

VPI Immingham OCGT Project

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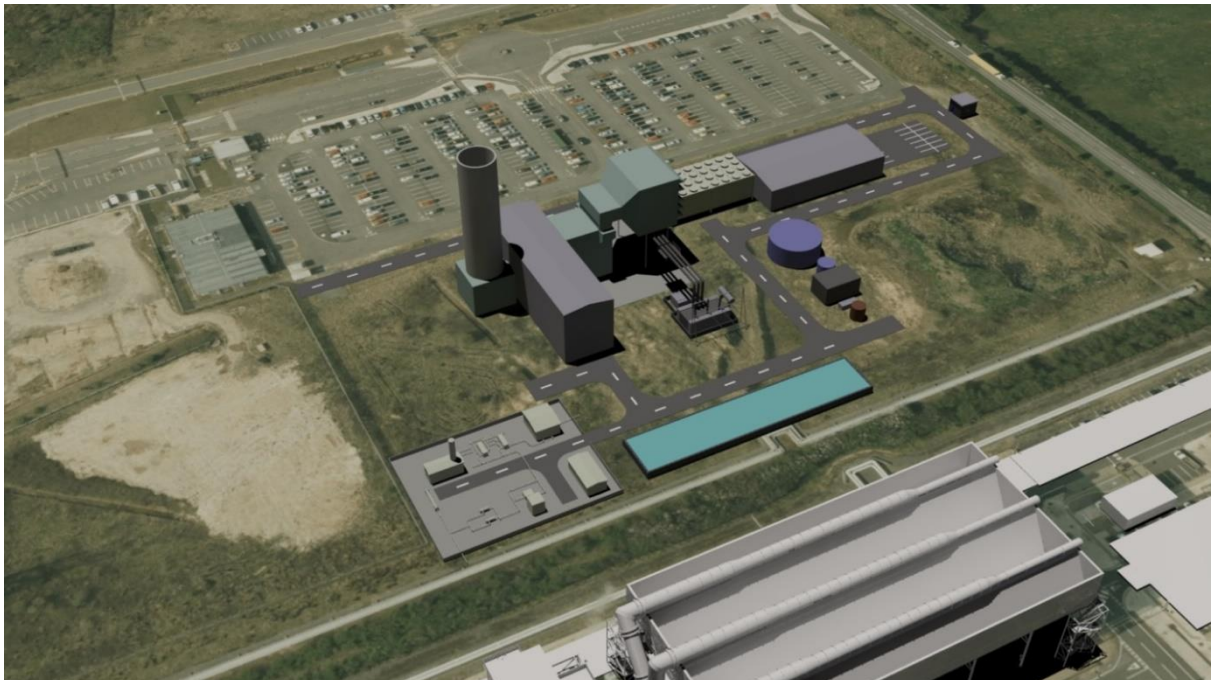
The Immingham Open Cycle Gas Turbine Order

Land to the north of and in the vicinity of the VPI Immingham Power Station, Rosper Road, South Killingholme, Lincolnshire, DN40 3DZ

Explanatory Memorandum

The Planning Act 2008

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 - Regulation 5(2)(c)



Applicant: VPI Immingham B Ltd

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GLOSSARY

Abbreviation	Description
PA 2008	The Planning Act 2008 which is the legislation in relation to applications for NSIPs, including pre-application consultation and publicity, the examination of applications and decision making by the Secretary of State.
Access	Work No. 2 – access works comprising access to the OCGT Power Station Site and access to Work Nos. 3, 4, 5 and 6
AGI	Above Ground Installation – installations used to support the safe and efficient operation of the pipeline; above ground installations are needed at the start and end of a gas pipeline and at intervals along the route.
APFP Regulations	The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009. Sets out detailed procedures that must be followed for submitting and publicising applications for Nationally Significant Infrastructure Projects.
Applicant	VPI Immingham B Ltd or VPIB
Application	The Application for a Development Consent Order made to the Secretary of State under Section 37 of the Planning Act 2008 in respect of the Proposed Development, required pursuant to Section 31 of the Planning Act 2008 because the Proposed Development is a Nationally Significant Infrastructure Project under Section 14(1)(a) and Section 15 of the Planning Act 2008 by virtue of being an onshore generating station in England of more than 50 Megawatts electrical capacity of more.
Associated Development	Defined under S.115(2) of The Planning Act 2008 as development which is associated with the principal development (the NSIP) and that has a direct relationship with it. Associated development should either support the construction or operation of the principal development, or help address its impacts. It should not be an aim in itself but should be subordinate to the principal development.
DCO	A Development Consent Order made by the relevant Secretary of State pursuant to the Planning Act 2008 to authorise a Nationally Significant Infrastructure Project. A DCO can incorporate or remove the need for a range of consents which would otherwise be required for a development. A DCO can also include powers of compulsory acquisition.
EIA	Environmental Impact Assessment – a term used for the assessment of environmental consequences (positive or negative) of a plan, policy, program or project prior to the decision to move forward with the proposed action.

Abbreviation	Description
EIA Regulations	The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 setting out how the environmental assessment of Nationally Significant Infrastructure Projects must be carried out and the procedures that must be followed
EN-1	the Overarching National Policy Statement for Energy, Department of Energy and Climate Change, 2011
EN-2	the National Policy Statement for Fossil Fuel Electricity Generating Infrastructure, Department of Energy and Climate Change, 2011
EN-4	the National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines, Department of Energy and Climate Change, 2011
EN-5	the National Policy Statement for Electricity Networks Infrastructure, Department of Energy and Climate Change, 2011
ES	Environmental Statement – a report in which the process and results of an Environmental Impact Assessment are documented
Existing AGI	The existing AGI within the Existing VPI CHP Plant Site
Existing AGI Site	The land comprising the Existing AGI, within the Existing VPI CHP Plant Site
Existing Gas Pipeline	An existing underground gas pipeline owned by VPI LLP connecting the Existing AGI Site to an existing tie in the National Grid (NG) Feeder No.9 located to the west of South Killingholme
Existing Gas Pipeline Site	The land comprising the Existing Gas Pipeline and a stand-off either side of it
Existing VPI CHP Plant	The existing VPI combined heat and power plant
Existing VPI CHP Plant Site	The land comprising the Existing VPI CHP Plant, located to the south of the OCGT Power Station Site
Ha	Hectares. A metric measurement of area.
Land Plans	A plan showing the land over which interests or rights in land are sought as part of the Order
Limits of deviation	The lateral limits shown on the Works Plan submitted as part of the Application and within which the Proposed Development may occur
NSIP	A Nationally Significant Infrastructure Project that must be authorised by the making of a DCO under the 2008 Act.
NTS	National transmission system.
NELC	North East Lincolnshire Council.
NLC	North Lincolnshire Council.
OCGT	Open Cycle Gas Turbine.
OCGT Power Station	Work No. 1 – an OCGT power station with a gross capacity of up to 299MW
OCGT Power Station Site	The land required for Work No.1
Order	The Immingham Open Gas Fired Generating Station Order 20[x], being the DCO that would be made by the Secretary of State authorising the Project, a draft of which has been submitted as part of the Application.
Order Land	The area over which powers of compulsory acquisition or temporary possession are sought in the DCO, shown on the Land Plans. The Order land is the same area as the Project Land

Abbreviation	Description
Order Limits	The area in which consent to carry out works is sought in the DCO, the area is split into different Work Numbers which are set out Schedule 1 to the DCO and shown on the Works Plans. The Order limits is the same area as the Site
PINS	Planning Inspectorate – executive agency of the Ministry of Housing, Communities and Local Government of the United Kingdom Government. It is responsible for examining applications for NSIPs, and reporting to the Secretary of State who makes a final decision on such applications.
Project Land	The land required for the Proposed Development (the Site) and the land comprising the Existing Gas Pipeline Site. The Project Land is the same as the 'Order land' (in the DCO).
Proposed Development	The construction, operation and maintenance of a new gas-fired electricity generating station with a gross output capacity of up to 299 MW, including electrical and gas supply connections, and other associated development.
Requirements	The 'requirements' at Schedule 2 to the Order that, amongst other matters, are intended to control the final details of the Project as to be constructed and also to control its operation, amongst other matters to ensure that it accords with the EIA and does not result in unacceptable impacts.
Site	The land required for the Proposed Development, and which is the same as the 'Order limits' (in the DCO)
SoS	The Secretary of State. The decision maker for DCO applications and head of Government department. In this case the SoS for the Department for Business, Energy and Industrial Strategy
Temporary Construction and Laydown	Work No. 3 – temporary construction and laydown areas comprising hard standing, laydown and open storage areas, contractor compounds and staff welfare facilities, vehicle parking, roadways and haul routes, security fencing and gates, gatehouses, external lighting and lighting columns. There are three construction and laydown areas included in the Application.
Temporary Construction and Laydown Site	Land Required for Work No. 3
VPIB	VPI Immingham B Ltd (the Applicant)
VPI LLP	VPI Immingham LLP – the owner and operator of the Existing VPI CHP Plant
Work No.	Work number, a component of the Proposed Development, described at Schedule 1 to the Order
Work No.1	An OCGT power station (the 'OCGT Power Station') with a gross capacity of up to 299MW.
Work No.2	Access works (the 'Access Site'), comprising access to the Main OCGT Power Station Site and access to Work Nos. 3, 4, 5 and 6.
Work No.3	Temporary construction and laydown area (the 'Temporary Construction and Laydown') comprising hard standing, laydown and open storage areas, contractor compounds and staff welfare facilities, vehicle parking, roadways and haul routes, security fencing and gates, gatehouses, external lighting and lighting columns;

Abbreviation	Description
Work No.4	An underground and overground gas pipeline (the 'Gas Connection) of up to 600 mm (nominal internal diameter) for the transport of natural gas to Work No. 1.
Work No.5	An electrical connection (the 'Electrical Connection') of up to 400 kilovolts and control systems.
Work No.6	Utilities and services connections (the 'Utilities and Services Connections').
Works Plans	Plans showing the Work Nos. referred to at Schedule 1 to the Order and which together make up the Proposed Development.

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1. INTRODUCTION

1.1 Overview

- 1.1.1 This explanatory memorandum (Document Ref. 3.2) has been prepared on behalf of VPI Immingham B Limited ('VPIB' or the 'Applicant') to explain the purpose and effect of the provisions of the draft Immingham Open Cycle Gas Turbine Order 20[X] (the 'Order') in accordance with regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009. It forms part of the application (the 'Application') for a Development Consent Order (a 'DCO'), that has been submitted to the Secretary of State (the 'Secretary of State') for Business, Energy and Industrial Strategy, under Section 37 of 'The Planning Act 2008' (the 'PA 2008').
- 1.1.2 VPIB is seeking development consent for the construction, operation and maintenance of a new gas-fired electricity generating station with a gross output capacity of up to 299 megawatts ('MW'), including electrical and gas supply connections and other associated development (the 'Proposed Development'). The Proposed Development is located primarily on land (the 'Site') to the north of the existing VPI Immingham Power Station, Rosper Road, South Killingholme, North Lincolnshire, DN40 3DZ.
- 1.1.3 A DCO is required for the Proposed Development as it falls within the definition and thresholds for a 'Nationally Significant Infrastructure Project' (a 'NSIP') under section 14(1)(a) and sections 15(1) and (2) of the PA 2008. The DCO, if made by the SoS, would be known as the 'Immingham Open Cycle Gas Turbine Order' (the 'Order')

1.2 VPI Immingham LLP and VPIB

- 1.1.4 VPI Immingham LLP ('VPI LLP') owns and operates the existing VPI Immingham Power Station, one of the largest combined heat and power ('CHP') plants in Europe, capable of generating 1,240 MW (about 2.5% of UK peak electricity demand) and up to 930 tonnes of steam per hour (hereafter referred to as the 'Existing VPI CHP Plant'). The steam is used by nearby oil refineries to turn crude oil into products, such as gasoline. The land comprising the Existing VPI CHP Plant is hereafter referred to as the 'Existing VPI CHP Plant Site'.
- 1.1.5 VPI LLP is a wholly owned subsidiary of the Vitol Group ('Vitol'), founded in 1966 in Rotterdam, the Netherlands. Since then Vitol has grown significantly to become a major participant in world commodity markets and is now the world's largest independent energy trader. Its trading portfolio includes crude oil, oil products, liquid petroleum gas, liquid natural gas, natural gas, coal, electricity, agricultural products, metals and carbon emissions. Vitol trades with all the major national oil companies, the integrated oil majors and independent refiners and traders. For further information on VPI LLP and Vitol please visit:
- <https://www.vpi-i.com/>
- 1.1.6 VPIB has been formed as a separate entity for the purpose of developing and operating the Proposed Development.

1.3 The Site

- 1.3.1 The Site is primarily located on land immediately to the north of the Existing VPI CHP Plant Site, as previously stated. Immingham Dock is located approximately 1.5 kilometres ('km') to the south east of the Site at its closest point. The Humber ports facility is located approximately 500 metres ('m') north and the Humber Refinery is located approximately 500m to the south.
- 1.3.2 The villages of South Killingholme and North Killingholme are located approximately 1.4 km and 1.6 km to the west of the Site respectively, and the town of Immingham is located approximately 1.8 km to the south east. The nearest residential property comprises a single house off Marsh Lane, located approximately 325 m to the east of the Site.
- 1.3.3 The Site comprises the following main parts:
- OCGT Power Station Site;
 - Access Site;
 - Temporary Construction and Laydown Site;
 - Gas Connection Site;
 - Existing AGI Site;
 - Electrical Connection Site; and
 - Utilities and Services Connections Site.
- 1.3.4 The OCGT Power Station Site and the majority of the Temporary Construction and Laydown Site are within the control of VPIB. VPI LLP has a lease of the Existing VPI CHP Plant Site.
- 1.3.5 The Site is located entirely within the boundary of the administrative area of North Lincolnshire Council ('NLC'), a unitary authority. The different parts of the Site are illustrated in the Works Plans (Application Document Ref: 4.3).
- 1.3.6 The Site has been selected by the Applicant for the Proposed Development, as opposed to other potentially available sites, for the following reasons:
- it comprises primarily of previously developed or disturbed land, including land within the operational envelope of the Existing VPI CHP Plant Site;
 - it is situated in an industrial setting with few immediate receptors and is not particularly sensitive from an environmental perspective;
 - it is primarily located adjacent to the Existing VPI CHP Plant, which provides visual screening and synergies in terms of the existing workforce and services;
 - it benefits from excellent grid connections (gas and electricity) on the Existing VPI CHP Plant Site; and

- it benefits from existing highway accesses onto Rosper Road, with the latter providing a direct connection (via a short section of Humber Road) to the Strategic Highway Network (A160) a short distance to the south of the Site.

1.3.7 A more detailed description of the Site is provided in Environmental Statement ('ES') Volume 1 Chapter 3 'Description of the Site' (Application Document Ref: 6.2.3).

1.4 The Existing Gas Pipeline

1.4.1 In addition to the Site, the Application includes provision for the use of an existing gas pipeline (the 'Existing Gas Pipeline') to provide fuel to the Proposed Development. The Existing Gas Pipeline was originally constructed in 2003 to provide fuel to the Existing VPI CHP Plant. The route of the pipeline runs from a connection point at an above ground installation (the 'Existing AGI Site') within the Existing VPI CHP Plant Site to a tie in point at the existing National Grid ('NG') Feeder No.9 located to the west of South Killingholme.

1.4.2 A small part of the Existing Gas Pipeline lies within the administrative area of North East Lincolnshire District Council ('NELC'), the neighbouring local authority.

1.4.3 The Applicant is not seeking consent to carry out any works to the Existing Gas Pipeline and, as a result, it does not form part of the Site or Proposed Development. However, the Existing Gas Pipeline is included in the Application on the basis that the Applicant is seeking powers of compulsory acquisition over it, to use and maintain it to ensure that the Proposed Development can operate.

1.4.4 The Site and the Existing Gas Pipeline together comprise the Order land (or 'Project Land') for the DCO application. The area of land covered by the Existing Gas Pipeline, including a 13 m stand-off either side of it to provide for access and any future maintenance requirements, is hereafter referred to as the 'Existing Gas Pipeline Site'.

1.4.5 A more detailed description of the Site is provided in Environmental Statement ('ES') Volume I Chapter 3 'Description of the Site' (Application Document Ref: 6.2) and the extent of the Order land is shown on the Land Plans (Application Document Ref: 4.2).

1.5 The Proposed Development

1.5.1 The main components of the Proposed Development are summarised below, as set out in the draft DCO (Application Document Ref: 2.1):

- Work No. 1 – an OCGT power station (the 'OCGT Power Station') with a gross capacity of up to 299 megawatts;
- Work No. 2 – access works (the 'Access'), comprising access to the OCGT Power Station and access to Work Nos. 3, 4, 5 and 6;
- Work No. 3 – temporary construction and laydown area ('Temporary Construction and Laydown') comprising hard standing, laydown and open storage areas, contractor compounds and staff welfare facilities, vehicle parking, roadways and haul routes, security fencing and gates, gatehouses, external lighting and lighting columns;

- Work No. 4 – gas supply connection works (the ‘Gas Connection’) comprising an underground and/or overground gas pipeline of up to 600 millimetres (nominal internal diameter) and approximately 800 m in length for the transport of natural gas from the Existing Gas Pipeline to Work No. 1;
- Work No. 5 – an electrical connection (the ‘Electrical Connection’) of up to 400 kilovolts and controls systems; and
- Work No 6 – utilities and services connections (the ‘Utilities and Services Connections’).

1.5.2 The areas within which each of the main components (the Works Nos.) of the Proposed Development are to be built are shown by the coloured and hatched areas on the Works Plans (Application Document Ref: 4.3). The ‘associated development’, for the purposes of Section 115 of the PA 2008, comprises Work Nos. 2, 4, 5 and 6 of the Proposed Development.

1.5.3 It is anticipated that subject to the DCO having been made by the SoS and a final investment decision by VPIB, construction work on the Proposed Development would commence in early 2021. The overall construction programme is expected to last approximately 21 months and is anticipated to be completed in late 2022, with the Proposed Development entering commercial operation later that year or early the following year. It is envisaged that the Proposed Development would have a design and operational life of at least 40 years.

1.5.4 A more detailed description of the Proposed Development is provided at Schedule 1 ‘Authorised Development’ of the draft DCO (Application Document Ref: 2.1) and ES Volume I, Chapter 4 ‘The Proposed Development’ (Application Document Ref: 6.2).

1.6 The Purpose and Structure of this Document

1.6.1 This explanatory memorandum should be read alongside the Order (Application Document Ref 2.1) and the various documents submitted in respect of the Application. It explains the effect and purpose of the provisions in the Order, and is provided as required by Regulation 5(2)(c) of the APFP Regulations.

1.6.2 The explanation in the following section follows the structure of the Order, first explaining the articles in the Order and then the Schedules to it.

2. THE PROVISIONS OF THE ORDER

2.1 Introduction

2.1.1 The Order consists of 43 operative provisions, each referred to as articles, and 13 Schedules.

2.2 Parts 1 (Preliminary) and 2 (Principal Powers)

2.2.1 Articles 1 (Citation and Commencement) and 2 (Interpretation) are preliminary provisions. Article 1 provides for the way in which the Order should be cited and when it takes effect.

2.2.2 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.

2.2.3 Article 2 defines 'apparatus' 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 electricity cables and telecommunications equipment, and to include aerial markers, cathodic protection test posts and field boundary markers, transformer rectification kiosks and electricity cabinets. This is required to ensure that the definition of apparatus is sufficiently broad to encompass the nature of street works which VPIB may need to carry out. This wording has precedent in the Eggborough Gas Fired Generating Station Order 2018.

2.2.4 Article 2 defines 'commencement' and separately also defines the 'permitted preliminary works'. Where appropriate the requirements (in Schedule 2, see further below) are drafted so that these works can be carried out without discharging certain requirements. The works identified in the 'permitted preliminary works' are considered appropriate as to the nature of these works, and the ES has assessed the Proposed Development on the basis that the permitted preliminary works may be carried out prior to certain requirements being discharged or triggered. A similar structure and wording has precedent in the Eggborough Gas Fired Generating Station Order 2018 which defined "permitted preliminary works" as follows:-

"permitted preliminary works" means works within the areas of Work Nos. 1, 2, 3, 4, 5, 6, 7, 9 and 10 to the extent that those are within the area of the existing coal-fired power station, consisting of environmental surveys, geotechnical surveys and other investigations for the purpose of assessing ground conditions, the preparation of facilities for the use of contractors (excluding earthworks and excavations), the provision of temporary means of enclosure and site security for construction, the temporary display of site notices or advertisements and any other works agreed by the relevant planning authority, provided that these will not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

2.2.5 Article 2 includes a definition of 'limits of deviation' which operates by reference to the Works Plans which has precedent in the Progress Power (Gas Fired Power Station) Order 2015, and it defines 'Order limits' as the limits shown on the Works Plans, to tie these concepts into the Order and ensure works can only be carried out in the relevant areas.

- 2.2.6 Article 2 defines ‘Order land’ 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 and described in the book of reference. The Order land covers a greater area than the Order limits, since consent is only sought for works (the ‘authorised development’ in Schedule 1 to the Order) within the Order limits, but powers of compulsory acquisition are also sought over the Existing Gas Pipeline Corridor, to ensure that VPIB has the necessary land and rights to be able to operate the Proposed Development. The Order land therefore extends to include the Existing Gas Pipeline Corridor. The Statement of Reasons (Application Document Ref. 3.2) provides more information on the need for and justification of powers of compulsory acquisition in the Order.
- 2.2.7 Article 2 defines ‘undertaker’ as VPI Immingham B Limited who has the benefit of the provisions of the Order, subject to the provisions of articles 6 and 7 (see below).
- 2.2.8 Article 2, Sub-paragraph (2) has been included to reflect that “rights over land” (including new rights which are created or acquired) include any trusts, incidents and restrictive covenants which has precedent in the Eggborough Gas Fired Generating Station Order 2018.
- 2.2.9 Article 2, Sub-paragraphs (3) to (7) of Article 2 have been added to provide clarity in relation to (respectively) that all distances, directions and lengths are approximate; all areas described in square meters in the book of reference are approximate; references to numbered works are as described in Schedule 1 and shown on the Works Plans; how the word ‘includes’ is to be construed; and that references to “plot” are to those shown on the Land Plans (Application Document Ref. 4.2) and described in the Book of Reference (Application Document Ref. 3.1).
- 2.2.10 Article 3 (Development consent etc. granted by the Order) – Article 3(1) grants development consent for 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. Article 3(2) requires that the works authorised by the Order are situated within the areas shown on the Works Plans (Document Reference 2.6). This is to provide certainty as to what has been consented by the Order and has precedent in the Eggborough Gas Fired Generating Station Order 2018.
- 2.2.11 Article 4 (Maintenance of authorised development) provides a power to maintain 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 which has precedent in the Eggborough Gas Fired Generating Station Order 2018. A definition of “maintain” has been included so that it is clear what the term involves, and the activities are limited by reference to the effects considered in the Environmental Statement (Application Document Ref. 6.1 to 6.4). The Environmental Statement has assessed the maintenance of the Proposed Development, as that is permitted by the Order.
- 2.2.12 Article 5 (Operation of authorised development) permits the operation and use of the generating station comprised in the authorised development and is included pursuant to section 140 of the Planning Act 2008. Article 5(2) specifically preserves the need for any other operational consent that may be needed for the authorised development in addition to the Order. The wording of this Article has precedent in Article 5 of the Eggborough Gas Fired Generating Station Order 2018.

