or field garden allotment). The exception is if the Secretary of State is satisfied that certain tests under section 132 are met, including if the land when burdened with the order right, will be no less advantageous than it was before (section 132(3)). The undertaker submits that this is the case, for the reasons set out in the statement of reasons (Document Reference 4.1).~~
- ~~3.6.15 There is one plot of land within the Order land that constitutes open space for the purposes of section 19 of the Acquisition of Land Act 1981. This plot is shown on the land plans, sheet 12 (Document Reference 2.1) and comprises grassland, trees and shrubbery, south of Thames Road and south-west of Crayside Industrial Estate, Crayford.~~
- ~~3.6.16 The undertaker is seeking powers to acquire rights under this land for the purposes of installing the electrical connection beneath the surface of that land (the rights are restricted in Schedule 7 to the Order to Work Numbers 9(a) and 9(b)). The nature of those rights is such that the land, when burdened with that right, will be no less advantageous to the persons in whom it is vested or who use it for the purpose of public recreation. Accordingly, the use would be exempted from the protections for open space conferred by section 132 of the 2008 Act.~~

3.7 Schedules

Schedule 1 (Authorised development)

- 3.7.1 Schedule 1 describes the authorised development in detail, split into "work numbers", each of which represents different elements of the authorised development. This split of the authorised development between different work numbers enables the Order to refer to different parts of the authorised development by citing the relevant work number. The split also enables the Order and works plans (~~Document Reference 2.2, REP2-004~~) to delineate the area within which each "work" can be constructed, maintained and operated (see Articles 3 and 4).
- 3.7.2 Paragraphs 2.8 to 2.21 of this Memorandum summarise the authorised development. A further more detailed, description of the various elements of the authorised development is provided in Chapter 3 of the environmental statement (~~Document Reference 6.36.1, REP2-013~~).
- 3.7.3 Schedule 1 is drafted so as to be non-specific as to technology and configuration of the plant.
- 3.7.4 The mechanics of the drafting in Schedules 1 and 2 ensure that the undertaker does not exceed the basis of the assessment in the environmental statement. This is achieved through a number of mechanisms in the Order which together ensure:
- (a) Article 3 and Schedule 1 provide the power to build the authorised development. Pursuant to Article 3(2), each numbered work must be situated within the area delineated on the works plans (~~Document Reference 2.2, REP2-004~~) – thus, for example, the energy recovery facility can only be built within the area for Work Number 1A. Given these overarching constraints, there is certainty as where each element can be built;
 - (b) The relevant parameters secured via requirement 3 set maximums and, where applicable, minimums for relevant elements of the authorised development, including all those which are relied on for the assessment of effects in the environmental statement. These parameters are based on application of the Rochdale Envelope principle, such that maximum and, where applicable, minimum building dimensions have been presented and assessed in the environmental statement, recognising that the final building massings may differ from (but will never be materially larger than) these maxima depending on the technology provider selected;
 - (c) In terms of detailed design, requirement 2 of Schedule 2 provides that the undertaker must obtain the approval of the relevant planning authority to the layout, scale and external appearance of new permanent buildings and structures as listed in requirement 2 prior to commencing these works.
- 3.7.5 The combined effect of and relationship between these provisions ensures that the authorised development will not give rise to environmental effects beyond those which have been assessed.

Schedule 2 (~~R~~requirements)