2.2.13 Article 6(1) (Benefit of the Order) makes clear that (subject to sub-paragraph (2)) it is only VPIB who may take the benefit of the Order. Article 6(2) provides that for Work No. 5 (the Electrical Connection) the benefit of the Order is for VPIB and National Grid (as National Grid may potentially carry out all or part of those works). A similar approach regarding the benefit of parts of the Order being given to more than one person has been taken in various previous DCOs, including in Article 6 of the Meaford Gas Fired Generating Station Order 2016 and Article 6 of the Progress Power (Gas Fired Power Station) Order 2015 which respectively state:-

6.—(1) Subject to paragraph (2) and article 7 (consent to transfer benefit of Order), the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to—

(a) numbered work 2A(i) and numbered work 2A(ii) for which consent is granted by this Order for the benefit of the undertaker and National Grid; and

(b) numbered work 3 for which consent is granted by this Order for the benefit of the undertaker and WPD.

6.—(1) Section 156(1) of the 2008 Act applies to the grant of development consent by this Order.

(2) Without prejudice to paragraph (1), in relation to numbered works 3 and 5 consent is granted by this Order for the benefit of the undertaker and National Grid; and

(3) *Without prejudice to paragraph (1), in relation to numbered work 7 consent is granted by this Order for the benefit of the undertaker and the highway authority.*

2.2.14 These precedents are relevant as they relate to similar works and projects i.e. a gas generating station with an electrical connection.

2.2.15 Article 7 (Consent to transfer benefit of the Order) makes detailed provision for the transfer of the benefit of the Order and supplements Article 6(1). Under Article 7(4) the consent of the Secretary of State is needed before the undertaker can transfer the benefit of the Order. Such consent is not required where (i) the transferee or lessee is (a) the holder of a licence under section 6 of the Electricity Act 1989 or section 7 of the Gas Act 1986; or (b) in relation to the transfer of a lease of any works within a highway, a highway authority responsible for the highways within the Order Land or (ii) 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. The justification for these provisions is that in such cases, the transferee or lessee will either be of a similar regulatory standing to VPIB, or there are no outstanding actual or potential compulsory acquisition compensation claims. This has precedent in Article 7 of the Millbrook Gas Fired Generating Station Order 2019 with the amendments shown underlined below (which themselves have precedent in Article 7 of the Eggborough Gas Fired Generating Station Order 2018):-

(4) The consent of the Secretary of State is required for the exercise of the powers of paragraph (1) except where—

~~(a)~~(ii) the transferee or lessee is the holder of a licence under section 6 (licences authorising supply, etc) of the Electricity Act 1989(a) or section 7 (licensing of public gas transporters) of the Gas Act 1986(b); or

(ii) in relation to a transfer or a lease of any works within a highway, a highway authority responsible for the highways within the Order land; or

(b) the time limits for all claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—

(i) no such claims have been made;

(ii) any such claims that have been made have all been compromised or withdrawn;

(iii) compensation has been paid in final settlement of all such claims;

(iv) payment of compensation into court in lieu of settlement of all such claims has taken place; or

(v) it has been determined by a tribunal or court of competent jurisdiction in respect of all claims that no compensation is payable.

- 2.2.16 Article 7(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 7(6) to (8) provide further detail on the notification that is to be given. This is based on the notification procedure contained in Article 7 of the Millbrook Gas Fired Generating Station Order 2019.

2.3 Part 3 (Streets)

- 2.3.1 Article 8 (Power to alter layout etc. of streets) allows the undertaker to alter the layout of a street or carry out any works in the street as are set out in Schedule 3. Article 8(2) allows for the alteration of the layout of any street within the Order limits 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. This is based on Article 8 of the Millbrook Gas Fired Generating Station Order 2019.

- 2.3.2 Article 9 (Street works) 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 9(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 Article 9(1). This provides protection for the street authority for the street in question. This is based on Article 9 of the Millbrook Gas Fired Generating Station Order 2019 but the reference in Millbrook to "as is within the Order limits" at the end of Article 9(1) has been removed given that the streets set out in Schedule 3 are within the Order limits in any event.

- 2.3.3 Article 10 (Construction and maintenance of new or altered means of access) provides that new or altered means of access are to be constructed to the reasonable satisfaction of the highway authority, unless otherwise agreed by the highways authority, and maintained at the expense of the undertaker for a year. This Article has precedent in Article 10 of the Millbrook Gas Fired Generating Station Order 2019 and Article 10 of the Eggborough Gas Fired Generating Station Order 2018. Any part of the new or altered means of access which are proposed to be public highway (as set out on the Access and Rights of Way Plan, Document Reference 4.3) will then be maintained by the highway authority. Those parts of the new or altered means of access which are not intended to be public highway (such as private accesses which

the undertaker is altering or creating and as also set out in the Access and Rights of Way Plan) will then be maintained by the relevant street authority. Paragraphs (4) and (5) mirror the defence in section 58 of the Highways Act 1980 where the undertaker is subject to an action for damages and has taken such care as was reasonably required in the circumstances to secure that the street was not dangerous to traffic.

- 2.3.4 Article 11 (Temporary prohibition or restriction of use of streets) is slightly refined from the model provision and provides for the temporary alteration, diversion and prohibition or restriction on the use of streets for the purposes of carrying out the authorised development. Reference to temporary prohibition or restriction of use is a reference to the temporary control of how traffic and non-motorised users (including pedestrians) may use and pass along the streets in question. As per the model provision, this applies generally, and also applies specifically to certain streets which are set out in Schedule 5 to the Order.
- 2.3.5 Article 11(2) confers a power on the undertaker, where the use of a street has been temporarily prohibited or restricted under the power in Article 11, to use such a street as a temporary working site. There are consultation requirements before this power can be exercised, and in the case of any streets not specified in Schedule 5 the undertaker would need to secure the consent of the street authority prior to prohibiting or restricting use. Compensation may be payable in respect of the loss or suspension of any private rights of way. This Article has precedent in Article 11 of the Millbrook Gas Fired Generating Station Order 2019.
- 2.3.6 Article 12 (Access to works) is a model provision which permits the undertaker to form new or to improve existing means of access in the locations specified in Schedule 3. Other means of access or works can also be provided in other locations reasonably required for the authorised development with the approval of the relevant planning authority in consultation with the highway authority.
- 2.3.7 Article 13 (Agreements with street authorities) 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 Progress Power (Gas Fired Power Station) Order 2015 and the Wrexham Gas Fired Generating Station Order 2017.
- 2.3.8 Article 14 (Traffic regulation) 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 it is necessary for the purposes of or in connection with the construction of the authorised development. The Article gives effect to any prohibition, restriction or other provision made by the undertaker as if it was made by the traffic authority or local authority in whose area the road is situated. 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) - the reference in Wrexham to "prior to when the authorised development first becomes operational" in Article 14(1) has been replaced with "prior to the date of final commissioning" so as to utilise the appropriate defined term in this case. This Article is considered necessary to ensure that the authorised development can be

constructed without unnecessary delay. Article 38 (procedure in relation to certain approvals) applies to this Article, see further below.

2.4 Part 4 (Supplemental Powers)

2.4.1 Article 15 (Discharge of water) is a model provision which enables the undertaker to discharge water into any watercourse, public sewer or drain in connection with the construction and maintenance of the authorised development with the approval of the owner of the watercourse, public sewer or drain (such approval not to be unreasonably withheld) and subject to certain other conditions. 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. This Article has precedent in Article 16 of the Millbrook Gas Fired Generating Station Order 2019.

2.4.2 Article 16 (Authority to survey and investigate the land) is based on the model provision which allows the undertaker to survey and/or investigate land including bringing equipment onto the land and making trial holes. The power is subject to a number of conditions including a requirement for 14 days' notice to be given and is subject to the payment of compensation. The power extends 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). The Article 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. This Article has precedent in Article 17 of the Millbrook Gas Fired Generating Station Order 2019.

2.4.3 Article 17 (Removal of human remains) is a model provision which provides for the removal of human remains from the Order land and for their reburial in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose or for their treatment according to the wishes of any personal representatives or relatives who come forward following the giving of the necessary notices. This article has been included as VPIB has not been able to rule out the presence of any human remains within the Order land and is considered necessary so that there is no delay in the implementation of the authorised development. This Article has precedent in Article 16 of the Eggborough Gas Fired Generating Station Order 2018.

2.5 Part 5 (Powers of Acquisition)

2.5.1 Article 18 (Compulsory acquisition of land) provides for the compulsory acquisition of such land as is required for the authorised development or which is required to facilitate the authorised development or is incidental to 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 22 (Private rights). This approach has precedent in Article 18 of the Millbrook Gas Fired Generating Station Order 2019.

2.5.2 Article 19 (Power to override easements and other rights) provides 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 use 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 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 Article 19 of the Millbrook Gas Fired Generating Station Order 2019.

- 2.5.3 Article 20 (Time limit for exercise of authority to acquire land compulsorily) is a model provision which imposes a time limit of 5 years for the exercise of powers of compulsory acquisition. The date of the making of the Order has been used to align with the date from which the undertaker may exercise any powers of compulsory purchase that may be contained within the Order. VPIB considers that 5 years is an appropriate time limit as it is consistent with the time limit for commencing the authorised development set out in requirement 2 of Schedule 2 of the Order, and has precedent in the majority of Orders made to date for example in Article 19 of the Eggborough Gas Fired Generating Station Order 2018.
- 2.5.4 Article 21 (Compulsory acquisition of rights) is based on a model provision and entitles the undertaker to acquire rights over land which may be compulsorily acquired, including rights already in existence, or to create new rights or impose restrictions. The word "existing" has been deleted from the model provision wording in paragraph (3) in order to ensure that the undertaker is able to seek a lesser interference with land where this is appropriate (whether in the context of new or existing rights) as the authorised development is implemented.
- 2.5.5 The Article also introduces Schedule 7, which amends existing compensation legislation in the case of a compulsory acquisition under the Order of a right by the creation of a new right or the imposition of a restriction. Schedule 7 does not affect the entitlement to compensation, but generally ensures that the compensation code applies to the compulsory acquisition by the creation of new rights and the imposition of restrictive covenants. The Article also provides for the transfer of the power to acquire new rights to a statutory undertaker with the consent of the Secretary of State. This is to allow for the creation of easements in favour of statutory undertakers in respect of their apparatus which would not otherwise be possible as the undertaker does not own the 'dominant tenement'. Wording has been included at paragraph (6) to make clear that legislation governing the compensation for the compulsory purchase of land is to apply in relation to the creation of new rights and the imposition of restrictions.
- 2.5.6 This Article has precedent, for example, in Article 21 of the Millbrook Gas Fired Generating Station Order 2019. The approach to setting the purposes for which new rights may be acquired (as per Article 21(2) and Schedule 6) has precedent in the Millbrook Gas Fired Generating Station Order 2019.
- 2.5.7 Article 22 (Private rights) is based on a model provision and has the effect of extinguishing private rights and restrictions over land where: (1) land is compulsorily acquired; (2) where notified by the undertaker, the private right is inconsistent with a right being compulsorily acquired; and (3) land is owned or leased by the undertaker. The Article also suspends private rights where the private right is inconsistent with a right being compulsorily acquired by the undertaker and also suspends private rights

for as long as the undertaker is in temporary possession of land under the Order. The Article departs from the model provision in that it relates to all rights over land, not just rights of way, to ensure that any other rights that may exist cannot prevent the implementation of the Project. The Article follows the approach in Article 24 of the Wrexham Gas Fired Generating Station Order 2017. Paragraph (4) limits the scope of the suspension of existing rights where temporary possession of land is taken pursuant to the Order.

- 2.5.8 Article 23 (Application of the Compulsory Purchase (Vesting Declarations) Act 1981) is a model provision that applies the vesting procedures in the Compulsory Purchase (Vesting Declarations) Act 1981 to the exercise of powers of compulsory acquisition pursuant to the Order and is a model provision. It gives the undertaker the option to acquire land via the process set out under the 1981 Act, rather than the notice to treat procedure. This article has been updated to incorporate and reflect the changes brought about by the Housing and Planning Act 2016. These modifications have precedent in the High Speed Rail (London – West Midlands) Act 2017, the Wrexham Gas Fired Generating Station Order 2017 and the Silvertown Tunnel Order 2018.
- 2.5.9 Article 24 (Acquisition of subsoil only) 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, and it could permit the undertaker to compulsorily acquire only the 'smaller' interest, reducing the impact on the land owner. This is based on the model provision with amendments which have precedent in Article 24 of the Millbrook Gas Fired Generating Station Order 2019.
- 2.5.10 Article 25 (Modification of Part 1 of the Compulsory Purchase Act 1965) 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 this Order. These modifications have precedent in Article 25 of the Millbrook Gas Fired Generating Station Order 2019.
- 2.5.11 Article 26 (Rights under or over streets) 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 Article 27 of the Progress Power (Gas Fired Power Station) Order 2015.
- 2.5.12 Article 27 (Temporary use of land for carrying out the authorised development) allows the land specified in Schedule 8 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 requiring that at least 14 days' notice is given and for the restoration of the land following the temporary works.
- 2.5.13 Wording has been added to paragraph 1(a)(ii) in order to allow Article 27 to apply to land which may later be the subject of compulsory acquisition. New wording has also

been added to paragraphs (3) and (4) to take in to account that VPIB may, pursuant to Article 27(1)(a)(ii), temporarily use land that it may compulsorily acquire. Wording has also been deleted in paragraph (8) to dovetail with the new drafting in paragraph (1). This Article has precedent in Article 26 of the Wrexham Gas Fired Generating Station Order 2017.

- 2.5.14 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 of any part of the Order land. The wording in this Article has precedent in Article 27 of the Millbrook Gas Fired Generating Station Order 2019.
- 2.5.15 Sub-paragraph 13 dis-applies the provisions of the Neighbourhood Planning Act 2017 that relate to temporary possession. VPIB's rationale for this is that the provisions relating to temporary possession in the Neighbourhood Planning Act 2017 have not yet come into force and the Regulations required to provide more detail on the operation of that regime are also not yet in place. VPIB is of the view that it is not currently possible to understand or reflect accurately the temporary possession provisions as intended by Government in respect of DCOs. As such, it is considered appropriate to apply the temporary possession regime which has been included in numerous DCOs and orders made under the Transport and Works Act 1992 to date. This approach has been adopted in DCOs including the Silvertown Tunnel Order 2018, the Eggborough Gas Fired Generating Station Order 2018 and Article 28 of the Millbrook Gas Fired Generating Station Order 2019. The underlined wording below has been included in paragraph 13 which is additional to that included in Millbrook. This is required given the authorised development is limited to the Order limits, however, temporary possession may be required over the Order land (which a wider area than that contained in the Order limits):

The provisions of the Neighbourhood Planning Act 2017 do not apply insofar as they relate to temporary possession of land under this article in connection with the carrying out of the authorised development and other development or works necessary for the authorised development within the Order land.

- 2.5.16 Article 28 (Temporary use of land for maintaining the authorised development) 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 requiring 28 days' notice to be given and restoration of the land following the temporary possession. 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 1 year beginning with the date of final commissioning, as opposed to the date on which the project 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 in Article 28 of the Millbrook Gas Fired Generating Station Order 2019; however Article 28(11) has been amended as follows as a different maintenance period is not required for landscaping:-

In this article "the maintenance period" means the period of 5 years beginning with the date of final commissioning ~~except where the authorised development is landscaping where~~ "the maintenance period" means such period as set out in the landscape and ecological mitigation and management strategy which is approved by Central Bedfordshire Council pursuant to

Requirement 3 beginning with the date on which that part of the landscaping is completed provided that such period shall not exceed 10 years

- 2.5.17 Article 29 (Statutory undertakers) provides for the acquisition of land belonging to statutory undertakers within the Order land. This includes a power to move the apparatus of those statutory undertakers and to extinguish their rights. The model provision has been amended so as to allow for the suspension of rights of a statutory undertaker (for example where land is being temporarily used under the terms of the Order) rather than just extinguishment. This power is required over the whole of the Order land and has precedent in made Orders for gas fired generating stations, including in Article 28 of the Wrexham Gas Fired Generating Station Order 2017.
- 2.5.18 Article 30 (Apparatus and rights of statutory undertakers in streets) makes provision in respect of the apparatus and rights of statutory undertakers in streets which are altered or diverted or where use is temporarily prohibited or restricted under Articles 10 or 11. It 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 9 of the Order. This has precedent in Article 31 of the Millbrook Gas Fired Generating Station Order 2019.
- 2.5.19 Article 31 (Recovery of costs of new connections) provides that persons who have to create a new connection following the exercise of powers under Article 31 may recover the costs of new connections from the undertaker. It is a model provision and has precedent in Article 31 of the Millbrook Gas Fired Generating Station Order 2019.

2.6 Part 6 (Operations)

- 2.6.1 Article 32 (Felling or lopping of trees and removal of hedgerows) provides that the undertaker may fell or lop or cut back the roots of any tree or shrub within the Order land to prevent it obstructing or interfering with the construction, maintenance or operation of the authorised development. Compensation is provided for loss or damage if caused. It is a model provision.
- 2.6.2 Article 33 (Protective works to buildings) is a model provision which allows the undertaker to carry out protective works to buildings within the Order limits, subject to a number of conditions including the service of 14 days' notice (except in the case of emergency) and the payment of compensation. The model provision has been updated to refer to the period following the date of final commissioning, as the phrase in the model provisions (when it is 'open for use'), is not appropriate for a generating station project. Article 32 of the Eggborough Gas Fired Generating Station Order 2018 made a similar amendment, although used "commercial use" as the relevant defined term.

2.7 Part 7 (Miscellaneous and General)

- 2.7.1 Article 34 (Application of landlord and tenant law) 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. This provision is required to ensure that there is no impediment to the construction, use or maintenance of the authorised development.

- 2.7.2 Article 35 (Operational land for the purposes of the 1990 Act) 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.
- 2.7.3 Article 36 (Defence to proceedings in respect of statutory nuisance) is a model provision that provides that no one is able to bring statutory nuisance proceedings under the Environmental Protection Act 1990 in respect of noise, if the noise is created in the course of carrying out construction or maintenance of the authorised development and for which noise has been given under section 60 or consent obtained under section 61 or 65 of the Control of Pollution Act 1974, or which cannot be reasonably avoided as a consequence of the authorised development. This Article has precedent in Article 37 of the Eggborough Gas Fired Generating Station Order 2018.
- 2.7.4 Article 37 (Protective provisions) provides for Schedule 9, which protects the interests of certain statutory undertakers and other third parties potentially affected by the authorised development.
- 2.7.5 Article 38 (Procedure in relation to certain approvals) provides a procedure in relation to consents and approvals required pursuant to the Order. It applies to all such consents etc, bar those under requirements in Schedule 2, where a separate more detailed procedure is provided for in Schedule 10. Schedule 10 has been used in various draft development consent orders and can be seen in a similar form in the Wrexham Gas Fired Generating Station Order 2017. The article also provides that the procedures set out in Schedule 10 apply to any consent, agreement or refusal which needs to be obtained under the requirements set out in Schedule 2 to the Order. Article 38 provides the procedure which applies in respect of other consents, including by making clear that the appeals process set out in Schedule 10 applies. This Article has precedent in Article 38 of the Millbrook Gas Fired Generating Station Order 2019, and is considered appropriate and justified in order to ensure that the Proposed Development can proceed in a reasonable timescale, and so that there is a consistent approach to consents etc that must be sought by the undertaker pursuant to the Order.
- 2.7.6 Article 39 (Certification of plans etc.) is a model provision which provides for the submission of the book of reference, plans and other documents referred to in the Order to the Secretary of State in order that they may be certified as being true copies.
- 2.7.7 Article 40 (Service of notices) deals with the service of notices pursuant to the Order. These provisions have precedent in Article 39 of the Millbrook Gas Fired Generating Station Order 2019.
- 2.7.8 Article 41 (Amendment and modification of statutory provisions) provides for Schedule 13 which sets out modifications and amendments to the Able Marine Energy Park Development Consent Order 2014. The modifications are made pursuant to the power contained in section 120(5) of the Planning Act 2008, which permit in certain circumstances the amendment of "statutory provisions", defined in section 120(6) as including an instrument made under an Act. The Able Marine Energy Park Development Consent Order 2014 is such a statutory instrument, and

the amendments fall within the circumstances within which amendments are permitted. They are amendments of provisions which relate to matters for which provision may be made in the order or which it is necessary or expedient to make in connection with this Order, being the means by which conflicts between the works and powers contained within the two development consent orders are to be avoided. The interactions between the respective projects are explained in the Planning Statement (Application Document Ref. 5.3), and the relevant provisions are explained further below (see Schedule 13).

- 2.7.9 Article 42 (Arbitration) is a general arbitration provision which provides that differences under the Order should be settled by arbitration unless another means of resolving a dispute is provided for in the Order. It is based on a model provision but has been amended to provide for an arbitrator to be appointed by the Centre of Effective Dispute Resolution in the event that the Secretary of State fails to appoint an arbitrator. This is to prevent any delay to the resolution of any disputes.
- 2.7.10 Article 43 (Funding) provides for a guarantee or other form of security for the payment of compensation to be put in place prior to exercising the compulsory acquisition powers granted by the Order. The article is based on Article 39 of the Wrexham Gas Fired Generating Station Order 2017.

2.8 Schedules

- 2.8.1 **Schedule 1 (authorised development)** specifies the authorised development:-
- 2.8.2 An 'OCGT Plant' (Work No. 1) - an OCGT plant of up to 299 MW gross capacity, comprising (but not limited to) gas turbine, turbine buildings, emissions stacks, administration/control buildings and ancillary buildings, enclosures, plant, equipment and infrastructure connections and works;
- 2.8.3 Access (Work No. 2) – access to Work Nos 1, 3, 4, 5 and 6 from Rosper Road;
- 2.8.4 Temporary construction and laydown (Work No. 3) – comprising (but not limited to) hard standing, laydown and open storage areas, contractor compounds and staff welfare facilities;
- 2.8.5 A 'Gas Supply Connection' (Work No. 4) – for the transport of natural gas to Work No. 1 comprising underground and overground gas pipeline up to 600 millimetres nominal internal diameter and other works including (but not limited to) control systems and cables and marker posts; and
- 2.8.6 An 'Electrical Connection' (Work No. 5) - an electrical connection up to 400 kilovolt and controls systems; and
- 2.8.7 Utilities and services connections (Work No. 6) – comprising (but not limited to) water pipes, telecommunications cables and equipment and control systems and cables.
- 2.8.8 **Schedule 2 (Requirements)** sets out the requirements which apply to the carrying out and operation of the authorised development. They broadly follow those set out in the model provisions, where relevant, and where they have been amended this has been done following discussions with the relevant planning authority and other statutory consultees. The Order limits fall within the administrative area of North

Lincolnshire Council, and it is therefore the planning authority in respect of the requirements.

- 2.8.9 The requirements closely relate to the mitigation set out in the Environmental Statement (Document Reference 6.1).
- 2.8.10 Requirement 1 defines various and bodies which are referred to in the remainder of Schedule 2.
- 2.8.11 Requirement 2 (Commencement of the authorised development) - requires that the authorised development is commenced within five years from the Order coming into force. This broadly follows the model provision;
- 2.8.12 Requirement 3 (Notice of commencement and completion of commissioning) - This is not a model provision. It requires the undertaker to give notice to the relevant planning authority of commencement of the authorised development, and of the intended start and completion of commissioning. These are all points in the construction programme at which certain requirements are triggered, and it is therefore appropriate for the relevant planning authority to be notified of when they occur.
- 2.8.13 Requirement 4 (Notice of commencement of commercial use) - This is not a model provision. It requires the undertaker to notify the planning authority of the intended start of commercial use of the authorised development prior to such start and in any event within 7 days from the date that commissioning is started. This is required for the same reason as requirement 3.
- 2.8.14 Requirement 5 (Detailed design) - This is based on a model provision. It requires the specific design details for each Work Number, to be submitted to and approved by the relevant planning authority before commencement, save for the permitted preliminary works. In respect of Work No. 1, the submitted details must comply with the parameters set out in Schedule 12 – those match the parameters used in the Environmental Statement (Document Reference No. 6.2) to assess the Proposed Development. The authorised development must be constructed in accordance with the approved details.
- 2.8.15 Requirement 6 (Biodiversity enhancement and management plan) - This is based on a landscaping model provision, however has been modified to make provision instead for biodiversity protection management and enhancement. It has been split into two plans, one relating to the construction period and the second relating to the operational period.
- 2.8.16 It requires the undertaker to submit a biodiversity protection plan to the relevant planning authority prior to commencing the authorised development of that part the plan relates to. The plan must set out measures to protect existing tree and shrub planting and avoid impacts on biodiversity and habitats, and must be implemented as approved during the construction period.
- 2.8.17 Sub-paragraph (4) requires the undertaker to submit a further biodiversity management and enhancement plan, prior to the commissioning of the authorised development, to be in accordance with the principles of the framework biodiversity enhancement and management plan. This plan must include specific details as

specified in sub-paragraph (5) and must be implemented as approved during operation of the authorised development.

- 2.8.18 This approach of splitting out the requirement into two plans provides appropriate protection for the landscaping and biodiversity elements during construction, whilst providing the undertaker with the ability to commence construction without having to have provided full details of all the final landscaping and biodiversity proposals. It has precedent in the Eggborough Gas Fired Generating Station Order 2018.
- 2.8.19 Requirement 7 (External lighting) - This is based upon a model provision and requires the undertaker to submit details of all external lighting to be installed during construction to the planning authority for approval before the authorised development may commence, save for the permitted preliminary works. Sub-paragraph (2) contains an equivalent provision for the operation of the authorised development which requires the scheme to be submitted prior to commissioning.
- 2.8.20 Requirement 8 (Highway accesses) - This is a modified model provision. It provides that no part of the authorised development, save for the permitted preliminary works, may commence until details of any new, modified or temporary means of access to the public highway to be used by vehicular traffic, or any alteration to an existing means of access to a public highway used by vehicular traffic for that part have been submitted to and approved by the relevant planning authorities. Consultation is required with the highway authority and the highway accesses must be constructed in accordance with the approved details.
- 2.8.21 Requirement 9 (Means of enclosure) - This is based on a model provision. It requires that no part of the authorised development may commence, save for the permitted preliminary works until details of all temporary means of enclosure have for that part been submitted to and approved by the planning authority, including a programme for the removal of such temporary means of enclosure. It also requires that the authorised development may not be brought into commercial use until the permanent means of enclosure have been approved and completed.
- 2.8.22 Requirement 10 (Surface and foul water drainage) - This is based on a model provision. It provides that no part of the authorised development may commence, save for the permitted preliminary works, until details of the temporary surface and foul water drainage systems for that part, in accordance with the flood risk assessment (appendix 12A of the Environmental Statement) and Chapter 12 of the Environmental Statement have been submitted to and approved by the relevant planning authorities (in consultation with the lead local flood authority, Anglian Water and North East Lindsey Internal Drainage Board and the Environment Agency). The systems must be constructed in accordance with the approved details. The undertaker must then also obtain the approval of the relevant planning authorities (following consultation with the same bodies) of the equivalent permanent systems, which must occur prior to the start of construction of any part of those systems.
- 2.8.23 Requirement 11 (Flood risk mitigation) - This is not a model provision. It provides that no part of the authorised development may commence, save for the permitted preliminary works until a scheme for the mitigation of flood risk during construction has, for that part, been submitted to and approved by the planning authority. The scheme must be in accordance with the principles set out in the flood risk assessment (appendix 12A of the Environmental Statement) and Chapter 12 of the Environmental Statement. A further scheme in relation to the operational stage must subsequently

be submitted by the undertaker following consultation with the Environment Agency and North East Lindsey Internal Drainage Board. The schemes must be approved, respectively (i) prior to the construction of the authorised development and (ii) prior to commissioning of the authorised development, and must be implemented throughout the construction and operation periods as applicable.

- 2.8.24 Requirement 12 (Contaminated land and groundwater) - This is a modified model provision. It provides that no parts of the authorised development may commence save for investigations to assess ground conditions until a scheme (to include a risk assessment and, if necessary, a site investigation) to deal with the contamination of land has, for that part, been submitted to and approved by the relevant planning authorities following consultation with the Environment Agency. It requires that the submitted scheme must be in accordance with the principles set out in the flood risk assessment (appendix 12A of the Environmental Statement) and Chapter 12 of the Environmental Statement.
- 2.8.25 Requirement 13 (Archaeology) - This is a modified model provision. It provides that no part of the authorised development may commence until a scheme of archaeological investigation for that part has been submitted to and approved by the relevant planning authorities after consultation with Historic England. The scheme submitted and approved must be in accordance with the principles set out in Chapter 11 the Environmental Statement. Furthermore, 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.
- 2.8.26 Requirement 14 (Construction environmental management plan) - This is a modified version of the model provision on 'Code of Construction Practice'. It requires a Construction and Environmental Management Plan, in accordance with the framework construction environmental management plan (appendix 4A of the Environmental Statement) has been submitted to and approved by the relevant planning authorities before commencement of the authorised development. The plan should include all of the details set out in sub-paragraph (2). All construction works associated with the authorised development must be carried out in accordance with the approved Construction and Environmental Management Plan.
- 2.8.27 Requirement 15 (Protection of highway surfaces) - This is not a model provision. It requires details of the condition surveys (including any post-construction surveys) which are to be carried out on the public highways to be used during construction to be approved by the relevant planning authority prior to commencement of the authorised development, save for the permitted preliminary works. The surveys must then be carried out in accordance with the approved details, as well as any necessary repairs.
- 2.8.28 Requirement 16 (Construction traffic management plan) - This is a modified model provision. It requires a construction traffic management plan to be submitted to and approved by the relevant planning authority, following consultation with North East Lincolnshire Council, Highways England and the highway authority, before commencement, save for permitted preliminary works. It also requires notices to be erected and maintained throughout the construction period at every entrance to and exit from the construction site, indicating the approved routes for traffic entering and leaving the site.

- 2.8.29 Requirement 17 (Construction workers travel plan) - This is a modified model provision. It requires a travel plan for construction workers to be submitted to the relevant planning authorities following consultation with North East Lincolnshire Council, Highways England and the highway authority prior to commencement, save for the permitted preliminary works. The plan must include measures to encourage sustainable transport; details of the responsibility for and timetable for implementation of those measures; details of parking for construction personnel, and a monitoring and review regime. The approved plan must be implemented prior to commencement of the authorised development, save for the permitted preliminary works.
- 2.8.30 Requirement 18 (Construction hours) - This is a modified model provision. It specifies the hours in the day within which all construction work associated with the authorised development must be carried out. The restrictions do not apply to work that does not exceed a specified noise limit, is approved in advance by the planning authority or is associated with an emergency. The requirement also permits a 30 minute start-up and shut-down period at the beginning and the end of the construction hours.
- 2.8.31 Requirement 19 (Control of noise – operation) - This requires that no part of the authorised development must be brought in to commercial use until a scheme for the management and monitoring of noise during operation has been submitted to and approved by the relevant planning authorities. The scheme must be implemented as approved.
- 2.8.32 Requirement 20 (Piling and penetrative foundation design) - This is not a model provision. It requires that no part of Work No. 1 must commence, save for the permitted preliminary works, until a piling and penetrative foundation design method statement, informed by a risk assessment for that part, has been submitted to and approved with by the planning authority following consultation with the Environment Agency. All piling and penetrative foundation works must be carried out in accordance with the approved method statement.
- 2.8.33 Requirement 21 (Waste management on site - construction wastes) - This is not a model provision. It requires that no part of the authorised development may commence, save for the permitted preliminary works, until a construction site waste management plan for that part has been submitted to and approved by the relevant planning authority. The plan must be in accordance with the framework construction environmental management plan (appendix 4A of the Environmental Statement) and must be implemented as approved.
- 2.8.34 Requirement 22 (Restoration of land used temporarily for construction) - This is modified model provision. It prevents the authorised development being brought into commercial use until the scheme for the restoration of any land within the Order limits which has been used temporarily for construction has been submitted to and approved by the relevant planning authority. It stipulates that the land must be restored within three years of the authorised development being brought into commercial use (or such other period as may be approved by the planning authority), in accordance with the approved restoration scheme.
- 2.8.35 Requirement 23 (Employment, skills and training plan) - This is not a model provision, and has been included to secure an employment, skills and training plan, particularly in relation to local people. A similar requirement was included in the Knottingley Power Plant Order 2015 (at requirement 36).

- 2.8.36 Requirement 24 (Decommissioning) - This is not a model provision. It requires the undertaker to submit a decommissioning environmental management plan, in accordance with the Environmental Statement, to the relevant planning authorities within 12 months of it deciding to decommission the authorised development. The relevant planning authorities must approve the scheme before any decommissioning works are carried out and the scheme must be implemented as approved.
- 2.8.37 Requirement 25 (Requirement for written approval) - This is based on a model provision and confirms that the relevant planning authority's approval or agreement must be given in writing.
- 2.8.38 Requirement 26 (Approved details and amendments to them) - This is not a model provision. It requires that all details submitted to the relevant planning authority for approval must be in accordance with the parameters in the Environmental Statement and reflect the principles of the documents submitted for certification (in accordance with article 39). It expressly states that "approved details" includes any amendments which may be subsequently approved by the relevant planning authorities.
- 2.8.39 Requirement 27 (Amendments agreed by the relevant planning authority) - This is a modified model provision. This clarifies that where the phrase "unless otherwise agreed" appears in requirements, it does not permit changes which could give rise to any materially new or materially different environmental effects than those assessed in the Environmental Statement. It also makes clear that where the requirement requires consultation with another body, then any approval or agreement to any amendments must not be given without the relevant planning authority having first consulted with that body.
- 2.8.40 **Schedule 3 (Streets subject to street works)** sets out the streets that would be subject to street works (including reference to the relevant plan and the specific street).
- 2.8.41 **Schedule 4 (Access)** sets out those parts of accesses that are to be maintained at public expense or by the street authority (Parts 1 and 2 respectively) which are referred to in Article 10 of the Order.
- 2.8.42 **Schedule 5 (Temporary prohibition or restriction of the use of streets)** sets out the streets that may be subject to a temporary prohibition or restriction on the use of that street, including reference to the relevant plan, the location and the extent of the temporary prohibition or restriction on use.
- 2.8.43 **Schedule 6 (Land in which only new rights etc. may be acquired)** is split into two tables. The first that set out different classes of new rights and restrictions which may be acquired by the undertaker and the second table sets out which of these classes of rights can be acquired in relation to particular plots. The plot numbers in column 1 of the second table correlate with the relevant plot numbers shaded blue on the Land Plans.
- 2.8.44 Schedule 7 (Modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictions) modifies existing compensation legislation including the Land Compensation Act 1973 and the Compulsory Purchase Act 1965, in the case of a compulsory acquisition under the Order of a right by the creation of a new right or the imposition of a restriction. This

Schedule has precedent in Schedule 8 of the Millbrook Gas Fired Generating Station Order 2019.

- 2.8.45 **Schedule 8 (Land of which temporary possession may be taken)** sets out the land temporary possession of which may be taken pursuant to Article 27. It also makes clear the purpose for which such temporary possession may be taken.
- 2.8.46 **Schedule 9 (Protective provisions)** includes protective provisions for statutory undertakers and others who have apparatus or infrastructure within the Order limits. Part 1 of Schedule 9 protects electricity licence holders, gas transporters and sewerage undertakers. Part 2 protects operators of electronic communications code networks. The remaining Parts provide protective provisions for the specific named bodies.
- 2.8.47 Protective provisions are included at Part 8 for Able Humber Ports Limited, linked to the fact that the Order and the Able Marine Energy Park Development Consent Order 2014 would have overlapping works. These protective provisions are similar in form to those proposed to protect VPIB and which are proposed to be inserted into the Able Marine Energy Park Development Consent Order 2014 (see further on Schedule 13 below).
- 2.8.48 **Schedule 10 (Procedure for discharge of requirements)** provides a clear procedure for the discharge of requirements by the relevant planning authority. It sets out a time limit for decisions to be made within, with the ability to extend this period by agreement between the relevant planning authority and the undertaker. Deemed consent provisions come into effect when decisions are not made during this time. This process, including the time periods and deemed consent, is considered to be appropriate in order to ensure that the delivery of the authorised development is not delayed. This Schedule has precedent in Schedule 11 of the Eggborough Gas Fired Generating Station Order 2018.
- 2.8.49 **Schedule 11 (Documents and plans to be certified)** sets out in a Table all the documents and plans referred to in the Order and which need to be certified by the Secretary of State. The table identifies the relevant revision number and date of the document and plan.
- 2.8.50 **Schedule 12 (Design Parameters)** sets out the relevant parameters for Work No. 1, which tie-in to the maximum form of development that has been assessed in the Environmental Statement (and which is set out in Chapter 4 of Volume 1, Application Document Ref. 6.2).
- 2.8.51 **Schedule 13 (Modifications to the Able Marine Energy Park Development Consent Order 2014)** comprises the insertion of a new part 16 into Schedule 9 (Protective Provisions) of the Able Marine Energy Park Development Consent Order 2014. This is accompanied by the insertion of protective provisions for the protection of Able Humber Ports Limited into Part 8 of Schedule 9 to the Order to govern the interaction between the authorised development and the development authorised by the Able Marine Energy Park Development Consent Order 2014.
- 2.8.52 As a matter of law it is possible for a DCO to include a provision that changes, or changes the effect of, certain other legislation. Section 120(5) PA 2008 provides that a DCO may:

“(a) apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order; [and]

“(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...”

- 2.8.53 The term ‘statutory provision’ is wide enough to encompass the Able Marine Energy Park Development Consent Order 2014, as that term is defined in section 120(6) as being “a provision of an Act or of an instrument made under an Act”. The Able Marine Energy Park Development Consent Order 2014 is itself a statutory instrument made under an Act (the Planning Act 2008) and its provisions (i.e. its articles and schedules) are, therefore, ‘statutory provisions’ for the purposes of section 120(5)(a) and section 120(5)(b).
- 2.8.54 The meaning of the word ‘modify’ is wide and encompasses both ‘textual amendments’ and ‘non-textual modifications’ (see paragraph 6.9 of the Office of Parliamentary Counsel Drafting Guidance (July 2018)).
- 2.8.55 In the same way that the Able Marine Energy Park Development Consent Order 2014 contains protective provisions for the benefit of statutory undertakers, VPIB proposes to modify the Able Marine Energy Park Development Consent Order 2014 to protect VPIB as a prospective statutory undertaker.
- 2.8.56 The effect of Schedule 13 is to insert a new Part 16 into Schedule 9 to the Able Marine Energy Park Development Consent Order 2014 for the protection of VPIB. The newly inserted protective provisions in Part 16 of Schedule 9 to the Able Marine Energy Park Development Consent Order 2014 modify the effect of the substantive provisions in the Able Marine Energy Park Development Consent Order 2014 and do so for the protection of VPIB. Accordingly, Schedule 13 of the Order makes both ‘textual amendments’ and ‘non-textual modifications’. These protective provisions would broadly do the following.
- 2.8.57 Paragraph 123 regulates the operation of the powers in the Able Marine Energy Park Development Consent Order 2014 and the Order in respect of Rosper Road. Its effect is to restrict the application of Able Humber Ports Limited’s (‘Able’) powers over this land such as to permit VPI to use and maintain work number 2 (being the access from Rosper Road to Work Numbers 1, 3, 4, 5 and 6) and the relevant part of Work Number 6 (being a connection to the water main within Rosper Road). This is a clear modification of those powers, which are not themselves amended, but subject to a ‘non-textual modification’ for the protection of VPIB.
- 2.8.58 Paragraph 124 provides that Able shall not exercise its powers under articles 15, 16, 17, 22, 30, 31, 34, 35, 39, 40, 41 and 42 of the Able Marine Energy Park Development Consent Order 2014 over the “OCGT Order land” (which is defined in paragraph 122) without the prior written consent of VPIB. The restrictions on the use of the statutory powers in the Able Marine Energy Park Development Consent Order 2014 proposed by Schedule 13 will therefore apply to those parts of the Order land which cross over with the Order limits of the Able Marine Energy Park Development Consent Order 2014. This is a clear modification of those powers, which are not themselves amended, but subject to a ‘non-textual modification’ for the protection of VPIB.

- 2.8.59 Paragraph 125 requires Able to exercise its powers in such a way as to co-operate with VPIB and use its reasonable endeavours to avoid any conflict between the carrying out of the two projects. This is again a clear modification of Able's powers, which are not themselves amended, but subject to a 'non-textual modification' for the protection of VPIB.
- 2.8.60 Paragraph 126 provides that any dispute under the provisions in Part 16 of Schedule 9 is to be dealt with by way of arbitration.

**APPENDIX 1: COMPARISON OF THE DRAFT DCO AGAINST THE
MODEL PROVISIONS**

~~SCHEDULE 1~~

~~GENERAL MODEL PROVISIONS~~

~~Article 2~~

STATUTORY INSTRUMENTS

20** No. ****

INFRASTRUCTURE PLANNING

The Immingham Open Cycle Gas Turbine Order 20[x]

Made - - - - - ***

Coming into force - - - - - ***

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An application under section 37 (applications for orders granting development consent) of the Planning Act 2008(a) (the “2008 Act”) has been made to the Secretary of State for an order granting development consent.

[The application was examined by a [single appointed person] appointed by the Secretary of State pursuant to Chapter 3 [(the single appointed person procedure)] of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(b). The [single appointed person] has submitted a report and recommendation to the Secretary of State under section 83 (single appointed person to examine and report on application) of the 2008 Act.]

The Secretary of State has considered the report and recommendation of the Examining Authority, has taken into account the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(c) and has had regard to the documents and matters referred to in section 104(2) (decisions in cases where national policy statement has effect) of the 2008 Act.

The Secretary of State, having decided the application, has determined to make an order giving effect to the proposals comprised in the application on terms that in the opinion of the Secretary of State are not materially different from those proposed in the application.

Accordingly, the Secretary of State, in exercise of the powers conferred by sections 114, 115, 120 and 149A of the 2008 Act, makes the following Order—

(a) 2008 c.29. The relevant provisions of the 2008 Act are amended by Chapter 6 of Part 6 of, and Schedule 13 to, the Localism Act 2011 (c. 20) and by sections 22-27 of the Growth and Infrastructure Act 2013 (c. 27). Transitional provisions are contained in S.I. 2013/1124.
(b) S.I. 2010/103, amended by S.I. 2012/635.
(c) S.I. 2017/572 amended by S.I. 2018/695, S.I. 2018/834, S.I. 2018/942.

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Immingham Open Cycle Gas Turbine Order 20[x] and comes into force on [X] 20[X].