- 3.7.6 This Schedule sets out the requirements which apply to the carrying out and operation (including maintenance) of the authorised development under the Order. The requirements closely relate to the mitigation set out in Chapter 17 to the environmental statement (~~Document Reference~~ 6.1, [APP-054](#)) and a number of them specifically refer to the environmental statement and other application documents (in particular, 'outline' strategies or plans) in order to ensure that the mitigation or other measures outlined in those documents are secured.
- 3.7.7 The requirements operate by reference to preventing the undertaker from either carrying out "pre-commencement works" or "commencing" any part of the authorised development until it has met its obligations under the relevant requirements.
- 3.7.8 In the undertaker's opinion the requirements in Schedule 2 are all:
- (a) necessary and relevant to planning and the development to be permitted as they are outputs from the environmental statement;
 - (b) enforceable and precise in their language; and
 - (c) reasonable in all other respects.
- 3.7.9 *Requirement 1: Time limits* - This requirement provides that the authorised development must not commence later than 5 years from the date of the Order coming into force.
- 3.7.10 *Requirement 2: Detailed design approval* - This is based on a model provision. It requires the specific design details of Work Numbers 1A(iv), 1B(~~vi~~), 1C, 1E, 2, 3, 4, 5 and 6 to be submitted to and approved by the relevant planning authority before commencement of that work number, and for the authorised development to be constructed in accordance with those approved details. The details submitted must be in accordance with the design principles, which is a certified document under Article ~~3940~~ and Schedule 11. This requirement relates to these work numbers only as they are the parts of the authorised development including elements whose visual appearance has been assessed as being important in terms of the authorised development's visual impact (see Chapter 9 of the environmental statement, ~~Document Reference~~ 6.1, [REP2-021](#))).
- 3.7.11 *Requirement 3: Parameters of authorised development* – This requirement requires that the authorised development must not exceed the maximum dimensions and [levels and](#), where applicable, the minimum dimensions as set out in Table 1. This requirement ensures that the authorised development does not exceed the envelope that has been assessed by the environmental statement (~~Document Reference~~ 6.1 - 6.3, [APP-038 – APP-100 as updated by REP2-013 - 041](#)). [The maximum depth is subject to Article 3\(3\), which enables the undertaker to deviate vertically to any extent downwards not exceeding 2 metres.](#)
- 3.7.12 *Requirement 4: Pre-commencement biodiversity and landscape mitigation strategy* – As explained in respect of Article 2, the definition of “commence”

excludes pre-commencement works, ~~certain works~~ meaning that these certain works can be carried out without triggering "commencement". The undertaker recognises that in respect of some of those works, whilst de minimis, there is a need for a "pre-commencement biodiversity and landscape mitigation strategy" that will protect habitats and species whilst those "pre-commencement" works are being carried out. This requirement secures that strategy. ~~The "pre-commencement works" are defined in the requirement.~~

- 3.7.13 *Requirement 5: Biodiversity and landscape mitigation strategy* – This requirement prevents any part of the authorised development from commencing until a biodiversity and landscape mitigation strategy has been submitted to and approved by the relevant planning authority. The requirement is drafted to enable the undertaker to submit a strategy in respect of the part of the authorised development that it wants to "commence", without having to provide a strategy covering all parts. Therefore, the requirement could be discharged through one strategy or multiple strategies. The requirement requires the submitted strategy or strategies to be substantially in the accordance with the outline biodiversity and landscape mitigation strategy (which is a certified document under Article ~~4039~~ and Schedule 11) and the requirement also lists certain items that it must contain. The strategy / strategies is/are to be implemented as approved.
- 3.7.14 *Requirement 6: Replacement planting for Work No. 9* – This requires that no part of Work No. 9 may commence until details of any trees, shrubs and hedgerows to be removed during the construction of Work Number 9 and the details of planting to replace any such trees, shrubs and hedgerows have been submitted to and approved by the relevant planning authority. This replacement planting must be carried out in accordance with the approved details and maintained for a period of 12 months.
- 3.7.15 *Requirement 7: Archaeology* – This requirement prevents any part of Work Numbers 1, 2, 3, 4, 5 and 9 from commencing until a written scheme of investigation for that part has been submitted to and approved by the relevant planning authority. Any archaeological investigations must be carried out in accordance with the approved scheme and by a suitably qualified person or organisation ~~approved by the planning authority~~.
- 3.7.16 *Requirement 8: Highway access* – This requirement provides that no part of Work Numbers 6, 8, 9 and 10 may commence until details of the siting, design and layout of any new permanent or temporary means of access to a highway in that part or any alteration to an existing means of access to a highway in that part have been submitted to and approved by the relevant planning authority. The requirement also prevents the undertaker from exercising the power contained in Article 14 (permanent stopping up of streets) unless and until a plan showing the layout for the termination of the street (as specified in columns (1) and (2) of Schedule 6) has been submitted to and approved by the relevant planning authority.
- 3.7.17 *Requirement 9: Surface and foul water drainage* – This requirement provides that no part of Work Numbers 1, 2, 3, 4, 5 and 6 may commence until details of the surface and foul water drainage strategy for that part has been

submitted to and approved by the relevant planning authority. —The requirement is drafted to enable the undertaker to submit a strategy in respect of the part of the authorised development that it wants to "commence", without having to provide a strategy covering all parts. Therefore, the requirement could be discharged through one strategy or multiple strategies. The requirement requires the submitted strategy or strategies to be substantially in accordance with the outline drainage strategy (which is a certified document under Article [4039](#) and Schedule 11). The strategy / strategies is/are to be implemented as approved.