Interpretation

1

~~2.(1)~~ ~~—(1) In this ~~Order~~ Order—~~

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

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

“the 1980 Act” means the Highways Act 1980;~~(c)~~;

“the 1984 Act” means the Road Traffic Regulation Act 1984(d);

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

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

“the 2008 Act” means the Planning Act 2008;(g);

“access and rights of way plans” means the plans which are certified as the access and rights of way plans by the Secretary of State for the purposes of this Order;

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

“apparatus” has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act and further includes pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks, electricity cables, telecommunications equipment and electricity cabinets;

“Anglian Water” means Anglian Water Services Limited (company number 2366656) whose registered address is Lancaster House Lancaster Way, Ermine Business Park, Huntingdon, Cambridge, United Kingdom PE29 6XU;

~~“ancillary works” means the ancillary works described in Part 2 of Schedule A (authorised project) [and any other works authorised by the Order] and which are not~~ “authorised development” means the development described in Schedule 1 (authorised development) and any other development within the meaning of section 32 (meaning of “development”) of the 2008 Act;

~~“authorised development” means the development and associated development described in Part 1 of Schedule A (authorised project) [and any other development authorised by this Order], which is development within the meaning of section 32 of the 2008 Act;~~

~~“the authorised project” means the authorised development and the ancillary works authorised by this Order;~~

~~“the book of reference” means the book of reference certified by the decision-maker~~ “book of reference” means the document of that description set out in Schedule 11 (documents to be certified) by the Secretary of State as the book of reference for the purposes of this Order;

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

(a) 1961 c.33.

(b) 1965 c.56.

(c) 1980 c.66.

(d) 1984 c.27.

(e) 1990 c.8.

(f) 1991 c.22.

(g) 2008 c.29.

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

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

~~“the decision maker” has the same meaning as in section 103 of the 2008 Act;~~

“commence” means beginning to carry out any material operation, as defined in section 155 (when development begins) of the 2008 Act, comprised in or carried out for the purposes of the authorised development and the words “commencement” and “commenced” and cognate expressions are to be construed accordingly;

“commissioning” means the process of testing all systems and components of the authorised development (which are installed or in relation to which installation is nearly complete) in order to ensure that they, and the authorised development as a whole, functions in accordance with the plant design specifications and the undertaker’s operational and safety requirements;

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

~~“the land plan” means the plan certified as the land plan by the decision maker~~ “commitments register” means the document of that description set out in Schedule 11 as the commitments register for the purposes of this Order;

~~“Order land” means the land shown on the land plan which is within the limits of land to be acquired and described in the book of reference;~~

“date of completion of construction” means the date on which the construction of the authorised development is complete including rectification of any construction defects, landscaping and reinstatement works;

“date of final commissioning” means the date on which the authorised development commences operation by generating power on a commercial basis but excluding the generation of power during commissioning;

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

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

“flood risk assessment” means the document appended to the environmental statement at appendix 12A which is certified as the flood risk assessment by the Secretary of State for the purposes of this Order;

“footpath” and “footway” have the same meaning as in the 1980 Act;

“framework biodiversity enhancement and management plan” means the document appended to the environmental statement at appendix 9H which is certified as the framework biodiversity enhancement and management plan by the Secretary of State for the purposes of this Order;

“framework construction environmental management plan” means the document appended to the environmental statement at appendix 4A which is certified as the framework construction environmental management plan by the Secretary of State for the purposes of this Order;

“framework construction traffic management plan” means the document appended to the environmental statement at appendix 7C which is certified as the framework construction traffic management plan by the Secretary of State for the purposes of this Order;

“framework construction worker travel plan” means the document appended to the environmental statement at appendix 7B which is certified as the framework construction worker travel plan by the Secretary of State for the purposes of this Order;

“framework written scheme of investigation” means the document appended to the environmental statement at appendix 13E which is certified as the framework written scheme of investigation by the Secretary of State for the purposes of this Order;

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

“indicative lighting strategy” means the document which is certified as the indicative lighting strategy by the Secretary of State for the purposes of this Order;

“land plans” means the plans which are certified by the Secretary of State as the land plans for the purposes of this Order;

“limits of deviation” means in respect of numbered works 1, 2, 3, 4, 5 and 6 the outer limits of the corresponding numbered area shown on the works plan;

“maintain” includes, inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part, but not the whole of, the authorised development and “maintenance” and “maintaining” are to be construed accordingly;

“National Grid” means National Grid Electricity Transmission plc (Company Registration Number 02366977) whose registered office is at 1 to 3 Strand, London, WE2N 5EH and/or National Grid Gas plc (Company Registration Number 02006000) whose registered office is at 1 to 3 Strand, London WC2N 5EH as the context requires;

“Network Rail” means Network Rail Infrastructure Limited (Company Registration Number 02904587) whose registered office is at 1 Eversholt Street, London, NW1 2DN;

“Order land” means the land which is required for, or is required to facilitate, or is incidental to, or is affected by, the authorised development shown coloured pink, blue and yellow on the land plans and described in the book of reference;

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

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

“permitted preliminary works” means operations consisting of environmental surveys and monitoring, investigations for the purpose of assessing ground conditions, archaeological investigations, receipt and erection of construction plant and equipment, erection of any temporary means of enclosure, the temporary display of site notices or advertisements;

“relevant planning authority” means ~~the local planning authority for the land in question, being North Lincolnshire Council, or any successor to it as planning authority;~~

“requirements” means those matters set out in Schedule 2 (requirements) to this Order;

~~(i) the district planning authority for the area in which the land to which the provisions of this Order apply is situated unless the provisions relate to the construction or alteration of a hazardous waste facility, in which case it means the county planning authority;~~

~~(ii) a National Park Authority;~~

~~(iii) the Broads Authority; and~~

“shut down period” means the period set out in requirement 18 during which construction workers may return to the site office to return safety and other equipment, attend debrief sessions, change clothing and prepare to leave site;

“start-up period” means the period set out in requirement 18 during which construction workers may arrive at site, sign in, don personal protective equipment, attend safety and other briefings and mobilise on site;

~~(iv) the Greater London Authority if the land to which the provisions of this Order or requirements apply is situated in Greater London;~~

~~“rights plan” means the plan certified as the rights plan by the decision maker for the purposes of this Order;~~

~~“the sections” means the sections shown on the plan certified as the section drawings plan by the decision maker for the purposes of this Order;~~

(a) 1981 c.67.

“statutory undertaker” means any person falling within section 127(8), ~~128(5) or 129(2)~~ ([statutory undertakers’ land](#)) of the 2008 Act;

“street” means a street within the meaning of section 48 ([streets, street works and undertakers](#)) of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes [any footpath and “street” includes any](#) part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 ([street works in England and Wales](#)) of the 1991 Act;

~~“tree preservation order” has the meaning given in section 198 of the 1990 Act;~~

~~“traffic authority” has the same meaning as in section 121A of the 1984 Act;~~

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

“undertaker” means [VPI Immingham B Limited](#) or the person who [for the time being](#) has the benefit of this Order in accordance with ~~section 156 of the 2008 Act;~~ [articles 6 \(benefit of this Order\) and 7 \(consent to transfer benefit of the Order\);](#)

~~“VPI Immingham B Limited” means VPI Immingham B Limited (Company number 10630563) whose registered office is at 4th Floor, Nova South, 160 Victoria Street, London, England, SW1E 5LB;~~

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

~~the~~ “works [plan plans](#)” means the [plan plans which are](#) certified as the works [plan plans](#) by the ~~decision-maker~~ [Secretary of State](#) for the purposes of this Order.

~~(2) (2)~~—References in this Order to rights over land include references to rights to do or to place and maintain, ~~anything in, on or under land or in the air space above its surface~~ [airspace above its surface and to any trusts or incidents \(including restrictive covenants\) to which the land is subject and references in this Order to the creation or acquisition of new rights include the imposition of restrictive covenants which interfere with interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order.](#)

~~(3) (3)~~—All distances, directions and lengths referred to in this Order are approximate and distances between [lines and/or](#) points on a [numbered](#) work comprised in the authorised ~~project~~ [shall development and shown on the works plan and access and rights of way plan are to](#) be taken to be measured along that work.

~~[NOTE: In the case of off shore development, which is outside the area of any planning authority, it will be necessary to identify another appropriate body as the relevant planning authority.]~~

~~(4)~~ [All areas described in square metres in the book of reference are approximate.](#)

~~(5)~~ [References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 \(authorised development\) and shown on the works plans.](#)

~~(6)~~ [The expression “includes” is to be construed without limitation.](#)

~~(7)~~ [References in this Order to plots are references to the plots shown on the land plans and described in the book of reference.](#)

PART 2

PRINCIPAL POWERS

Development consent etc., granted by the Order

2

~~3.—(1)~~ Subject to the provisions of this Order and to the requirements ~~in the Schedule (requirements) attached to this Order,~~ the undertaker is granted ~~—(a)—~~ development consent for

the authorised development ~~;~~ ~~and (b) — consent for the ancillary works,~~ to be carried out within the Order limits.

(2) Each numbered work must be situated within the corresponding numbered area shown on the works plans and within the limits of deviation shown for each work number on the works plans.

Maintenance of authorised ~~project~~ development

3

4.—(1) The undertaker may at any time maintain the authorised ~~project,~~ development except to the extent that this Order or an agreement made under this Order ~~;~~ provides otherwise.

(2) This article only authorises the carrying out of maintenance works within the Order limits.

(3) This article does not authorise any works which are likely to give rise to any significant adverse effects that have not been assessed in the environmental statement.

Operation of authorised development

5.—(1) The undertaker is authorised to use and operate the generating station comprised in the authorised development.

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence or any obligation under any legislation that may be required to authorise the operation of the generating station.

Benefit of this Order

4

6.—(1) Subject to paragraph (2) and article 5-7 (consent to transfer benefit of the Order), the provisions of ~~articles [] and [] [specify relevant articles] shall this Order~~ have effect solely for the benefit of ~~[specify person, body or class of person].~~ VPI Immingham B Limited.

(2) Subject to article 7, paragraph (1) does not apply to Work No. 5 for which development consent is granted by this Order for the benefit of VPI Immingham B Limited and National Grid.

[NOTE: This article is required where provisions of the Order are specific to a named undertaker or class of undertaker (see section 156(2) of the 2008 Act).]

Consent to transfer benefit of ~~Order~~ the Order

7.—(1) Subject to paragraph (4), the undertaker may—

5

~~(1) — The undertaker may, with the consent of the [specify person or body]—~~

(a) ~~(a) —~~ transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order (including any of the numbered works) and such related statutory rights as may be agreed in writing between the undertaker and the transferee; or

(b) ~~(b) —~~ grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order (including any of the numbered works) and such related statutory rights as may be so agreed.

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

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

~~Application and modification of legislative provisions~~

6

~~(1) Subject to the modifications set out in paragraph (2) the following provisions of the [insert short title of the relevant Act] shall be incorporated in this Order—~~

~~(a) section[s] X [specify relevant section(s)].~~

~~(2) The modifications are: [insert relevant modifications].~~

~~(3) In construing the [insert short title of the relevant Act] as incorporated the following expressions shall have the following meanings: [insert relevant expressions and definitions].~~

Defence to proceedings in respect of statutory nuisance

7

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

~~(a) the defendant shows that the nuisance—~~

~~(i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974; or~~

~~(ii) is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; or~~

~~(b) the defendant shows that the nuisance—~~

~~(i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised project and that the nuisance is attributable to the use of the authorised project which is being used in accordance with a scheme of monitoring and attenuation of noise agreed with the Commission as described in requirement 25; or~~

~~(ii) is a consequence of the use of the authorised project and that it cannot reasonably be avoided.~~

~~(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), shall not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project.~~

(4) The consent of the Secretary of State is required for the exercise of the powers of paragraph

(1) except where—

(a) the transferee or lessee is—

(i) the holder of a licence under section 6 (licences authorising supply, etc.) of the Electricity Act 1989(a) or section 7 (licensing of public gas transporters) of the Gas Act 1986(b); or

(a) 1989 c.29. Section 6 was amended by section 30 of the Utilities Act 2000 (c.27), and section 6(10) amended by section 89(3) of the Energy Act 2004 (c.20). There are other amendments to this section that are not relevant to this Order.

(b) 1986 c.44. Section 7 was amended by section 5 of the Gas Act 1995 (c.45) and section 76(2) of the Utilities Act 2000 (c.27). There are other amendments to the section that are not relevant to this Order.

- (ii) in relation to a transfer or a lease of any works within a highway, a highway authority responsible for the highways within the Order land; or
- (b) the time limits for all claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
 - (i) no such claims have been made;
 - (ii) any such claims that have been made have all been compromised or withdrawn;
 - (iii) compensation has been paid in final settlement of all such claims;
 - (iv) payment of compensation into court in lieu of settlement of all such claims has taken place; or
 - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of all claims that no compensation is payable.
- (5) Where the consent of the Secretary of State is not required under paragraph (4), the undertaker must notify the Secretary of State in writing before transferring or granting a benefit referred to in paragraph (1).
- (6) The notification referred to in paragraph (5) must state —
 - (a) the name and contact details of the person to whom the benefit of the powers will be transferred or granted;
 - (b) subject to paragraph (7), the date on which the transfer is expected to take effect;
 - (c) the powers to be transferred or granted;
 - (d) pursuant to paragraph (3), the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted; and
 - (e) where relevant, a plan showing the works or areas to which the transfer or grant relates.
- (7) The date specified under paragraph (6)(b) must not be earlier than the expiry of five working days from the date of the receipt of the notice.
- (8) The notice given under paragraph (6) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.

PART 3

STREETS

Power to alter layout etc. of streets

8.—(1) The undertaker may for the purposes of the authorised development alter the layout of, or carry out any works in, the street in the manner specified in relation to that street in column (3) of Schedule 3 (streets subject to street works).

(2) Without prejudice to the specific powers conferred by paragraph (1), but subject to paragraph (3), the undertaker may, for the purposes of constructing, operating and maintaining the authorised development alter the layout of any street within the Order limits and, without limitation on the scope of this paragraph, the undertaker may—

- (a) alter the level or increase the width of any kerb, footway, cycle track or verge;
- (b) make and maintain passing places.

(3) The powers conferred by paragraph (2) must not be exercised without the consent of the street authority.

(4) Paragraph (3) does not apply where the undertaker is the street authority for a street in which the works are being carried out.

Street works

8

~~9.(1) — (1)~~ The undertaker may, for the purposes of the authorised ~~project~~ development, enter on so much of any of the streets specified in Schedule ~~B-3~~ (streets subject to street works) ~~as is within the Order limits and may —~~

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

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

~~(3) (3)~~ — ~~The~~ Where the undertaker is not the street authority, the provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

~~(4) — In this article "apparatus" has the same meaning as in Part 3 of the 1991 Act.~~

[NOTE: This article should not be used for the purposes of authorising street works that affect a trunk road (as defined in the 1980 Act); no trunk roads should be specified in Schedule B (streets subject to street works). For any street works affecting a trunk road the undertaker should make an application for a licence under section 50 of the 1991 Act.]

Stopping up of streets

9

~~(1) — Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised project, stop up each of the streets specified in columns (1) and (2) of Parts 1 and 2 of Schedule C (streets to be stopped up) to the extent specified, by reference to the letters and numbers shown on the works plan, in column (3) of those Parts of that Schedule.~~

~~(2) — No street specified in columns (1) and (2) of Part 1 of Schedule C (being a street to be stopped up for which a substitute is to be provided) shall be wholly or partly stopped up under this article unless —~~

- ~~(a) — the new street to be substituted for it, which is specified in column (4) of that Part of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or~~
- ~~(b) — a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).~~

~~(3) — No street specified in columns (1) and (2) of Part 2 of Schedule C (being a street to be stopped up for which no substitute is to be provided) shall be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the land which abuts on either side of the street to be stopped up.~~

~~(4) — The condition referred to in paragraph (3) is that —~~

- ~~(a) — the undertaker is in possession of the land; or~~
- ~~(b) — there is no right of access to the land from the street concerned; or~~
- ~~(c) — there is reasonably convenient access to the land otherwise than from the street concerned; or~~
- ~~(d) — the owners and occupiers of the land have agreed to the stopping up.~~

~~(5) — Where a street has been stopped up under this article —~~

- ~~(a) — all rights of way over or along the street so stopped up shall be extinguished; and~~
- ~~(b) — the undertaker may appropriate and use for the purposes of the authorised project so much of the site of the street as is bounded on both sides by land owned by the undertaker.~~

~~(6) — Any person who suffers loss by the suspension or extinguishment of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.~~

~~(7) — This article is subject to article 32 (apparatus etc of statutory undertakers).~~

Public rights of way

10

~~(1) — With effect from the [date of publication of this Order] [the date of certification by the local highway authority that the agreed alternative right of way has been created to the standard defined in the implementation plan], [the section of] the public right of way (being a [insert one of: footpath/bridleway/byway open to all traffic/restricted byway]) shown marked in [red] between the points [A] and [B] on the rights plan is extinguished.~~

~~(2) — With effect from [that same date] [insert later date] an alternative section of [insert description of right of way of that same type] as marked in [green] between the points [C] and [D] on the rights plan is created.~~

~~(3) — In this article —~~

~~"implementation plan" means the written plan agreed between the undertaker and the local highway authority for creation of the agreed alternative right of way to the defined standard; and~~

~~"local highway authority" has the same meaning as in section 329(1) of the 1980 Act.~~

Temporary stopping up of streets

11

~~(1) — The undertaker, during and for the purposes of carrying out the authorised project, may temporarily stop up, alter or divert any street and may for any reasonable time —~~

Construction and maintenance of new or altered means of access

10.—(1) Those parts of each means of access specified in Part 1 of Schedule 4 (access) to be constructed under this Order must be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed by the highway authority, must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the highway authority.

(2) Those parts of each means of access specified in Part 2 of Schedule 4 (access) to be constructed under this Order and which are not intended to be a public highway must be completed to the reasonable satisfaction of the street authority and must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the street authority.

(3) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(4) For the purposes of a defence under paragraph (3), a court must in particular have regard to the following matters —

- (a) the character of the street including the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;

- (c) ~~(a) — divert the traffic from the state of repair in which a reasonable person would have expected to find the street; and~~
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed.

but for the purposes of such a defence it is not relevant that the undertaker had arranged for a competent person to carry out or supervise the maintenance of that part of the street to which the action relates unless it is also proved that the undertaker had given that person proper instructions with regard to the maintenance of the street and that those instructions had been carried out.

Temporary prohibition or restriction of use of streets

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

- (a) divert the traffic from the street; and
- (b) ~~(b)~~—subject to paragraph (3), prevent all persons from passing along the street.

(2) Without prejudice to the scope of paragraph (1), the undertaker may use any street where the use has been prohibited or restricted under the powers conferred by this article and within the Order limits as a temporary working site.

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

(4) ~~(3)~~—Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule D (streets to be temporarily stopped up) alter, divert, prohibit the use of or restrict the use of the street specified in column (2) of Schedule 5 (temporary prohibition or restriction of the use of streets) to the extent specified, by reference to the letters and numbers shown on the works plan, in column (3) of that Schedule.

(5) ~~(4)~~—The undertaker shall must not temporarily stop up alter, alter or divert, prohibit the use of or restrict the use of—

- (a) ~~(a)~~—any the street specified ~~as mentioned~~ in paragraph (4) without first consulting the street authority; and
- (b) ~~(b)~~—any other street without the consent of the street authority which may attach reasonable conditions to any consent.

(6) ~~(5)~~—Any person who suffers loss by the suspension or extinguishment of any private right of way under this article shall be entitled to compensation to be determined, in the case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Access to works

~~12~~

12. The undertaker may, for the purposes of the authorised ~~project development~~

- (a) ~~(a)~~—form and lay out the means of access, or improve existing means of access, in the ~~location~~ locations specified in ~~columns (1) and (2) of~~ Schedule ~~E-3~~ (access to streets subject to street works); and
- (b) ~~(b)~~—with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve the existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised ~~project~~ development.

Agreements with street authorities

13

13.~~(1)~~—(1) A street authority and the undertaker may enter into agreements with respect ~~to~~
to—

- (a) ~~(a)~~—~~the construction of any new street including any structure carrying the street over or under a [insert description of development] authorised by this Order;~~
- (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (c) ~~(b)~~—the maintenance of any street or of the structure of any bridge or tunnel carrying a street over or under ~~a [insert description of the authorised development];~~
- (d) ~~(e)~~—any stopping up, alteration or diversion of a street authorised under the powers conferred by this Order;~~or~~
- (e) ~~(d)~~—the carrying out execution in the street of any of the works referred to in article 8(1) (street works); authorised development;
- (f) the adoption by a street authority which is the highway authority of works—
 - (i) undertaken on a street which is existing publicly maintainable highway; and/or
 - (ii) which the undertaker and highway authority agree are to be adopted as publicly maintainable highway; and
- (g) any such works as the parties may agree.

(2) ~~(2)~~—Such an agreement may, without prejudice to the generality of paragraph (1)—

- (a) ~~(a)~~—make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) ~~(b)~~—include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
- (c) ~~(e)~~—contain such terms as to payment and otherwise as the parties consider appropriate.

Traffic Regulation

14.—(1) Subject to paragraphs (3) and (4) and the consent of the traffic authority in whose area the road concerned is situated, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with the construction of the authorised development, at any time prior to the date that is 12 months after the date of final commissioning—

- (a) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road; and
- (b) make provision as to the direction or priority of vehicular traffic on any road,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(2) The undertaker must not exercise the powers under paragraph (1) of this article unless it has—

- (a) given not less than 4 weeks' notice in writing of its intention so to do to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within 7 days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a).

(3) Any prohibition, restriction or other provision made by the undertaker under article 11 (temporary prohibition or restriction of use of streets) or paragraph (1) of this article has effect as if duly made by, as the case may be—

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

(b) the local authority in whose area the road is situated as an order under section 32 (power of local authorities to provide parking places) of the 1984 Act,
and the instrument by which it is effected is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004(a).

(4) In this article—

- (a) subject to sub-paragraph (b), expressions used in it and in the 1984 Act have the same meaning; and
- (b) a “road” means a road that is a public highway maintained by and at the expense of the traffic authority.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

14

~~15.(1) —(1)~~ (1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised ~~project~~ development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

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

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

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

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

~~(5) — The undertaker shall not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.~~

~~(5) (6) — The undertaker shall~~ The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

~~(7) — This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991 (offences of polluting water).~~

~~(8) — In this article—~~

(a) 2004 c.18. There are amendments to this Act not relevant to this Order.

(b) 1991 c.56. Section 106 was amended by sections 43(2) and 35(8)(a) and paragraph 1 of Schedule 2 to the Competition and Service (Utilities) Act 1992 (c.43) and sections 99(2), (4), (5)(a), (5)(b), (5)(c) and 36(2) of the Water Act 2003 (c.37).

(6) This article does not authorise any water discharge activities or groundwater activities for which an environmental permit would be required pursuant to regulation 12(1) (requirement for an environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(a).