- 3.7.18 *Requirement 10: Ground conditions and ground stability* – This requirement provides that no part of Work Numbers 1, 2, 3, 4, 5, [6](#), [7](#) and [86](#) may commence until an investigation and assessment report to identify ground conditions and ground stability has been submitted to and approved by the relevant planning authority. Paragraph (2) requires the submitted report to identify the extent of any contamination and remedial measures to be taken, with paragraph ([43](#)) requiring the authorised development to be carried out in accordance with the approved report. Paragraph (3) requires a remediation verification plan to be submitted for that part should the report identify any necessary remedial measures.
- 3.7.19 *Requirement 11: Code of construction practice* – This requirement prevents any part of the pre-commencement works from being carried out and any part of the authorised development from commencing until a code of construction practice has been submitted to and approved by the relevant planning authority. The requirement is drafted to enable the undertaker to submit the code in respect of the part of the authorised development that it wants to "carry out" or "commence", without having to provide a code covering all parts. Therefore, the requirement could be discharged through one code or multiple codes. The requirement requires the submitted code or codes to be substantially in accordance with the outline code of construction practice (which is a certified document under Article [4039](#) and Schedule 11) and the requirement also lists certain items that it must contain. The code/codes is/are to be implemented as approved.
- 3.7.20 *Requirement 12: Construction hours* – This requirement specifies the hours in the day within which all construction work associated with Work Numbers 1, 2, 3, 4 and 5 must be carried out. The restrictions do not apply to work that is approved in advance by the relevant planning authority, is within existing or new buildings, is associated with an emergency or is associated with slip form working.
- 3.7.21 *Requirement 13: Construction traffic management plan* – This requirement prevents any part of the pre-commencement works from being carried out and any part of the authorised development from commencing until a construction traffic management plan has been submitted to and approved by the relevant planning authority. The requirement is drafted to enable the undertaker to submit the plan in respect of the part of the authorised development that it wants to "carry out" or "commence", without having to provide a plan covering all parts. Therefore, the requirement could be discharged through one plan or multiple plans. The requirement requires the submitted plan or plans to be substantially in accordance with the outline construction traffic management plan (which is a certified document under

Article ~~4039~~ and Schedule 11) and the requirement also lists certain items that it must contain. The plan/plans is/are to be implemented as approved by the relevant planning authority in consultation with the highway authority and, for streets within London Borough of Bexley, Transport for London.

3.7.22 Requirement 14: Heavy commercial vehicle movements delivering waste – Requirement 14(1) restricts the number of two-way vehicle movements made by heavy commercial vehicles delivering waste to Work Number 1A and Work Number 1B to 90 per day. Requirement 14(2), provides that where there is a "jetty outage", the restriction is increased to 300 per day, but with a restriction of 30 movements between the hours of 0730-0900 and 1630-1800. Requirement 14(3) requires that save where there is a "jetty outage", incinerator bottom ash must be removed only via the River. A "jetty outage" is defined in requirement 14(5).

3.7.223.7.23 Requirement 15: Operational worker travel plan – Before the date of final commissioning, the undertaker must submit an operational worker travel plan for those working at the authorised development to the relevant planning authority (in consultation with the relevant highway authority and, for streets within the London Borough of Bexley, Transport for London) for approval. This plan must be substantially in accordance with the outline worker travel plan (which is a certified document under Article ~~4039~~ and Schedule 11). The plan is to be implemented as approved.

3.7.223.7.24 Requirement 165: Operational lighting strategy – This requirement prevents any part of Work Numbers 1, 2, 3, 4, 5 and 6 from commencing until a written scheme for the management and mitigation of operational external light emissions for that part has been submitted to and approved by the relevant planning authority. The requirement is drafted to enable the undertaker to submit the strategy in respect of the part of the authorised development that it wants to "commence", without having to provide a strategy covering all parts. Therefore, the requirement could be discharged through one strategy or multiple strategies. The requirement requires the submitted strategy or strategies to be substantially in accordance with the outline lighting strategy (which is a certified document under Article ~~39-40~~ and Schedule 11). The strategy/strategies is/are to be implemented as approved.