(7) In this article—

- (a) ~~(a)~~—“public sewer or drain” means a sewer or drain which belongs to ~~the Homes and Communities Agency~~England, the Environment Agency, a harbour authority within the meaning of section 57 (interpretation) of the Harbours Act 1964 ~~(interpretation(b))~~, an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and
- (b) ~~(b)~~—other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991 ~~(c)~~ have the same meaning as in that Act.

Protective work to buildings

15

~~(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers necessary or expedient.~~

~~(2) Protective works may be carried out—~~

~~(a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised project; or~~

~~(b) after the completion of that part of the authorised project in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised project is first opened for use.~~

~~(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.~~

~~(4) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—~~

~~(a) enter the building and any land within its curtilage; and~~

~~(b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).~~

~~(5) Before exercising—~~

~~(a) a right under paragraph (1) to carry out protective works to a building;~~

~~(b) a right under paragraph (3) to enter a building and land within its curtilage;~~

~~(c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or~~

~~(d) a right under paragraph (4)(b) to enter land,~~

~~the undertaker shall, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.~~

~~(6) Where a notice is served under paragraph (5)(a), ~~(c)~~ or (d), the owner or occupier of the building or land concerned may, by serving a counter notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is~~

(a) S.I. 2016/1154.

(b) 1964 c.40. Paragraph 9B was inserted into Schedule 2 paragraph 9 of Schedule 3 of by the Transport and Works Act 1992 (c.42). There are other amendments to the 1964 Act that are not relevant to this Order.

(c) 1991 c.57.

~~necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 42 (arbitration).~~

~~(7) — The undertaker shall compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.~~

~~(8) — Where—~~

~~(a) — protective works are carried out under this article to a building; and~~

~~(b) — within the period of 5 years beginning with the day on which the part of the authorised project carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised project;~~

~~the undertaker shall compensate the owners and occupiers of the building for any loss or damage sustained by them.~~

~~(9) — Nothing in this article shall relieve the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act (compensation for injurious affection).~~

~~(10) — Any compensation payable under paragraph (7) or (8) shall be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).~~

~~(11) — In this article "protective works" in relation to a building means—~~

~~(a) — underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised project; and~~

~~(b) — any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised project.~~

Authority to survey and investigate the land

16

~~16.(1) — (1)~~ The undertaker may for the purposes of this Order enter on any land shown within the Order limits or on any land which may be affected by the authorised ~~project and development and—~~

~~(a)~~ (a) — survey or investigate the land;

~~(b)~~ (b) — without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;

~~(c)~~ (c) — without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and

~~(d)~~ (d) — place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

~~(2) (2)~~ — No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.

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

~~(a)~~ (a) — ~~shall~~must, if so required on entering the land, produce written evidence of their authority to do so; and

~~(b)~~ (b) — may take ~~with them~~ onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

~~(4) (4)~~ — No trial holes ~~shall are to~~ be made under this ~~article—article—~~

~~(a)~~ (a) — in land located within the highway boundary without the consent of the highway authority; or

~~(b) (b)~~—in a private street without the consent of the street authority~~;~~

~~but such consent shall not be unreasonably withheld.~~

~~(5) (5)~~—The undertaker ~~shall~~ must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

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

Removal of human remains

~~17~~

~~(1) —In this article "the specified land" means [insert description of the land].~~

~~17.(2) —(1)~~ Before the undertaker carries out any development or works which will or may disturb any human remains in the ~~specified~~ Order land it ~~shall~~ must remove those human remains from the ~~specified~~ Order land, or cause them to be removed, in accordance with the following provisions of this article.

~~(2) (3)~~—Before any such remains are removed from the ~~specified~~ Order land the undertaker ~~shall~~ must give notice of the intended removal, describing the ~~specified~~ Order land and stating the general effect of the following provisions of this article, ~~by~~ by—

~~(a) (a)~~—publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised project; and

~~(b) (b)~~—displaying a notice in a conspicuous place on or near to the ~~specified~~ Order land.

~~(3) (4)~~—As soon as reasonably practicable after the first publication of a notice under paragraph (2) the undertaker ~~shall~~ must send a copy of the notice to ~~insert the~~ relevant ~~local~~ planning authority~~;~~

~~(4) (5)~~—At any time within 56 days after the first publication of a notice under paragraph (2) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.

~~(5) (6)~~—Where a person has given notice under paragraph (4), and the remains in question can be identified, that person may cause such remains to ~~be~~ be—

~~(a) (a)~~—removed and re-interred in any burial ground or cemetery in which burials may legally take place; or

~~(b) (b)~~—removed to, and cremated in, any crematorium~~;~~ and that person ~~shall~~ must, as soon as reasonably practicable after such re-interment or cremation,

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

~~(6) (7)~~—If the undertaker is not satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question ~~shall~~ is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who ~~shall~~ is to remove the remains and as to the payment of the costs of the application.

~~(7) (8)~~—The undertaker ~~shall~~ must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

~~(9) —If—~~

~~(8) If—~~

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

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

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

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

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

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

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

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

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

~~18~~

~~18.~~(1)—~~(1)~~ The undertaker may acquire compulsorily so much of the Order land as is required for the authorised ~~project~~ development, or to facilitate it, or as is incidental, ~~to it~~ to it ~~or is required as replacement land~~.

~~(2)~~—~~As from the date on which a compulsory acquisition notice under section 134(3) of the 2008 Act is served or the date on which the Order land, or any part of it, is vested in the~~

(a) 1857 c.81. Substituted by Church of England (Miscellaneous Provisions) Measure 2014 No. 1 s.2 (January 1, 2015: substitution has effect subject to transitional and saving provisions specified in SI 2014/2077 Sch.1 paras 1 and 2).

~~undertaker, whichever is the later, that land or that part of it which is vested (as the case may be) shall be discharged from all rights, trusts and incidents to which it was previously subject.~~

~~(3) — Any person who suffers loss by the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.~~

~~(2) (4) — This article is subject to article 25–21 (compulsory acquisition of land limited to subsoil lying more than 9 metres beneath surface rights etc) and article 28–27 (temporary use of land for carrying out the authorised project).development).~~

Power to override easements and other rights

~~Compulsory acquisition of land—incorporation of the mineral code~~

~~19~~

~~[Part(s)] 2 [and 3] of Schedule 2 to the Acquisition of Land Act 1981 (minerals) [is/are] incorporated in this Order subject to the modifications that—~~

- ~~(a) — paragraph 8(3) is not incorporated;~~
- ~~(b) — for "the acquiring authority" substitute "the undertaker";~~
- ~~(c) — [insert additional modifications].~~

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

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

(2) The undertaker must pay compensation to any person whose land is injuriously affected by—

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

caused by the carrying out or use of the authorised development and the operation of section 158 (benefit of order granting development consent) of the 2008 Act.

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

(4) Subsection (2) of section 10 (further provision as to compensation for injurious affection) of the 1965 Act applies to paragraph (2) by virtue of section 152(5) (compensation in case where no right to claim in nuisance) of the 2008 Act.

(5) Any rule or principle applied to the construction of section 10 of the 1965 Act must be applied to the construction of paragraph (2) (with any necessary modifications).

Time limit for exercise of authority to acquire land compulsorily

~~20~~

~~20.(1) — (1) After the end of the period of [5 years], beginning on the day on which this Order is made—made—~~

- ~~(a) (a) — no notice to treat shall is to be served under Part 1 of the 1965 Act; and~~

~~(b)~~ ~~(b)~~—no declaration ~~shall~~ is to be executed under section 4 (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981—~~(a)~~ as applied by article 23 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

~~(2)~~ ~~(2)~~—The authority conferred by article ~~28~~ 27 (temporary use of land for carrying out the authorised ~~project~~ development) ~~shall cease~~ ceases at the end of the period referred to in paragraph (1), save that nothing in this paragraph ~~shall prevent~~ prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights etc

21.—(1) Subject to paragraph (2), the undertaker may acquire such rights over the Order land or impose such restrictive covenants affecting the Order land as may be required for any purpose for which that land may be acquired under article 18 (compulsory acquisition of land), by creating them as well as acquiring rights already in existence.

21

~~(2)~~ ~~(1)~~—~~The~~ In respect of such parts of the Order land that are shown edged red and shaded blue on the land plans, the undertaker may acquire compulsorily the existing rights over land and create and acquire compulsorily the new ~~rights described in the book of reference and shown on the *insert name* plan~~ class of rights and impose the restrictions as described in Table 6 of Schedule 6 (land in which only new rights etc. may be acquired).

(3) Subject to section 8 (provisions as to divided land) of the 1965 Act and Schedule 2A (counter-notice requiring purchase of land) (as substituted by paragraph 5(8) of Schedule 7 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictions), where the undertaker creates or acquires a right over land or imposes a restriction under paragraph (1) or (2), the undertaker is not to be required to acquire a greater interest in that land.

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

(5) The powers of paragraph (1) may be exercised by a statutory undertaker instead of by the undertaker in any case where the undertaker has given its prior consent to that in writing, and that consent may be given subject to terms and conditions.

(6) Where in consequence of paragraph (5) a statutory undertaker exercises the powers of paragraph (1) in place of the undertaker, except in relation to the payment of compensation, the statutory undertaker is to be treated for the purposes of this Order, and by any person with an interest in the land in question, as being the undertaker in relation to the acquisition of the rights and the imposition of the restrictive covenants in question.

(7) Subject to the modifications set out in Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictions) the enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply in the case of a compulsory acquisition under this Order in respect of a right by the creation of a new right or imposition of a restriction as they apply to the compulsory purchase of land and interests in land.

Private rights

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

(a) 1981 c.66.

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

whichever is the earliest.

~~(2) (2) — As from the date on which a compulsory acquisition notice is served or the date on which any new right is vested in the undertaker, whichever is the later, the land over which any new rights is acquired shall be discharged from all rights, trusts and incidents to which it was previously subject so far as~~ Subject to the provisions of this article, all private rights and restrictions over land subject to the compulsory acquisition of rights or imposition of restrictions under this Order or which is leased by the undertaker, are suspended and unenforceable or, where so notified by the undertaker, extinguished in so far as in either case their continuance would be inconsistent with the exercise of ~~that new right, the right—~~

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

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights over any part of the Order land that is owned by, vested in or acquired by the undertaker are extinguished on commencement of any activity authorised by this Order which interferes with or breaches those rights and where the undertaker gives notice of such extinguishment.

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

~~(3) — Subject to section 8 of the 1965 Act, as substituted by article 26 (acquisition of part of certain properties), where the undertaker acquires an existing right over land under paragraph (1), the undertaker shall not be required to acquire a greater interest in that land.~~

(5) (4) — Any person who suffers loss as a result of by the extinguishment or suspension of any private right of way or restriction under this article shall be Order is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Private rights of way

22

~~(1) — Subject to the provisions of this article, all private rights of way over land subject to compulsory acquisition under this Order shall be extinguished—~~

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

~~whichever is the earlier.~~

~~(2) — Subject to the provisions of this article, all private rights of way over land owned by the undertaker which, being within the limits of land which may be acquired shown on the land plan, is required for the purposes of this Order shall be extinguished on the appropriation of the land by the undertaker for any of those purposes~~

~~(3) Subject to the provisions of this article, all private rights of way over land of which the undertaker takes temporary possession under this Order shall be suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.~~

~~(4) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.~~

~~(5) This article does not apply in relation to any right of way to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 31-29 (statutory undertakers) applies.~~

~~(6) Paragraphs (1) to (4) shall have effect subject to—~~

~~(a) any notice given by the undertaker before—~~

~~(i) the completion of the acquisition of the land, or the creation and acquisition of rights or the imposition of restrictions over land;~~

~~(ii) the undertaker's appropriation of it;~~

~~(iii) the undertaker's entry onto it, or;~~

~~(iv) the undertaker's taking temporary possession of it,~~

that any or all of those paragraphs ~~shall~~ are not to apply to any right ~~of way~~ specified in the notice; and

~~(b) any agreement made at any time between the undertaker and the person in or to whom the right of way or restriction in question is vested or belongs, or benefits.~~

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

~~(a) is made with a person in or to whom the right of way is vested or belongs; and~~

~~(b) is expressed to have effect also for the benefit of those deriving title from or under that person,~~

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

References in this article to private rights over land include any right of way, trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

23

~~(1) The Compulsory Purchase (Vesting Declarations) Act 1981 shall apply~~ applies as if this Order were a compulsory purchase order.

~~(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, shall have~~ by paragraph (1), has effect with the following modifications.

~~(3) In section 3 (preliminary notices), for subsection (1) there shall be substituted—~~

~~"(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order, the acquiring authority shall include the particulars specified in subsection (3) in a notice which is—~~

~~(3) In section 1 (application of act) for subsection 2 there is substituted—~~

~~"(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order."~~

~~(a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and~~

~~(b) published in a local newspaper circulating in the area in which the land is situated."~~

~~(4) — In that section, in subsection (2), for "(1)(b)" there shall be substituted "(1)" and after "given" there shall be inserted "and published".~~

~~(5) — In that section, for subsections (5) and (6) there shall be substituted—~~

~~"(5) — For the purposes of this section, a person has a relevant interest in land if—~~

~~(a) — that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or~~

~~(b) — that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month."~~

~~(4) (6) — In section 5 In section 5(2) (earliest date for execution of declaration)—, omit the words from “, and this subsection” to the end.~~

~~(a) — in subsection (1), after "publication" there shall be inserted "in a local newspaper circulating in the area in which the land is situated"; and~~

~~(5) (b) — subsection (2) shall be Section 5A (time limit for general vesting declaration) is omitted.~~

~~(6) In section 5B (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 20 (time limit for exercise of authority to acquire land compulsorily) of the Immingham Open Cycle Gas Turbine Order 20[X]”.~~

~~(7) In section 6 (notices after execution of declaration), in subsection (1)(b) for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.~~

~~(8) (7) — In section 7 (constructive notice to treat), in subsection (1)(a), omit the words “(as modified by section 4 of the Acquisition of Land Act 1981)” shall be omitted.~~

~~(9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—~~

~~“(2) But see article 24(3) (acquisition of subsoil only) of the Immingham Open Cycle Gas Turbine Order 20[X], which excludes the acquisition of subsoil only from this Schedule”.~~

~~(10) (8) — References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 shall must be construed as references to that Act as applied by section 125 of the 2008 Act (and as modified by article 25 (modification of Part 1 of the Compulsory Purchase Act 1965) to the compulsory acquisition of land under this Order.~~

Acquisition of subsoil only

24

~~24.(1) — (1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 18 (compulsory acquisition of land) and paragraphs (1) and (2) of article 21 (compulsory acquisition of rights etc) as may be required for any purpose for which that land or rights or restrictions over that land may be created and acquired or imposed under that provision instead of acquiring the whole of the land.~~

~~(2) (2) — Where the undertaker acquires any part of, or rights in, the subsoil of land under paragraph (1), the undertaker shall is not to be required to acquire an interest in any other part of the land.~~

~~(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil only—~~

~~(a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;~~

(b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the Compulsory Purchase (Vesting Declarations) Act 1981; and

(c) section 153(4A) (blighted land: proposed acquisition of part interest: material detriment test) of the 1990 Act.

~~(4) (3) — Paragraph (2) shall not prevent article 26 Paragraphs (2) and (3) from applying are to be disregarded~~ where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Acquisition of land limited to subsoil lying more than 9 metres beneath surface

25

~~(1) — This article applies to the land specified in Schedule F (land of which only subsoil more than 9 metres beneath surface may be acquired);~~

~~(2) — In the case of land to which this article applies, the undertaker may only acquire compulsorily under article 18 (compulsory acquisition of land) so much of, or such rights in, the subsoil of the land as may be required for the purposes of the authorised project;~~

~~(3) — Where the undertaker acquires any part of, or rights in, the subsoil of the land to which this article applies, the undertaker shall not be required to acquire a greater interest in the land or an interest in any other part of it.~~

~~(4) — References in this article to the subsoil of land are references to the subsoil lying more than 9 metres beneath the level of the surface of the land; and for this purpose "level of the surface of the land" means—~~

~~(a) — in the case of any land on which a building is erected, the level of the surface of the ground adjoining the building;~~

~~(b) — in the case of a watercourse or other water area, the level of the surface of the ground nearest to it which is at all times above water level; or~~

~~(c) — in any other case, ground surface level.~~

Acquisition of part of certain properties

26

~~(1) — This article shall apply instead of section 8(1) of the 1965 Act (other provisions as divided land) (as applied by section 125 of the 2008 Act) where—~~

~~(a) — a notice to treat is served on a person ("the owner") under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden ("the land subject to the notice to treat"); and~~

~~(b) — a copy of this article is served on the owner with the notice to treat.~~

Modification of Part 1 of the Compulsory Purchase Act 1965

25.—(1) Part 1 of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1) (extension of time limit during challenge) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4" substitute "section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 20 (time limit for exercise of authority to acquire land compulsorily) of the Immingham Open Cycle Gas Turbine Order 20[X]".

(3) In section 11A (powers of entry: further notice of entry)—

(a) in subsection (1)(a), after “land” insert “under that provision”; and

(b) in subsection (2), after “land” insert “under that provision”.

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 20 (time limit for exercise of authority to acquire land compulsorily) of the Immingham Open Cycle Gas Turbine Order 20[X]”.

(5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—

(a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 24(3)(acquisition of subsoil only) of the Immingham Open Cycle Gas Turbine Order 20[X], which excludes the acquisition of subsoil only from this Schedule”;
and

(b) after paragraph 29, insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 27 (temporary use of land for carrying out the authorised development) or article 28 (temporary use of land for maintaining the authorised development) of the Immingham Open Cycle Gas Turbine Order 20[X].”

~~(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).~~

~~(3) If no such counter-notice is served within that period, the owner shall be required to sell the land subject to the notice to treat.~~

~~(4) If such a counter-notice is served within that period, the question whether the owner shall be required to sell only the land subject to the notice to treat shall, unless the undertaker agrees to take the land subject to the counter-notice, be referred to the tribunal.~~

~~(5) If on such a reference the tribunal determines that the land subject to the notice to treat can be taken—~~

~~(a) without material detriment to the remainder of the land subject to the counter-notice;
or~~

~~(b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house;~~

~~the owner shall be required to sell the land subject to the notice to treat.~~

~~(6) If on such a reference the tribunal determines that only part of the land subject to the notice to treat can be taken—~~

~~(a) without material detriment to the remainder of the land subject to the counter-notice;
or~~

~~(b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house;~~

~~the notice to treat shall be deemed to be a notice to treat for that part.~~

~~(7) — If on such a reference the tribunal determines that —~~

~~(a) — the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter notice; but~~

~~(b) — the material detriment is confined to a part of the land subject to the counter notice;~~

~~the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.~~

~~(8) — If the undertaker agrees to take the land subject to the counter notice, or if the tribunal determines that —~~

~~(a) — none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter notice or, as the case may be, without material detriment to the remainder of the land subject to the counter notice and without seriously affecting the amenity and convenience of the house; and~~

~~(b) — the material detriment is not confined to a part of the land subject to the counter notice;~~

~~the notice to treat shall be deemed to be a notice to treat for the land subject to the counter notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.~~

~~(9) — Where, by reason of a determination by the tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, shall pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.~~

~~(10) — Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker shall pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.~~

Rights under or over streets

~~27~~

~~26.(1) — (1) The undertaker may enter on upon and appropriate so much of the subsoil of, or air space airspace over, any street within the Order limits land as may be required for the purposes of the authorised project development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised project development.~~

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

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

~~(a) (a) — any subway or underground building; or~~

~~(b) (b) — any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.~~

~~(4) (4) — Subject to paragraph (5), any person who is an owner or occupier of land appropriated under in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result by the exercise of that power, shall is to be entitled to compensation to be determined, in~~

case of dispute, under Part 1 ([determination of questions of disputed compensation](#)) of the 1961 Act.

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

Temporary use of land for carrying out the authorised [project development](#)

28

~~27.(1)~~—(1) The undertaker may, in connection with the carrying out of the authorised ~~project development~~

(a) [enter on and take possession of](#)—

(i) ~~(a)~~—~~enter on and take temporary possession so much~~ of the land specified in ~~columns column (1) and (2)~~ of Schedule ~~G-8~~ (land of which temporary possession may be taken) for the purpose specified in relation to that land in column ~~(32)~~ of that Schedule ~~relating to the part of the authorised project specified in column (4) of that Schedule~~;

(ii) [any other part of the Order land in respect of which no notice of entry has been served under section 11 \(powers of entry\) of the 1965 Act and no declaration has been made under section 4 \(execution of declaration\) of the Compulsory Purchase \(Vesting Declarations\) Act 1981](#);

(b) ~~(b)~~—remove any buildings, [fences, debris](#) and vegetation from that land; ~~and~~

(c) ~~(e)~~—construct temporary works (including the provision of means of access) and buildings on that land;

(d) [construct any works specified in relation to that land in column \(2\) of Schedule 8 \(land of which temporary possession may be taken\)](#); and

(e) [any other mitigation works](#).

~~(2) (2)~~—Not less than ~~14-28~~ days before entering on and taking temporary possession of land under this article the undertaker ~~shall~~ [must](#) serve notice of the intended entry on the owners and occupiers of the land.

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

(a) ~~article in the case of land specified in paragraph (1)(a)(i)~~ after the end of the period of one year beginning with the date of ~~completion of the part final commissioning~~ of the authorised ~~project specified in relation to that land in column (4) of Schedule G-development~~; or

(b) [in the case of land referred to in paragraph \(1\)\(a\)\(ii\) after the end of the period of one year beginning with the date of final commissioning of the authorised development unless the undertaker has, before the end of that period, served notice of entry under section 11 \(powers of entry\) of the 1965 Act or made a declaration under section 4 \(execution of declaration\) of the Compulsory Purchase \(Vesting Declarations\) Act 1981 or has otherwise acquired the land subject to temporary possession](#).

(4) ~~(4)~~—~~Before~~ [Unless the undertaker has served notice of entry under section 11 \(powers of entry\) of the 1965 Act or made a declaration under section 4 \(execution of declaration\) of the Compulsory Purchase \(Vesting Declarations\) Act 1981 or has otherwise acquired the land subject to temporary possession, the undertaker must, before](#) giving up possession of land of which temporary possession has been taken under this article, ~~the undertaker shall~~ remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker ~~shall is not to~~ be required to replace a building [or any debris](#) removed under this article.