3.7.25 Requirement 17 – River Wall – This requirement prevents any part of Work Number 1 from commencing until a river wall condition survey on the parts of the river wall within the order limits is submitted to and approved by the Environment Agency. The requirement requires any identified remedial works to bring the defence up to the applicable standard (being a tidal defence up to a good standard considering a design life of 100 years) to be carried out within a set timeframe.

3.7.26 Requirement 18 – Community benefits – This requirement prevents any part of the authorised development from commencing until an employment and skills plan has been submitted to and approved by the relevant planning authority. The plan is to be implemented as approved.

3.7.243.7.27 Requirement 169: Notice of start of commissioning and notice of date of final commissioning – This requirement requires the undertaker to

give notice to the relevant planning authority of the intended start of commissioning of Work Number 1, with notice of the actual start of commissioning being given not later than 7 days from the actual start. Within 7 days of completing final commissioning, the undertaker is to provide the relevant planning authority with notice of the date upon which the commissioning process was duly completed (which can clearly be monitored by the processes being carried out at the plant). This requirement assists the relevant planning authority in monitoring the requirements.

~~3.7.25~~3.7.28 *Requirement 2017: Combined heat and power* – This requirement requires the undertaker to submit a CHP review to update the Combined Heat and Power Statement submitted with the Application (~~Document Reference—5.4, APP-035~~) and the Combined Heat and Power Supplementary Report (5.4.1, REP2-012) to the relevant planning authority 12 months after the date of final commissioning. This requirement sets out what the CHP review must assess and include in each review. A revised CHP review is required to be submitted to the relevant planning authority every five-four years following the submission of the last CHP review. This requirement also requires the undertaker to install the necessary pipework to the site boundary once certain details are known and to establish a working group to progress the actions in the approved/revised CHP review and monitor and report on progress to the relevant planning authority.

~~3.7.26~~3.7.29 *Requirement 2148: Decommissioning* – This requirement requires the undertaker to submit a scheme for the ~~demolition and removal of~~restoration and aftercare of the land for Work Number 1, to the relevant planning authority, within 24 months of the ~~Order land ceasing to be used for the purposes of the operation of the authorised development~~permanent cessation of the operation of the authorised development. –The relevant planning authority must approve the scheme before any decommissioning works are carried out and the scheme must be implemented ~~as approved~~with the phasing set out therein.

3.7.30 *Requirement 2249: Amendments to approved details* – This requirement allows the relevant planning authority to approve amendments to certified documents, the parameters in requirement 3, and other details, schemes or plans approved by the relevant planning authority. This is to allow flexibility in the detailed design stage, however this flexibility is given strict parameters in that it only applies to the extent the subject matter of the approval is unlikely to result in materially new or materially different effects to those assessed in the environmental statement (~~Document Reference—6.1 - 6.3, APP-038 – APP-100 as updated by REP2-013 - 041~~). A similar Requirement appeared in the Progress Power (Gas Fired Power Station) Order 2015.

3.7.31 *Requirement 23: Flood Risk Activity Permit Area* – This requirement sets out the area where no part of Work Number 1E and Work Number 5 can be constructed and where no hazardous material can be stored during construction and operation of the authorised development.

~~3.7.27~~3.7.32 *Requirement 24: Finished floor levels* – This requirement specifies the minimum finished floor levels of Work Numbers 1, 2, 3, 4, 5 and 6.

Schedule 3 (~~S~~streets subject to street works)

~~3.7.28~~3.7.33 This Schedule sets out the streets that would be subject to street works (including reference to the relevant access and public rights of way plans (~~Document Reference-2.3, REP2-005~~), the location and the specific street). The Schedule relates to Article ~~11~~9 (street works).

Schedule 4 (~~S~~streets subject to permanent and temporary alteration of layout)

~~3.7.29~~3.7.34 This Schedule sets out the streets to be permanently altered (Part 1) or temporarily altered (Part 2), by reference to the access and public rights of way plans (~~Document Reference-2.3, REP2-005~~). The Schedule relates to Articles ~~12~~4 (power to alter layout, etc., of streets) and ~~14~~5 (access to works).

Schedule 5 (~~T~~emporary prohibition or restriction of the use of streets or public rights of way)

~~3.7.30~~3.7.35 This Schedule sets out the streets that will be subject to temporary prohibition or restriction and the public rights of way that will be subject to temporary prohibition or restriction (including reference to the relevant access and public rights of way plans (~~Document Reference-2.3, REP2-005~~), the location and the extent of the temporary prohibition or restriction). The Schedule relates to Article ~~13~~2 (temporary prohibition or restriction of use of streets and public rights of way).