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

~~(6)~~ ~~(6)~~—Any dispute as to a person’s entitlement to compensation under paragraph (5), or as to the amount of the compensation, ~~shall is to~~ be determined under Part 1 ([determination of questions of disputed compensation](#)) of the 1961 Act.

~~(7)~~ ~~(7)~~—Nothing in this article ~~shall affect~~ [affects](#) any liability to pay compensation under section 10(2) ~~of the 1965 Act~~ (further provisions as to compensation for injurious affection) [of the 1965 Act](#) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised [project development](#), other than loss or damage for which compensation is payable under paragraph (5).

~~(8)~~ ~~(8)~~—The undertaker ~~may~~ [must](#) not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i).

[\(9\) Nothing in this article precludes the undertaker from—](#)

(a) ~~(a)~~ ~~creating and~~ [acquiring new rights or imposing restrictions](#) over any part of ~~that the~~ [Order land](#) ~~under identified in~~ article 21 (compulsory acquisition of rights [etc](#)); or

(b) ~~(b)~~ ~~acquiring any~~ [right in the subsoil of any](#) part of the ~~subsoil (or rights in the subsoil) of that land~~ [Order land identified in part 1 of the book of reference](#) under article 24 (acquisition of subsoil only) or ~~in accordance with~~ article ~~25–26~~ [\(acquisition of land limited to subsoil lying more than 9 metres beneath surface rights under or over streets\)](#).

~~(10)~~ ~~(9)~~—Where the undertaker takes possession of land under this article, the undertaker ~~shall is not to~~ be required to acquire the land or any interest in it.

~~(11)~~ ~~(10)~~—Section 13 ~~of the 1965 Act~~ (refusal to give possession to acquiring authority) ~~shall apply of the 1965 Act applies~~ to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 ~~of the 2008 Act~~ (application of compulsory acquisition provisions) [of the 2008 Act](#).

[\(12\) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 8 \(land of which temporary possession may be taken\).](#)

[\(13\) The provisions of the Neighbourhood Planning Act 2017\(a\) do not apply insofar as they relate to temporary possession of land under this article in connection with the carrying out of the authorised development and other development or works necessary for the authorised development within the Order land.](#)

Temporary use of land for maintaining [the authorised project development](#)

29

~~28.~~ ~~(1)~~—~~(1)~~ Subject to paragraph 28(2), at any time during the maintenance period relating to any part of the authorised [project development](#), ~~the~~ undertaker ~~may~~ ~~may~~

(a) ~~(a)~~ ~~enter on and take temporary possession of any~~ ~~land within of~~ the Order ~~limits land~~ if such possession is reasonably required for the purpose of maintaining the authorised [project development](#); ~~and~~

(b) [enter on any of the Order land for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and](#)

(c) ~~(b)~~ ~~construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.~~

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

(a) ~~(a)~~ ~~any house or garden belonging to a house; or~~

(b) ~~(b)~~ ~~any building (other than a house) if it is for the time being occupied.~~

~~(3)~~ ~~(3)~~—Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker ~~shall~~ [must](#) serve notice of the intended entry on the owners and occupiers of the land.

[\(a\) 2017 c.20.](#)

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

~~(5) (5)~~—Before giving up possession of land of which temporary possession has been taken under this article, the undertaker ~~shall~~ must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

~~(6) (6)~~—The undertaker ~~shall~~ must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

~~(7) (7)~~—Any dispute as to a person’s entitlement to compensation under paragraph (6), or as to the amount of the compensation, ~~shall~~ is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

~~(8) (8)~~—Nothing in this article ~~shall affect~~ affects any liability to pay compensation under section 10(2) ~~of the 1965 Act~~ (further provisions as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from the maintenance of the authorised ~~project~~ development, other than loss or damage for which compensation is payable under paragraph (6).

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

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

~~(11) (11)~~—In this article “the maintenance period”, ~~in relation to any part of the authorised project,~~ means the period of 5 years beginning with the date ~~on which that part of the authorised project is first opened for use.~~ of final commissioning.

~~(12) The provisions of the Neighbourhood Planning Act 2017(a) do not apply insofar as they relate to temporary possession of land under this article in connection with the maintenance of the authorised development and other development necessary for the authorised development within the Order land.~~

Special category land

30

~~(1) The special category land shall not vest in the undertaker until the undertaker has acquired the replacement land and [insert name of relevant body] has certified that a scheme for the provision of the replacement land as [common/open space/fuel or field garden allotment] has been implemented to its satisfaction.~~

~~(2) On the requirements of paragraph (1) being satisfied, the replacement land shall vest in [insert name of relevant body] subject to the same rights, trusts and incidents as attached to the special category land; and the special category land shall be discharged from all rights, trusts and incidents to which it was previously subject.~~

~~(3) In this article—~~

~~“the special category land” means the land identified as forming part of a common, open space, or fuel or field garden allotment in the book of reference and on the plan entitled “Special Category Land Plan” attached to the land plan, which may be acquired compulsorily under this Order and for which replacement land is to be provided; and~~

~~“the replacement land” means the land identified in the book of reference and on the plan entitled “Replacement Land Plan” attached to the land plan.~~

(a) 2017 c.20.

Statutory undertakers

29.

~~31~~

~~The Subject to the provisions of Schedule 9 (protective provisions), the~~ undertaker ~~may—may—~~

- ~~(a) (a)—~~acquire compulsorily the land belonging to statutory undertakers ~~shown on the land plan—~~within the ~~limits of the land to be acquired and described in the book of reference~~Order land;
- ~~(b) (b)—~~extinguish or suspend the rights of or restrictions for the benefit of, and remove or reposition the apparatus belonging to statutory undertakers ~~shown on the [insert name] plan and described in the book of reference~~on, under, over or within the Order land; and
- ~~(c) (c)—~~create and acquire compulsorily the ~~new~~rights and/or impose restrictions over any Order land belonging to statutory undertakers ~~shown on the [insert name] plan and described in the book of reference.~~

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

~~32~~

30.(1)—Where a street is ~~stopped up~~altered or diverted or its use is temporarily prohibited or restricted under article ~~9-8~~(stopping up of streets), ~~any statutory utility power to alter layout etc. of streets~~, article ~~9~~(street works), article ~~10~~(construction and maintenance of new or altered means of access) or article ~~11~~(temporary prohibition or restriction of use of streets) any statutory undertaker whose apparatus is under, in, on, along or across the street ~~shall is to~~ have the same powers and rights in respect of that apparatus, subject to ~~the provisions of this article~~Schedule 9 (protective provisions), as if this Order had not been made.

~~(2)—Where a street is stopped up under article 9, any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker shall—~~

- ~~(a)—remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or~~
- ~~(b)—provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).~~

~~(3)—Subject to the following provisions of this article, the undertaker shall pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—~~

- ~~(a)—the execution of the relocation works required in consequence of the stopping up of the street; and~~
- ~~(b)—the doing of any other work or thing rendered necessary by the execution of the relocation works.~~

~~(4)—If in the course of the execution of relocation works under paragraph (2)—~~

- ~~(a)—apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or~~
- ~~(b)—apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,~~

~~and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth,~~

~~as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) shall be reduced by the amount of that excess.~~

~~(5) — For the purposes of paragraph (4) —~~

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

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

~~(6) — An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.~~

~~(7) — Paragraphs (3) to (6) shall not apply where the authorised project constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead —~~

~~(a) — the allowable costs of the relocation works shall be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and~~

~~(b) — the allowable costs shall be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.~~

~~(8) — In this article —~~

~~"apparatus" has the same meaning as in Part 3 of the 1991 Act;~~

~~"relocation works" means work executed, or apparatus provided, under paragraph (2); and~~

~~"statutory utility" means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) of the Communications Act 2003.~~

Recovery of costs of new connections

33

~~31.~~(1) ~~— (1)~~ Where any apparatus of a public utility undertaker or of a public communications provider is removed under article ~~31–29~~29 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus ~~shall~~is to be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

~~(2)~~(2) — Paragraph (1) ~~shall~~does not apply in the case of the removal of a public sewer but where such a sewer is removed under article ~~31–29~~29 (statutory undertakers) any person who ~~is—~~is—

~~(a)~~ (a) — the owner or occupier of premises the drains of which communicated with ~~that~~the sewer; or

~~(b)~~ (b) — the owner of a private sewer which communicated with that sewer,

~~shall be~~is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

~~(3) (3)~~—This article ~~shall~~does not have effect in relation to apparatus to which article ~~32-30~~ (apparatus and rights of statutory undertakers in ~~stopped-up~~ streets) or Part 3 (water supply) of the 1991 Act applies.

~~(4) (4)~~—In this ~~paragraph~~article—

“public ~~communications~~communication provider” has the same meaning as in section 151(1) (interpretation of chapter 1) of the Communications Act 2003(a); and

“public utility undertaker” has the same meaning as in the 1980 Act.

~~Railway and navigation undertakings~~

34

PART 6

OPERATION

Felling or lopping of trees

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

(a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or

(b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

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

Protective works to buildings

~~33.(1) —(1)~~ Subject to the following provisions of this article, the undertaker may ~~not under article 8 (street works) break up or open a street where the street, not being a highway maintainable at public expense (within the meaning of the 1980 Act) at its own expense carry out such protective works to any building lying within the Order limits or which may be affected by the authorised development as the undertaker considers necessary or expedient.~~

(2) Protective works may be carried out—

(a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or

(b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the date of final commissioning.

(3) Subject to paragraph (5), for the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—

(a) 2003 c.21. Section 151(1) was amended by paragraphs 90(a)(i), (ii), (iii), 90(b), 90(c) and 90(d) of Schedule 1 to the Electronic Communications and Wireless Telegraphy Regulations 2011/1210.

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land.

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than fourteen days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (5)(c) or (5)(d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of ten days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 42 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by the reason of the exercise of those rights.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within a period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first in commercial use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development.

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act (compensation for injurious affection).

(10) Any compensation payable under paragraph (7) or (8) is to be determined, in the case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(11) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development;
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development; and
- (c) any works the purpose of which is to secure the safe operation of the authorised development or to prevent or minimise the risk of such operation being disrupted.

(12) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of land under this article, to the same extent as it applies to the compulsory acquisition of land under this order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

PART 7

MISCELLANEOUS AND GENERAL

~~(a) — is under the control or management of, or is maintainable by, railway or tramway undertakers or a navigation authority; or~~

~~(b) — forms part of a level crossing belonging to any such undertakers or to such an authority or to any other person;~~

~~except with the consent of the undertakers or authority or, as the case may be, of the person to whom the level crossing belongs.~~

~~(2) — Paragraph (1) shall not apply to the carrying out under this Order of emergency works, within the meaning of Part 3 of the 1991 Act.~~

~~(3) — A consent given for the purpose of paragraph (1) may be made subject to such reasonable conditions as may be specified by the person giving it but shall not be unreasonably withheld.~~

~~(4) — In this paragraph "navigation authority" means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary or harbour.~~

Application of landlord and tenant law

35

~~34.(1) — (1) This article applies to —~~

~~(a) (a) — any agreement for leasing to any person the whole or any part of the authorised project development or the right to operate the same; and~~

~~(b) (b) — any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised project development, or any part of it,~~

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

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

~~(3) (3) — Accordingly, no such No enactment or rule of law shall to which paragraph (2) applies is to apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to —~~

~~(a) (a) — exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;~~

~~(b) (b) — confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or~~

~~(c) (c) — restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.~~

Operational land for purposes of the 1990 Act

36

~~35. Development consent granted by this Order shall is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as not being operational land for the purposes of that Act). of the 1990 Act.~~

Defence to proceedings in respect of statutory nuisance

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

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974(b); or
 - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) of the Control of Pollution Act 1974(c) does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Protective provisions

37. Schedule 9 (protective provisions) has effect.

Procedure in relation to certain approvals

38.—(1) Where an application is made to, or a request is made of, the relevant planning authority, highway authority, traffic authority, street authority, or the owner of a watercourse, sewer or drain or the beneficiary of any of the protective provisions contained in Schedule 9 (protective provisions) for any consent, agreement or approval required or contemplated by any of the provisions of the Order (not including the requirements), such consent, agreement or approval to be validly given, must be given in writing and must not be unreasonably withheld or delayed.

(2) Schedule 10 (procedure for discharge of requirements) has effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to the requirements.

(3) Save for applications made pursuant to Schedule 10 (procedure for discharge of requirements) and where stated to the contrary if, within eight weeks (or such longer period as may be agreed with the undertaker in writing) after the application or request has been submitted to an authority, beneficiary of protective provisions or an owner as referred to in paragraph (1) of this article it has not notified the undertaker of its disapproval and the grounds of disapproval, it is deemed to have approved the application or request.

(4) The procedure set out in paragraph 1(3) of Schedule 10 (procedure for discharge of requirements) has effect in relation to any refusal by an authority, beneficiary of protective provisions, or an owner as referred to in paragraph (1) of this article to any consent, agreement or approval required under this Order, including such as may be required pursuant to the protective provisions contained within Schedule 9 (protective provisions).

(a) 1990 c.43. Section 82 was amended by section 103 of the Clean Neighbourhoods and Environment Act 2005 (c.16); Section 79 was amended by sections 101 and 102 of the same Act. There are other amendments not relevant to this Order.

(b) 1974 c.40. Section 60 was amended by section 7(3)(a)(4)(g) of the Public Health (Control of Disease) Act 1984 (c.22) and section 112(1)(3), paragraphs 33 and 35(1) of Schedule 17, and paragraph 1(1)(xxvii) of Schedule 16 to the Electricity Act 1989 (c.29); Section 61 was amended by section 133(2) and Schedule 7 to the Building Act 1984 (c.55), paragraph 1 of Schedule 24 to the Environment Act 1995 (c.25), and section 162(1) of and paragraph 15(3) of Schedule 15 to the Environmental Protection Act 1990 (c.43). There are other amendments not relevant to this Order.

(c) 1974 c.40.

(5) Where any application is made as described in paragraph (1), the undertaker must include a statement in such application that refers to the timeframe for consideration of the application and the consequences of failure to meet that timeframe as prescribed by paragraph (3).

~~Deemed consent under section 34 of the Coast Protection Act 1949~~
~~37~~

~~The undertaker is granted deemed consent under section 34 of the Coast Protection Act 1949 to carry out the works described in Schedule H, subject to the requirements set out in that Schedule.~~

~~Deemed licence under Part 2 of the Food and Environment Protection Act 1985~~
~~38~~

~~The undertaker is granted a deemed licence under Part 2 of the Food and Environment Protection Act 1985 to carry out the works described in Schedule I, subject to the requirements set out in that Schedule.~~

~~Felling or lopping of trees~~
~~39~~

~~(1) The undertaker may fell or lop any tree or shrub near any part of the authorised project, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—~~

~~(a) from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project; or~~

~~(b) from constituting a danger to passengers or other persons using the authorised project.~~

~~(2) In carrying out any activity authorised by paragraph (1), the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity.~~

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

~~Trees subject to tree preservation orders~~

~~40~~

~~(1) The undertaker may fell or lop any tree described in Schedule J [and identified on the [insert name] plan, or cut back its roots if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub—~~

~~(a) from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project; or~~

~~(b) from constituting a danger to passengers or other persons using the authorised project.~~

~~(2) In carrying out any activity authorised by paragraph (1)—~~

~~(a) the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity; and~~

~~(b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) shall not apply.~~

~~(3) The authority given by paragraph (1) shall constitute a deemed consent under the relevant tree preservation order.~~

~~(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.~~

Certification of plans etc.

41

39.~~(1)~~—(1) The undertaker ~~shall~~must, as soon as practicable after the making of this Order, submit to the

~~decision-maker copies of—(a)—the book of reference;~~

~~(b)—the land plan;~~

~~(c)—the rights plan;~~

~~(d)—the works plan;~~

~~(e)—the sections; and~~ Secretary of State copies of all documents and plans listed in Table 8 of Schedule 11 (documents and plans to be certified) to this Order ~~(f)—any other plans or documents referred to in this Order;~~ for certification that they are true copies of the documents referred to in this Order.

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

Service of notices

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

(a) by post;

(b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or

(c) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

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

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

(a) in the case of the secretary or clerk of that body corporate, the registered or principal office of that body, and

(b) in any other case, the last known address of that person at that time of service.

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

(a) addressing it to that person by the description of “owner”, or as the case may be “occupier” of the land (describing it); and

(b) either leaving it in the hands of the person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

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

(a) 1978 c.30. Section 7 was amended by section 144 and paragraph 19 of Schedule 10 to the Road Traffic Regulation Act 1984 (c.27). There are other amendments not relevant to this Order.

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

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

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

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

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

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

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

Amendment and modification of statutory provisions

41. The Able Marine Energy Park Development Consent Order 2014 is amended for the purposes of this Order only as set out in Schedule 13 (modifications to the Able Marine Energy Park Development Consent Order 2014).

Arbitration

42

42.—(1) Any difference under any provision of this Order, unless otherwise provided for, shall is to be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the ~~insert appropriate body~~ Secretary of State.

(2) Should the Secretary of State fail to appoint an arbitrator under paragraph (1) within 14 days of the application, the referring party may refer to the Centre of Effective Dispute Resolution for appointment of an arbitrator.

Schedule A Authorised Project

Part 1 Authorised Development

[NOTE: This Part should describe as fully as possible the elements of the proposed project (including any associated development), which are development for the purposes of section 32 of the 2008 Act, for which development consent is sought. It should not include any elements of development which would be authorised by specific provisions in the Order.]

Part 2 Ancillary Works

[NOTE: This Part should describe as fully as possible the ancillary works for which consent is sought and which are not development within the meaning of section 32 of the 2008 Act and which would not be the subject of a separate provision [article] in this Order.]

Model Provisions in respect of requirements

Funding

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

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

(2) The provisions are—

- (a) article 18 (compulsory acquisition of land);
- (b) article 21 (compulsory acquisition of rights etc);
- (c) article 22 (private rights);
- (d) article 24 (acquisition of subsoil only);
- (e) article 26 (rights under or over streets);
- (f) article 27 (temporary use of land for carrying out the authorised development);
- (g) article 28 (temporary use of land for maintaining the authorised development); and
- (h) article 29 (statutory undertakers).

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

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

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

Name

Address

Date

Department for Business, Energy and Industrial Strategy

SCHEDULES

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

In North Lincolnshire—

A nationally significant infrastructure project as defined in sections 14(1)(a) and 15 of the 2008 Act, and associated development under section 115(1)(b) of that Act, consisting of a generating station with a gross rated electrical output of up to 299MWe—

Work No. 1 – OCGT power station, being an open cycle gas turbine generating station with a gross capacity of up to 299 megawatts, comprising—

- (a) gas turbine and turbine hall buildings;
- (b) electrical generator;
- (c) stack;
- (d) auxiliary cooling equipment or system;
- (e) gas turbine air intake filters;
- (f) banks of finfan coolers;
- (g) nitrogen oxide emissions control equipment;
- (h) transformers;
- (i) a switchyard, associated switch gear and ancillary equipment;
- (j) a gas receiving area, gas control facilities and gas reception building;
- (k) lubricating oil, hydraulic oil and chemical storage tanks and equipment;
- (l) continuous emissions monitoring system;
- (m) raw water and fire water storage tanks;
- (n) water treatment facilities, demineralised water treatment works, including storage tanks;
- (o) oily water and waste water treatment plant building and basin;
- (p) fire fighting equipment, buildings and distribution pipework;
- (q) permanent plant laydown area;
- (r) auxiliary plant, buildings, enclosures and structures;
- (s) mechanical, electrical, gas, telecommunications and water networks, pipework, cables, racks, infrastructure, instrumentation and utilities, including connections between parts of this Work No. 1 and Work Nos 4, 5 and 6;
- (t) workshop buildings and stores;
- (u) electrical, control, administration and welfare buildings; and
- (v) storm water attenuation system.

Work No. 2 – access, comprising access from Rosper Road to each of Work Numbers 1, 3, 4, 5 and 6.

Work No. 3 – temporary construction and laydown comprising hard standing, laydown and open storage areas, contractor compounds and staff welfare facilities, vehicle parking, roadways and haul routes, security fencing and gates, gatehouses, external lighting and lighting columns.

Work No. 4 – gas connection, being works for the transport of natural gas to Work No. 1, comprising—

- (a) an underground and overground gas pipeline up to 600 millimetres (nominal internal diameter);
- (b) cathodic protection system and posts;
- (c) marker posts; and
- (d) control systems and cables.

Work No. 5 – overground electrical connection up to 400 kilovolt and controls systems.

Work No 6 – utilities and services connections, comprising—

- (a) water pipes, connections, structures and ancillary equipment;
- (b) telecommunications cables and equipment;
- (c) compressed air connections and ancillary equipment;
- (d) electrical cables, connections and ancillary equipment;
- (e) control systems and cables; and
- (f) closed circuit television and security system connections.

In connection with and in addition to Work Nos. 1 to 6, further development including—

- (a) buildings and structures;
- (b) surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage systems;
- (c) electrical, gas, water, foul drainage and telecommunications infrastructure, connections and works, and works to install, remove, alter and connect into such services;
- (d) hard standing and hard landscaping, soft landscaping, embankments, planting and biodiversity enhancement measures;
- (e) security fencing, gates, boundary treatment and other means of enclosure;
- (f) lighting, including lighting columns;
- (g) gatehouses and weighbridges;
- (h) closed circuit television cameras, columns and other security works;
- (i) site establishment and preparation works, including site clearance, demolition, earthworks, excavations, vehicular access points, the alteration and protection of services and utilities, and works for the protection of buildings and land;
- (j) temporary construction laydown areas, contractor facilities, materials and plant storage, generators, concrete batching facilities, vehicle and cycle parking, roadways and haul routes, offices and welfare facilities, wheel wash facilities, and signage;
- (k) vehicle parking and cycle storage;
- (l) accesses, roads, pedestrian and cycle routes; and
- (m) tunnelling, boring and drilling works,

and to the extent that it does not form part of such works, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the works assessed in the environmental statement.

REQUIREMENTS**Interpretation****1****In this Schedule—**

~~"the 1990 Act" means the Town and Country Planning Act 1990;~~

~~"the 2008 Act" means the Planning Act 2008;~~

~~"authorised development" means the development and associated development described in Part 1 of Schedule A (authorised project) [and any other development authorised by this Order], which is development within the meaning of section 32 of the 2008 Act;~~

1. In this Schedule—

"Environment Agency" means the non-departmental public body of that name created by section 1 of the Environment Act 1995(a);

"existing CHP Plant" means the VPI Immingham Combined Heat and Power Plant which, at the date of this Order, is located partly within Order limits;

"Highways England" means Highways England Company Limited or such other person who is appointed as the strategic highways company in respect of the A160 Humber Road; and A160/A180 interchange pursuant to section 1 of the Infrastructure Act 2015(b);

"Historic England" means the Historic Buildings and Monuments Commission for England established by section 32 of the National Heritage Act 1983(c);

"Humberside Fire and Rescue Service" means the fire and rescue service for the area in which the authorised development is located established pursuant to the Humberside Fire Services (Combination Scheme) Order 1995(d);

"lead local flood authority" means the body designated as such, for the area in which the authorised development is located, pursuant to section 6(7) of the Flood and Water Management Act 2010(e);

"Lincolnshire Wildlife Trust" means Lincolnshire Wildlife Trust (registered charity number 218895) of Banovallum House, Lincolnshire, LN9 5HF;

~~"the authorised project" means~~ "North East Lindsey Internal Drainage Board" means the internal drainage board for the area in which the authorised development ~~and the ancillary works authorised by this Order;~~ is located pursuant to section 1 of the Land Drainage Act 1991(f);

"North Lincolnshire Police" means the police force for the area in which the authorised development is located pursuant to section 1 of the Police Act 1996(g); and

"a part" of the authorised development means any part of Works Nos. 1-6.

(a) 1995 c.25.

(b) 2015 c.7.

(c) 1983 c.47.

(d) S.I.1995/3132.

(e) 2010 c.29.

(f) 1991 c.59 as amended by the Water Act 2014 (c.21).

(g) 1996 c.16 as amended by the Local Government and Public Involvement in Health Act 2007 (c.28) and the Policing and Crime Act 2017 (c.3).

Commencement of the authorised development

2.—(1) The authorised development must not be commenced after the expiration of five years from the date this Order comes into force.

(2) The authorised development must not commence unless the undertaker has given the relevant planning authority fourteen days' notice of its intention to commence the authorised development.

Notice of commencement and completion of commissioning

3.—(1) Notice of the intended start of commissioning of the authorised development must be given to the relevant planning authority where practicable prior to such start and in any event within seven days from the date that commissioning is started.

(2) Notice of the intended completion of commissioning of the authorised development must be given to the relevant planning authority where practicable prior to such completion and in any event within seven days from the date that commissioning is completed.

Notice of commencement of commercial use

4. Notice of the intended start of commercial use of the authorised development must be given to the relevant planning authority where practicable prior to such start and in any event within seven days from the date that commercial use is started.

~~"the code of construction practice" means the code of construction practice agreed by [insert relevant body] on [insert date];~~

~~"the environmental document" means the document certified as the environmental document by the decision maker for the purposes of this Order;~~

~~"highway" and "highway authority" have the same meaning as in the Highways Act 1980;~~

~~"the Order limits" means the limits shown on the works plan within which the authorised project may be carried out;~~

~~"relevant planning authority" means—~~

~~(i) the district planning authority for the area in which the land to which the provisions of this Order apply is situated unless the provisions relate to the construction or alteration of a hazardous waste facility, in which case it means the county planning authority;~~

~~(ii) a National Park Authority;~~

~~(iii) the Broads Authority; and~~

~~(iv) the Greater London Authority if the land to which the provisions of this Order or requirements apply is situated in Greater London;~~

~~"stage" means a defined section or part of the authorised development, the extent of which is shown in a scheme submitted to and approved by the Commission pursuant to requirement 3 (stages of authorised development).~~

~~Time limits~~

~~2~~

~~The authorised development must be begun within [insert number] years of the date of this Order.~~

~~Stages of authorised development~~

~~3~~

~~No authorised development shall commence until a written scheme setting out all the stages of the authorised development has, after consultation with the relevant planning authority and highway authority, been submitted to and approved by the Commission.~~

Detailed design approval

4

~~5. No [stage—(1) In relation to any part of the] authorised development shall commence until [for that stage] written comprised in Work No. 1 no development of that part may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, in respect of sub-paragraph 5(1)(d), after consultation with the relevant planning highway authority, been submitted to and approved by the Commission relevant planning authority—~~

~~for~~

5

~~(a) No [stage of the] authorised development shall commence until details of the the sitting, layout, scale and external appearance of the following elements of the authorised development [within that stage] have, after consultation with the relevant planning authority, been submitted to and approved by the Commission], including the colour, materials and surface finishes of all new permanent buildings and structures;~~

6

~~The authorised development must be carried out in accordance with the approved details.~~

Provision of landscaping

7

~~No [stage of the] authorised development shall until commence a written landscaping scheme [for that stage] has, after consultation with the relevant planning authority, been submitted to and approved by the Commission. The landscaping scheme must include details of all proposed hard and soft landscaping works, including—~~

~~(a)—location, number, species, size and planting density of any proposed planting;~~

~~(b)—cultivation, importing of materials and other operations to ensure plant establishment;~~

~~(b) (c)—proposed finished ground finished floor levels;~~

~~(d)—hard surfacing materials;~~

~~(e)—vehicular and pedestrian access, parking and circulation areas;~~

~~(f)—minor structures, such as furniture, refuse or other storage units, signs and lighting;~~

~~(g)—proposed and existing functional services above and below ground, including drainage, power and communications cables and pipelines, manholes and supports;~~

~~(h)—details of existing trees to be retained, with measures for their protection during the construction period;~~

~~(i)—retained historic landscape features and proposals for restoration, where relevant; and~~

~~(j)—implementation timetables for all landscaping works.~~

Implementation and maintenance of landscaping

8

~~(1) All landscaping works must be carried out in accordance with the landscaping scheme approved under requirement 7 and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.~~

~~(c) hard standings; and~~

~~(d) the internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities, cycle parking and routes, and pedestrian facilities and routes.~~

~~(2) The details submitted pursuant to sub-paragraph (1) must be in accordance with the parameters set out in Schedule 12.~~

~~(3) No part of the authorised development comprised in Work No. 2 may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, after consultation with the highway authority, approved by the relevant planning authority—~~

~~(a) construction access;~~

~~(b) operational access;~~

~~(c) vehicle parking; and~~

~~(d) haul routes.~~

~~(4) No part of the authorised development comprised in Work No. 3 may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, in respect of sub-paragraphs (a), (d) and (e) after consultation with the highway authority, approved by the relevant planning authority—~~

~~(a) hard standings, laydown and open storage areas;~~

~~(b) contractor compounds and construction staff welfare facilities;~~

~~(c) gatehouse;~~

~~(d) vehicle parking and cycle storage facilities; and~~

~~(e) the internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities, cycle parking and routes, and pedestrian facilities and routes.~~

~~(5) No part of the authorised development comprised in Work Nos. 4 and 5, save for the permitted preliminary works, may commence until details of the following for that part have been submitted to and, after consultation with National Grid, approved by the relevant planning authority—~~

~~(a) the route and method of installation of the gas pipeline; and~~

~~(b) the route and method of electrical connection works comprising overground electrical cables, and control systems and cables.~~

~~(6) No part of the authorised development comprised in Work No. 6 may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, after consultation with the Environment Agency and Anglian Water, approved by the relevant planning authority—~~

~~(a) the route and method of construction of any utilities and services connections including water pipes, connections, pumps, tanks, structures and ancillary equipment; telecommunications cables and equipment; electrical cables, connections and ancillary equipment; and control systems and cables; and~~

~~(b) water connection works, comprising underground and overground pipes, plant apparatus, enclosures and structures, and supply cables, transformers and control system cables.~~

~~(7) (2) The landscaping works Work Nos. 1, 2, 3, 4, 5 and 6 must be carried out in accordance with the approved details unless otherwise agreed with the relevant planning authority.~~

Biodiversity enhancement and management plan

6.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a biodiversity protection plan for that part has been submitted to and approved by the relevant planning authority.

(2) The plan submitted and approved pursuant to sub-paragraph (1) must include details of—

- (a) measures to protect existing shrub and tree planting that is to be retained; and
- (b) biodiversity and habitat impact avoidance.

(3) The plan submitted and approved pursuant to sub-paragraph (1) must be implemented as approved throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

(4) No part of the authorised development may be brought into commercial use until a biodiversity enhancement and management plan for that part has been submitted to and approved by the relevant planning authority.

(5) The plan submitted and approved pursuant to sub-paragraph (4) must include details of—

- (a) measures to protect existing shrub and tree planting that is to be retained;
- (b) measures to enhance biodiversity and habitats;
- (c) an implementation timetable approved under requirement 6; and
- (d) biodiversity management and maintenance.

(6) (3) — Any tree or shrub planted as part of an approved landscaping scheme that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the Commission relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless otherwise approved by the Commission agreed with the relevant planning authority.

(7) The plan submitted and approved pursuant to sub-paragraph (4) must be in accordance with the principles of the framework biodiversity enhancement and management plan.

(8) The plan must be implemented as approved during the operation of the authorised development unless otherwise agreed with the relevant planning authority.

External lighting

7.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a scheme for all external lighting to be installed during construction for that part has been submitted to and approved by the relevant planning authority.

(2) No part of the authorised development may be commissioned until a scheme for all permanent external lighting to be installed has been submitted to and approved by the relevant planning authority.

(3) The schemes submitted and approved pursuant to sub-paragraphs (1) and (2) of this requirement must be in accordance with the indicative lighting strategy and include measures to minimise and otherwise mitigate any artificial light emissions during the construction and operation of the authorised development.

(4) The schemes must be implemented as approved unless otherwise agreed with the relevant planning authority.

Trees

9

(1) — No [stage of the] authorised development shall commence until written details of any proposed tree planting and the proposed times of planting have, after consultation with the relevant planning authority, been approved in writing by the Commission; and all tree planting shall be carried out in accordance with those details and at those times.

~~(2) — If within a period of [two years] beginning with the date of the planting of any tree that tree, or any tree planted in replacement for it, is removed, uprooted or destroyed or dies, [or becomes, in the opinion of the Commission, seriously damaged or defective,] another tree of the same species and size as that originally planted shall be planted at the same place, unless the Commission gives its written consent to a variation.~~

Highway accesses

10

~~(1) — No [stage of the] authorised development shall commence until [for that stage,] written details of the siting, design and layout of any new permanent or temporary means of access to a highway to be used by vehicular traffic, or any alteration to an existing means of access to a highway used by vehicular traffic, has, after consultation with the relevant planning authority and highway authority, been submitted to and approved by the Commission.~~

8.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until details of the siting, design and layout (including visibility splays and construction specification) of any new or modified means of access between any part of the Order limits and the public highway to be used by vehicular traffic during construction, and the means of reinstating any such means of access after construction has, for that part, been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(2) (2) — The highway accesses approved pursuant to sub-paragraph (1) must be constructed in accordance with the approved details, prior to the start of construction of the relevant part of the authorised development (other than the accesses), and where temporary, reinstated prior to the authorised development being brought into commercial use, unless otherwise agreed with the relevant planning authority.

(3) No part of the authorised development may be brought into commercial use until details of the siting, design and layout (including visibility splays and construction specification) of any new or modified permanent means of access to a highway to be used by vehicular traffic, has, for that part, been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

~~(3) — No [stage of the] authorised development shall be begun until [for that stage,] a written Access Management Scheme has, after consultation with the relevant planning authority and highway authority, been submitted to and approved by the Commission.~~

~~(4) — The Access Management Scheme must be carried out in accordance with the approved details.~~

Public rights of way

11

~~(1) — No [stage of the] authorised development shall commence that would affect [*insert details of relevant right of way*] until a written implementation plan and specification for the making up of an alternative right of way has, after consultation with the relevant planning authority and highway authority, been submitted to and approved by the Commission.~~

~~(2) — The alternative [*insert details of relevant right of way*] shall be implemented in accordance with the approved plan and specification.~~

Fencing special roads

12

(4) (1) — No [stage of the] authorised development shall commence until written details of the design and construction of any boundary fencing for special roads have, after consultation The highway accesses approved pursuant to sub-paragraph (3) must be constructed in accordance with the details approved unless otherwise agreed with the relevant planning authority and highway authority, been submitted to and approved by the Commission.

~~(2) — The authorised development shall be carried out in accordance with the approved design and construction.~~

~~(3) — "Special road" has the same meaning as in section 329 of the Highways Act 1980.~~

~~Fencing and other means~~ Means of enclosure

~~13~~

~~(1) — No [stage of the] authorised development shall commence until written details of all proposed permanent and temporary fences, walls or other means of enclosure [for that stage] have, after consultation with the relevant planning authority, been submitted to and approved by the Commission.~~

9.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a programme for the removal of all temporary means of enclosure for any construction areas or sites associated with the authorised development has, for that part, been submitted to and approved by the relevant planning authority.

(2) (2) — The [insert description], and any Any construction areas or sites, associated with the authorised development must remain securely fenced at all times during construction and commissioning of the authorised development.

(3) (3) — Any temporary fencing must be removed on completion. No part of the authorised development may be brought into commercial use until details of any proposed permanent means of enclosure, have, for that part, been submitted to and approved by the relevant planning authority.

(4) No part of the authorised development may be brought into commercial use until any approved permanent means of enclosure has been completed.

(5) The authorised development must be carried out in accordance with the approved details unless otherwise agreed with the relevant planning authority.

(6) In this requirement, "means of enclosure" means fencing, walls or other means of boundary treatment and enclosure.

Surface and foul water drainage

10.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until details of the temporary surface and foul water drainage systems, including means of pollution control in accordance with the construction environmental management plan submitted pursuant to requirement 14 and a management and maintenance plan to ensure that the systems remain fully operational throughout the construction of the relevant part of the authorised development have, for that part, been submitted to, and after consultation with the Environment Agency, the lead local flood authority and North East Lindsey Internal Drainage Board, approved by the relevant planning authority.

(2) The scheme approved pursuant to sub-paragraph (1) must be implemented as approved and maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

(3) Details of the permanent surface and foul water drainage systems, including a programme for their implementation, must be submitted to, and after consultation with the Environment Agency, the lead local flood authority, Anglian Water and North East Lindsey Internal Drainage Board, approved by the relevant planning authority prior to the start of construction of any part of those systems.

(4) The details submitted and approved pursuant to sub-paragraphs (1) and (3) of this requirement must be in accordance with the principles set out in chapter 12 (surface water, flood risk and drainage) of the environmental statement and the flood risk assessment.

(5) The scheme approved pursuant to sub-paragraph (3) must be implemented as approved and maintained throughout the operation of the authorised development unless otherwise agreed with the relevant planning authority.

Flood risk mitigation

11.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a scheme for the mitigation of flood risk during construction, has, for that part, been submitted to and approved by the relevant planning authority.

(2) The scheme approved pursuant to sub-paragraph (1) must be implemented as approved and maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

(3) No part of the authorised development may commence until a scheme for the mitigation of flood risk during operation has, for that part, been submitted to and, after consultation with the Environment Agency and North East Lindsey Internal Drainage Board, approved by the relevant planning authority.

(4) The schemes submitted and approved pursuant to sub-paragraphs (1) and (3) of this requirement must be in accordance with the principles set out in chapter 12 (surface water, flood risk and drainage) of the environmental statement and the flood risk assessment.

(5) The scheme approved pursuant to sub-paragraph (3) must be implemented as approved and maintained throughout the operation of the authorised development unless otherwise agreed with the relevant planning authority.

(6) The authorised development must not be commissioned until the flood risk mitigation has been implemented and a flood emergency response and contingency plan has been submitted to, and after consultation with the Environment Agency and North East Lindsey Internal Drainage Board, approved by the relevant planning authority.

(7) The plan approved pursuant to sub-paragraph (6) must be implemented throughout the commissioning and operation of the authorised development unless otherwise agreed with the relevant planning authority.

~~(4) Any approved permanent fencing of the new [insert description] must be completed before the [insert description] is brought into use.~~

Surface water drainage

14

~~(1) No [stage of the] authorised development shall commence until [for that stage,] written details of the surface and foul water drainage system (including means of pollution control) have, after consultation with the relevant planning authority and the sewerage and drainage authority, been submitted to and approved by the Commission.~~

~~(2) The surface and foul water drainage system must be constructed in accordance with the approved details.~~

Contaminated land and groundwater

15

~~12.(1) No [stage —(1) No part of the] authorised development shall commence until a written scheme [applicable to that stage,] may commence, save for geotechnical surveys and other investigations for the purpose of assessing ground conditions, until a scheme to deal with the contamination of any land, including groundwater, within the Order limits which is likely to cause significant harm to persons or pollution of controlled waters or the environment has, has, for that part, been submitted to and, after consultation with the Environment Agency, approved by the relevant planning authority and the Environment Agency, been submitted to and approved by the Commission.~~

(2) The scheme submitted and approved must be in accordance with the principles set out in chapter 11 (ground conditions and hydrogeology) and with the construction environmental management plan submitted pursuant to requirement 14.

~~(3) (2) The scheme shall include an investigation and assessment report, prepared by a specialist consultant approved by the relevant planning authority. The scheme must include a risk assessment, supported by site investigation data, to identify the extent of any contamination and~~

the remedial measures to be taken to render the land fit for its intended purpose, together with a [materials management plan](#), which sets out long-term measures with respect to any contaminants remaining on the site.

(4) ~~(3) — Remediation~~ [The authorised development, including any remediation, must be carried out in accordance with the approved scheme unless otherwise agreed with the relevant planning authority.](#)

[\(5\) Should any remediation be required, there must be no commercial use of any part of the authorised development until, a verification report demonstrating the completion of works set out in the approved scheme and the effectiveness of the remediation shall be submitted to, and approved, by the relevant planning authority. The report must include results of sampling and monitoring carried out in accordance with the approved scheme to demonstrate that the site remediation criteria have been met.](#)

Archaeology

16

~~(1) — No [stage of the] authorised development shall commence until [for that stage,] a written scheme for the investigation of areas of archaeological interest [as identified in section [] of the environmental document] has, after consultation with the relevant planning authority, been submitted to and approved by the Commission.~~

[13.—\(1\) No part of the authorised development may commence until a written scheme of investigation for that part has been submitted to and, after consultation Historic England, approved by the relevant planning authority.](#)

[\(2\) The scheme submitted and approved must be in accordance with chapter 13 \(cultural heritage\) of the environmental statement and the framework written scheme of investigation.](#)

[\(3\) The scheme must identify whether any further archaeological investigations are required and, if investigations are deemed to be required, the nature and extent of the investigations in order to preserve by knowledge or in-situ any archaeological features that are identified.](#)

~~(4) (2) — The scheme shall identify areas where field work and/or a watching brief are required, and~~ [The scheme must provide details of](#) the measures to be taken to protect, record or preserve any significant archaeological ~~remains~~ [features](#) that may be found.

~~(3) — Any archaeological works or watching brief carried out under the scheme must be by a suitably qualified person or body approved by the Commission.~~

[\(5\) Any archaeological investigations implemented and measures taken to protect record or preserve any identified significant archaeological features that may be found must be carried out—](#)

[\(a\) \(4\) — Any archaeological works or watching brief must be carried out in accordance with the approved scheme; and](#)

[\(b\) by a suitably qualified person or organisation approved by the relevant planning authority unless otherwise agreed with the relevant planning authority.](#)

[Construction environmental management plan](#)

[14.—\(1\) No part of the authorised development may commence, save for the permitted preliminary works, until a construction environmental management plan has been submitted to and approved by the relevant planning authority.](#)

[\(2\) The plan submitted and approved must be in accordance with the framework construction environmental management plan and incorporate—](#)

Ecological management plan

17

~~(1) — No [stage of the] authorised development shall commence until a written ecological management plan [for that stage] reflecting the survey results and ecological mitigation and~~

~~enhancement measures included in the environmental document, after consultation with the relevant planning authority, shall be submitted to and approved by the Commission.~~

~~(2) — The ecological management plan shall include an implementation timetable and must be carried out as approved.~~

Code of construction practice

18

~~Construction works shall be carried out in accordance with the agreed code of construction practice, unless otherwise agreed by the Commission, after consultation with relevant planning authority.~~

~~for~~

19

~~(1) — No [stage of the] authorised development shall commence until a code of construction practice shall, after consultation with the relevant planning authority, be submitted to and approved by the Commission.~~

~~(2) — All construction works shall be undertaken in accordance with the approved code, unless otherwise agreed by the Commission.~~

~~(a) [Note: The code should specify a code of construction practice, specifying measures designed to minimise the impacts of construction works, such as means of minimising pollution from dust, noise, vibration and lighting, wheel cleansing facilities, routes for construction traffic, working hours etc To the extent that it does not, or does not do so adequately, separate conditions are likely to be required, some of which are indicated below].~~

~~(b) a scheme for the control of emissions of dust;~~

Design of roads

20

~~(1) — No [stage of the] authorised development consisting of the construction or alteration of a street which is a trunk road or including any traffic management and control measures shall commence until written details of the design of the street shall, after consultation with the Highways Agency, be submitted to and approved by the Commission.~~

~~(c) a soil management plan;~~

~~(d) a sediment control plan;~~

~~(e) a scheme for environmental monitoring and reporting during the construction of the authorised development, including measures for undertaking any corrective actions; and~~

~~(f) a scheme for the notification of any significant construction impacts on local residents and for handling any complaints received from local residents relating to such impacts during the construction of the authorised development.~~

~~(3) (2) — The [authorised development] construction or alteration of the street or the taking of traffic management and control measures shall All construction works associated with the authorised development must be carried out in accordance with the approved design-construction environmental management plan unless otherwise agreed with the relevant planning authority.~~

Protection of highway surfaces

15.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until details for undertaking condition surveys of the relevant parts of Rosper Road which are maintainable at the public expense and which are to be used during construction have been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(2) (1) The condition surveys must be undertaken in accordance with the approved details and a schedule of repairs required due to use by construction traffic for the authorised development, including a programme for undertaking any such repairs and their inspection, must, following the completion of the post-construction condition surveys, be submitted to, and after consultation with the highway authority, approved by the relevant planning authority.