Schedule 6 (~~P~~ermanent stopping up of streets)

~~3.7.31~~3.7.36 This Schedule sets out the streets that will be subject to permanent stopping up by reference to the access and public rights of way plans (~~Document Reference-2.3, REP2-005~~). The Schedule relates to Article ~~14~~3 (permanent stopping up of streets).

Schedule 7 (~~L~~and in which only new rights etc. may be acquired)

~~3.7.32~~3.7.37 This Schedule specifies both the areas of land in which only new rights may be acquired by the undertaker and the nature of the rights that may be acquired. The plot numbers in column 1 of that table correlate with the relevant plot numbers shaded blue on the land plans (~~Document Reference-2.1, REP2-003~~), and the nature of the rights in column 2 is explained by reference to the relevant work numbers and the corresponding works plans (~~Document Reference-2.2, REP2-004~~). The Schedule relates to Article ~~24~~3 (compulsory acquisition of rights ~~etc.~~).

Schedule 8 (~~M~~odification of compensation and compulsory purchase enactments for creation of new rights)

~~3.7.33~~3.7.38 This Schedule modifies existing compensation legislation including the Land Compensation Act 1973 and the Compulsory Purchase Act 1965. It is commonly included in orders as made, including the Hinkley Point C (Nuclear Generating Station) Order 2013 and the National Grid (King's Lynn B Power Station Connection) Order 2013. This has been updated to reflect any necessary changes arising as a result of the Housing and Planning Act 2016. The Schedule relates to Article ~~24~~3 (compulsory acquisition of rights ~~etc.~~).

Schedule 9 (~~L~~and of which temporary possession may be taken)

~~3.7.34~~3.7.39 This Schedule sets out the land of which only temporary possession may be taken, pursuant to Article 301 (temporary use of land for carrying out the authorised development). This land is shown yellow on the land plans (~~Document Reference-2.1, REP2-003~~), and the purpose for the temporary possession is described by reference to the relevant work numbers and corresponding works plans (~~Document Reference-2.2, REP2-004~~).

Schedule 10 (~~P~~rotective provisions)

~~3.7.35~~3.7.40 This Schedule includes draft protective provisions for the following:

- (a) Part 1 – for the protection of RRRL;
- (b) Part 2 – for the protection of electricity, gas, water and sewerage undertakers. It is likely that before the end of the Examination, a new Part will be inserted for Thames Water;
- (c) Part 3 – for the protection of operators of electronic communications code networks;
- (d) Part 4 – for the protection of the ~~e~~Environment ~~a~~Agency. The undertaker is in active discussions with the Environment Agency, with Part 4 currently in draft;
- ~~(e)~~ (e) Part 5 - for the protection of railway interests. The undertaker is in active discussions with -Network Rail, with Part 5 currently in draft;
- ~~(e)~~(f) Part 6 – for the protection of National Grid. The undertaker is in active discussions with the National Grid, with Part 6 currently in draft.

Schedule 11 (~~D~~ocuments and plans to be certified)

~~3.7.36~~3.7.41 This Schedule lists the documents that the undertaker must have certified pursuant to Article ~~40~~39.

Schedule 12 (~~P~~rocedure in relation to certain approvals)

~~3.7.37~~3.7.42 This Schedule, which relates to Article ~~41~~42 (procedure in relation to certain approvals), sets out the procedure for the discharge of all consents, agreements or approvals contemplate by the Order other than Schedule 10 and Article ~~20~~19(6). The Schedule sets out time periods within which decisions must be made, and provides for deemed approval in certain circumstances. The Schedule makes provision for appeals to be made in the event of a refusal of an application or if the relevant authority requires further information to be provided in relation to that application. Schedules similar to Schedule 12 have been used in various made orders, with the drafting in Schedule 12 having regard to Advice Note 15 (July 2018). The process is required in order to ensure that decisions are dealt with efficiently so that the authorised development is not held up.

Schedule 13 (~~A~~rbitration rules)

~~3.7.38~~3.7.43 This Schedule sets out the rules that apply to the arbitration of any difference or dispute arising under Schedule 10 or Article ~~2019~~(6). Schedule 13 relates to Article ~~421~~(procedure in relation to certain approvals). These rules have been included to ensure that there is no delay to the resolution of any dispute or difference.

Appendix 1