External lighting

21

~~No [stage of the] authorised development, shall commence until written details of any external lighting to be installed at any of the construction sites [within that stage], including measures to prevent light spillage, shall, after consultation with the relevant planning authority and the highway authority, be submitted to and approved by the Commission; and any approved means of lighting must subsequently be installed and retained for the duration of the construction period.~~

Construction traffic

22

~~(3) (1) — No [stage of the] authorised development shall commence until written details of the preferred route to be used by construction traffic shall, after consultation~~ The schedule of repairs must be carried out as approved unless otherwise agreed with the relevant planning authority ~~and the highway authority, be submitted to and approved by the Commission.~~

Construction traffic management plan

16.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a construction traffic management plan has been submitted to and, after consultation with North East Lincolnshire Council, Highways England and the highway authority, approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with chapter 7 (traffic and transport) of the environmental statement and the framework construction traffic management plan.

(3) The plan submitted and approved must include—

- (a) details of the routes to be used for the delivery of construction materials and any temporary signage to identify routes and promote their safe use, including details of the access points to the construction site to be used by light goods vehicles and heavy goods vehicles;
- (b) details of the routing strategy and procedures for the notification and conveyance of abnormal invisible loads, including agreed routes, the numbers of abnormal loads to be delivered by road and measures to mitigate traffic impact; the construction programme; and
- (c) any necessary measures for the temporary protection of carriageway surfaces, the protection of statutory undertakers' plant and equipment, and any temporary removal of street furniture.

(4) (2) — Notices shall must be erected and maintained throughout the period of construction at every entrance to and exit from the construction site—exit, indicating to drivers the route agreed by the Commission approved routes for traffic entering and leaving the site—construction site.

(5) The plan must be implemented as approved unless otherwise agreed with the relevant planning authority.

Construction workers travel plan

17.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a construction workers travel plan has been submitted to and, after

consultation with North East Lincolnshire Council, Highways England and the highway authority, approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with chapter 7 (traffic and transport) of the environmental statement and the framework construction worker travel plan.

(3) The plan submitted and approved must include—

- (a) measures to promote the use of sustainable transport to and from the authorised development by construction staff;
- (b) provision as to the responsibility for, and timescales of, the implementation of those measures;
- (c) details of parking for construction personnel within the construction sites; and
- (d) a monitoring and review regime.

(4) The approved plan must be implemented prior to commencement of the authorised development, save for the permitted preliminary works, and must be maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

Control of noise during construction and maintenance

23

~~(1) No [stage of the] authorised development shall commence until, after consultation with the relevant planning authority, a written scheme for noise management during construction and maintenance [of that stage] has been submitted to and approved by the Commission.~~

~~(2) The scheme shall set out the particulars of—~~

- ~~(a) the works, and the method by which they are to be carried out;~~
- ~~(b) the noise attenuation measures to be taken to minimise noise resulting from the works, including any noise limits; and~~
- ~~(c) a scheme for monitoring the noise during the works to ensure compliance with the noise limits and the effectiveness of the attenuation measures.~~

~~(3) The approved noise management scheme must be implemented before and maintained during construction and maintenance of the [relevant stage of the] authorised development.~~

~~(4) The construction and maintenance works must be undertaken in accordance with the approved noise management scheme.~~

Construction hours

24

~~(1) Construction work shall not take place other than between [0800 and 1800 hours on weekdays and 0800 and 1300 hours on Saturdays, excluding public holidays], unless otherwise agreed by the Commission.~~

~~(2) Nothing in paragraph (1) precludes a start-up period from [0730 to 0800] and a shut-down period from [1800 to 1830] on weekdays (excluding public holidays).~~

Control of noise during operational phase

25

18.—(1) Construction work relating to the authorised development must not take place on bank holidays nor otherwise outside the hours of—

- (a) 0700 to 1900 hours on Monday to Friday; and
- (b) 0800 to 1800 hours on a Saturday.

(2) Delivery or removal of materials, plant and machinery must not take place on bank holidays nor outside the hours of 0700 to 1900 hours on Monday to Saturday.

(3) The restrictions in sub-paragraphs (1) and (2) do not apply to construction work or the delivery or removal of materials, plant and machinery, where these—

- ~~(a) (1) —No authorised development shall commence operation until, after consultation do not exceed a noise limit measured at the Order limits and which must be first agreed with the relevant planning authority, a written scheme for noise management including monitoring and attenuation for the use of the authorised project has been submitted to and approved by the Commission.;~~
- (b) are carried out with the prior approval of the relevant planning authority; or
- (c) are associated with an emergency.

(4) The restrictions in sub-paragraph (2) do not apply to the delivery of abnormal indivisible loads, where this is—

- (a) associated with an emergency; or
- (b) carried out with the prior approval of the relevant planning authority.

(5) Sub-paragraph (1) does not preclude—

- (a) a start-up period from 0630 to 0700 and a shut-down period from 1900 to 1930 Monday to Friday and a start-up period from 0730 to 0800 and a shut-down period from 1800 to 1830 on a Saturday; or
- (b) maintenance at any time of plant and machinery engaged in the construction of the authorised development.

(6) In this requirement “emergency” means a situation where, if the relevant action is not taken, there will be adverse health, safety, security or environmental consequences that in the reasonable opinion of the undertaker would outweigh the adverse effects to the public (whether individuals, classes or generally as the case may be) of taking that action.

Control of noise - operation

19.—(1) No part of the authorised development may be brought into commercial use until a scheme for management and monitoring of noise during operation of the authorised development has been submitted to and approved by the relevant planning authority.

(2) The scheme submitted pursuant to sub-paragraph (1) must include the results of daytime and night time baseline noise monitoring that has been carried out by the undertaker for the purposes of this requirement as agreed with the relevant planning authority.

(3) Noise (in terms of the BS4142:2014 rating level) from the operation of the authorised development must be no greater than 5dB higher than the defined representative background sound level during each of the daytime and the night time, adjacent to the nearest residential properties at locations agreed with the relevant planning authority.

~~(4) (2) —The noise management-~~The scheme must be implemented as approved

~~and maintained for the duration of use of the authorised project.~~**Control of odour emissions**

26

~~(1) —No [stage of the] authorised development shall commence until, after consultation with the relevant planning authority, a written scheme for the management and mitigation of odour emissions has been submitted to and approved by the Commission.~~

~~(2) —The approved scheme for the management and mitigation of odour emissions must be implemented before and maintained during the construction, operation and decommissioning of the [relevant stage of the] authorised development.~~

Control of artificial light emissions

27

~~(1) — No [stage of the] authorised development shall commence until, after consultation with the relevant planning authority, a written scheme for the management and mitigation of artificial light emissions has been submitted to and approved by the Commission.~~

~~(2) — The approved scheme for the management and mitigation of artificial light emissions must be implemented before and maintained during the construction, operation and decommissioning of the [relevant stage of the] authorised development.~~

Control of dust emissions

28

~~(1) — No [stage of the] authorised development shall commence until, after consultation with the relevant planning authority, a written scheme for the management and mitigation of dust emissions has been submitted to and approved by the Commission.~~

~~(2) — The approved scheme for the management and mitigation of dust emissions must be implemented before and maintained during the construction, operation and decommissioning of the [relevant stage of the] authorised development.~~

Control of smoke emissions

29

~~(1) — No [stage of the] authorised development shall commence until, after consultation with the relevant planning authority, a written scheme for the management and mitigation of smoke emissions has been submitted to and approved by the Commission.~~

~~(2) — The approved scheme for the management and mitigation of smoke emissions must be implemented before and maintained during the construction, operation and decommissioning of the [relevant stage of the] authorised development.~~

Control of steam emissions

30

~~(1) — No [stage of the] authorised development shall commence until, after consultation with the relevant planning authority, a written scheme for the management and mitigation of steam emissions has been submitted to and approved by the Commission.~~

~~(2) — The approved scheme for the management and mitigation of steam emissions must be implemented before and maintained during the construction, operation and decommissioning of the [relevant stage of the] authorised development.~~

Control of insects

31

~~(1) — No [stage of the] authorised development shall commence until, after consultation with the relevant planning authority, a written scheme to ensure the prevention of infestation or emanation of insects from the authorised development has been submitted to and approved by the Commission.~~

~~(2) — The approved scheme for the prevention of infestation or emanation of insects must be implemented before and maintained during the construction, operation and decommissioning of the [relevant stage of the] authorised development.~~

~~(3) — For the purposes of this requirement, "insects" excludes insects that are wild animals included in Schedule 5 to the Wildlife and Countryside Act 1981 (animals which are protected); unless they are included in respect of section 9(5) of that Act only.~~

Accumulations and deposits

32

~~(1) — No [stage of the] authorised development shall commence until, after consultation unless otherwise agreed with the relevant planning authority, a written scheme for the management of any accumulations [or] and deposits whose effects may be harmful or visible or otherwise noticeable from outside the Order limits has been submitted to and approved by the Commission.~~

(5) In this requirement—

~~(2) — The approved scheme for the management of accumulations and deposits must be implemented before and maintained during the construction, operation and decommissioning of the [relevant stage of the] authorised development.~~

Travel plan

33

(a) “daytime” means the period from 0700 to 2300 and “night time” means the period from 2300 to 0700; and

(b) “defined representative background sound level” means the sound level measured during the monitoring secured by sub-paragraph (2).

Piling and penetrative foundation design

~~20.(1) — No [stage of the] —(1) No part of the authorised development shall be begun until comprised within Work No. 1 may commence, save for the permitted preliminary works, until a written piling and penetrative foundation design method statement, informed by a risk assessment, for that part, has been submitted to and, after consultation with the Environment Agency, approved by the relevant planning authority and the highway authority, a travel plan [for the contractor's workforce], which must include details of the expected means of travel to and from [the authorised [project]][the construction site] and any parking to be provided, has been submitted to and approved by the Commission.~~

~~(2) — No part of the authorised project shall be brought into use until, after consultation with the relevant planning authority and the highway authority, a travel plan, which must include details of the expected means of travel to and from the authorised project and any parking to be provided, has been submitted to and approved by the Commission.~~

~~(3) — The plan approved under paragraph (1) must be implemented during the construction of the authorised development and the plan approved under paragraph (2) must be implemented [within one month of the authorised project being brought into use] and shall continue to be implemented for as long as the authorised project is used.~~

European protected species

34

~~(1) — No [stage of the] authorised development shall commence until [further] survey work has been carried out to establish whether a European protected species is present on any of the land affected, or likely to be affected, by the authorised development or in any of the trees to be lopped or felled or buildings to be demolished during [that stage of] the authorised development.~~

~~(2) — Where a European protected species is shown to be present, no authorised development [of that stage] shall be begun until, after consultation with the relevant planning authority, Natural England and the Secretary of State for the Environment, Food and Rural Affairs, a scheme of protection and mitigation measures has been submitted to and approved by the Commission; and the authorised development shall be carried out in accordance with the approved scheme.~~

~~(3) —"European protected species" has the same meaning as in regulations 38 and 42 of the Conservation (Natural Habitats, &c) Regulations 1994.~~

(2) All piling and penetrative foundation works must be carried out in accordance with the approved method statement unless otherwise agreed with the relevant planning authority.

Waste management on site - construction wastes

21.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a construction site waste management plan for that part has been submitted to and approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with the principles set out in the framework construction environmental management plan.

(3) The plan must be implemented as approved unless otherwise agreed with the relevant planning authority.

Restoration of land used temporarily for construction

35

~~Any land within the Order limits which is used temporarily for construction must be reinstated to its former condition, or such condition as the Commission may approve, within [six] months of completion of authorised development.~~

22.—(1) The authorised development must not be brought into commercial use until a scheme for the restoration of any land within the Order limits which has been used temporarily for construction has been submitted to and approved by the relevant planning authority.

(2) The land must be restored within three years of the authorised development being brought into commercial use (or such other period as the relevant planning authority may approve), in accordance with the restoration scheme approved in accordance with sub-paragraph (1).

Employment, skills and training plan

23.—(1) —No part of the authorised development may commence, save for the permitted preliminary works, until a plan detailing arrangements to promote employment, skills and training development opportunities for local residents during construction and employment opportunities during operation of the authorised development has been submitted to and, after consultation with North East Lincolnshire Council, approved by the relevant planning authority.

(2) The approved plan must be implemented and maintained during the construction and operation of the authorised development unless otherwise agreed by the relevant planning authority.

Decommissioning

24.—(1) Within 12 months of the date that the undertaker decides to decommission the authorised development, the undertaker must submit to the relevant planning authority for their approval a decommissioning environmental management plan.

(2) No decommissioning works may be carried out until the relevant planning authority has approved the plan.

(3) The plan submitted and approved must include details of—

- (a) the buildings to be demolished;
- (b) the means of removal of the materials resulting from the decommissioning works;
- (c) the phasing of the demolition and removal works;
- (d) any restoration works to restore the land to a condition agreed with the relevant planning authority;
- (e) the phasing of any restoration works; and

(f) a timetable for the implementation of the scheme.

(4) The plan must be implemented as approved unless otherwise agreed with the relevant planning authority.

Requirement for written approval

36

25. Where under any of the above requirements the approval or agreement of the ~~Commission~~ relevant planning authority or another person is required, that approval or agreement must be ~~given~~ provided in writing.

~~Amendments to approved~~ Approved details and amendments to them

26.—(1) All details submitted for approval of the relevant planning authority under these requirements must be in accordance with the parameters of the environmental statement and reflect the principles set out in the documents certified under article 39 (certification of plans etc.).

37

(2) With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the ~~Commission~~ relevant planning authority, the approved details ~~shall~~ are to be taken to include any amendments that may subsequently be approved ~~in writing by the Commission~~ by the relevant planning authority.

Amendments agreed by the relevant planning authority

27.—(1) Where the words “unless otherwise agreed by the relevant planning authority” appear in the above requirements, any such approval or agreement may only be given in relation to non-material amendments and where it has been demonstrated to the satisfaction of the relevant planning authority that the subject matter of the approval or agreement sought will not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

(2) In cases where the requirement or the relevant sub-paragraph requires consultation with specified persons, any approval or agreement must not be given without the relevant planning authority having first consulted with those persons.

STREETS SUBJECT TO STREET WORKS

Table 1

Schedule B
Streets Subject to Street Works

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
<i>Area</i>	<i>Street to be stopped up</i>	<i>Extent of stopping up</i>	<i>New street to be substituted</i>

<u>(1)</u> <u>Area</u>	<u>(2)</u> <u>Street subject to street works</u>	<u>(3)</u> <u>Description of the street works</u>
<u>In the District of North Lincolnshire</u>	<u>Rosper Road</u>	<u>Works to repair and resurface the access and to maintain visibility splays in the areas cross hatched in red and blue at the point marked C on sheet 1 of the access and rights of way plans</u>
<u>In the District of North Lincolnshire</u>	<u>Rosper Road</u>	<u>Works to repair and resurface the access and to maintain visibility splays in the area cross hatched in red at the point marked A on sheet 1 of the access and rights of way plans</u>
<u>In the District of North Lincolnshire</u>	<u>Rosper Road</u>	<u>Works for the installation and maintenance of Work No. 6 in the area cross hatched in blue at the point marked B on sheet 1 of the access and rights of way plans</u>

SCHEDULE 4

Article 10

ACCESS

PART 1

THOSE PARTS OF THE ACCESSES TO BE MAINTAINED AT THE PUBLIC EXPENSE

Table 2

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of relevant part of access</i>
In the District of North Lincolnshire	Rosper Road	That part of the access in the area cross hatched in blue at the point marked C on sheet 1 of the access and rights of way plans

PART 2

THOSE PARTS OF THE ACCESSES TO BE MAINTAINED BY THE STREET AUTHORITY

Table 3

Part 2
Streets for which No Substitute is to be Provided

Schedule C
Streets to be Stopped Up

Part 1
Streets for which a Substitute is to be Provided

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of relevant part of access</i>
<u>In the District of North Lincolnshire</u>	<u>Rosper Road</u>	<u>That part of the access cross hatched in red at the point marked A on sheet 1 of the access and rights of way plans</u>
<u>In the District of North Lincolnshire</u>	<u>Rosper Road</u>	<u>That part of the access cross hatched in red at the point marked C on sheet 1 of the</u>

TEMPORARY PROHIBITION OR RESTRICTION OF THE USE OF
STREETS

Table 4

<u>(1)</u> <u>Area</u>	<u>(2)</u> <u>Streets subject to temporary prohibition or restriction of use</u>	<u>(3)</u> <u>Extent of temporary prohibition or restriction of use of street</u>
<u>In the District of North Lincolnshire</u>	<u>Rosper Road</u>	<u>Temporary closure of the part of the street cross hatched in blue at the point marked B on sheet 1 of the access and rights of way plans</u>

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

Table 5

Schedule E
Access to Works

<i>(1)</i>	<i>(2)</i>
<i>Area</i>	<i>Description of access</i>

<i>(1)</i> <i>Class of compulsory acquisition and the creation of rights and the imposition of restrictions for the installation and use of the authorised development</i>	<i>(2)</i> <i>Means of all rights and restrictions necessary for the undertaker and/or those authorised by the undertaker</i>
<i>(a)</i>	<i>To pass and repass on foot, with or without vehicles, plant and machinery</i>
<i>(b)</i>	<i>To construct, maintain, improve and protect access routes</i>
<i>(c)</i>	<i>To install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve an underground and overground gas pipeline up to 600 millimetres (nominal internal diameter), control systems and cables and any other ancillary apparatus and any other works as necessary</i>
<i>(d)</i>	<i>To install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve an overground electrical connection of up to 400 kilovolt, control systems and any other ancillary apparatus and any other works as necessary</i>
<i>(e)</i>	<i>To install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve: water pipes, connections, structures and ancillary equipment; telecommunications cables and equipment; compressed air connections and ancillary equipment; electrical cables, connections and ancillary equipment; control systems and cables; closed circuit television and security system connections; and any other ancillary apparatus and any other works as necessary</i>
<i>(f)</i>	<i>To retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve an underground gas pipeline, control systems and cables and any other ancillary apparatus and any other works as necessary</i>
<i>(g)</i>	<i>To install, retain, use, maintain, inspect, alter,</i>

	<u>remove, refurbish, reconstruct, replace, protect and improve: water pipes, connections, structures and ancillary equipment and any other ancillary apparatus and any other works as necessary</u>
<u>(h)</u>	<u>To install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve security fencing, gates, boundary treatment and any other ancillary apparatus and any other works as necessary</u>
<u>(i)</u>	<u>To install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve gatehouses and weighbridges and any other ancillary apparatus and any other works as necessary</u>
<u>(j)</u>	<u>Restrictions on erecting buildings or structures, altering ground levels, planting trees or carrying out operations or actions which may obstruct, interrupt or interfere with the exercise of rights</u>

Schedule F

Land of which Only Subsoil More than 9 Metres Beneath Surface may be Acquired

Table 6

<u>(1)</u>	<u>(2)</u>
<u>Area</u>	<u>Number of land shown on land plan</u>

<u>(1)</u> <u>Plot</u>	<u>(2)</u> <u>Class of rights listed in Table 5 applicable to the plot</u>
<u>2</u>	<u>(a), (b), (h), (i) and (j)</u>
<u>6</u>	<u>(a), (g) and (m)</u>
<u>7</u>	<u>(a), (g) and (m)</u>
<u>8</u>	<u>(a), (b), (h), (i) and (j)</u>
<u>9</u>	<u>(a), (b), (h), (i) and (j)</u>
<u>10</u>	<u>(a), (b), (h), (i) and (j)</u>
<u>12</u>	<u>(a), (e) and (j)</u>
<u>14</u>	<u>(a), (e), (b), (h), (i) and (j)</u>
<u>15</u>	<u>(a), (b), (h), (i) and (j)</u>
<u>16</u>	<u>(a), (c) and (j)</u>
<u>17</u>	<u>(a), (d), (e), (c) and (j)</u>
<u>18</u>	<u>(a), (e) and (j)</u>
<u>20</u>	<u>(a), (b), (c), (h), (i) and (j)</u>
<u>21</u>	<u>(a), (b), (h), (i) and (j)</u>
<u>22</u>	<u>(a), (b), (e), (h), (i) and (j)</u>
<u>23</u>	<u>(a), (b), (c), (d), (e), (h), (i) and (j)</u>
<u>24</u>	<u>(a), (d) and (j)</u>
<u>25</u>	<u>(a), (b), (h), (i) and (j)</u>
<u>26</u>	<u>(a), (b), (h), (i) and (j)</u>
<u>27</u>	<u>(a), (e) and (j)</u>

<u>28</u>	<u>(a), (b), (c), (e), (h), (i) and (j)</u>
<u>29</u>	<u>(a), (b), (c), (e), (h), (i) and (j)</u>
<u>30</u>	<u>(a), (b), (d), (h), (i) and (j)</u>
<u>31</u>	<u>(a), (b), (h), (i) and (j)</u>
<u>32</u>	<u>(a), (e), (b), (h), (i) and (j)</u>
<u>34</u>	<u>(a), (b), (h), (i) and (j)</u>
<u>35</u>	<u>(a), (b), (c), (h), (i) and (j)</u>
<u>33, 37-111</u>	<u>(a) and (f)</u>

Schedule G

Land of which Temporary Possession may be Taken

MODIFICATION OF COMPENSATION AND COMPULSORY
PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS
AND IMPOSITION OF NEW RESTRICTIONS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation to the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 5(3)—

- (a) for the words “land is acquired or taken” there are substituted the words “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for the words “acquired or taken from him” there are substituted the words “over which the right is exercisable or the restrictive covenant enforceable”.

3.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph 2(2).

(2) For section 5A (5A) (relevant valuation date) of the 1961 Act, for (a) and (b) substitute—

- “(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 7 to the Immingham Open Cycle Gas Turbine Order 20[X]; and
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 7 to the Immingham Open Cycle Gas Turbine Order 20[X] to acquire an interest in the land, and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.”

Application of Part 1 of the 1965 Act

4.—(1) Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 25 (modification of Part 1 of the Compulsory Purchase Act 1965)) to the acquisition of land under article 18 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 21 (compulsory acquisition of rights etc)—

- (a) with the modification specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4(1)(a) are as follows.

(a) 1973 c.26.

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

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

(3) For section 7 of the 1965 Act (measure of compensation in case of severance) there is substituted the following section—

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

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

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

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

(5) Section 11 (powers of entry) of the 1965 Act is modified as to secure that, where the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 18 (compulsory acquisition of land), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A(a) (powers of entry; further notices of entry), 11B(b) (counter-notice requiring possession to be taken on a specified date), 12(c) (penalty for unauthorised entry) and 13(d) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

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

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 25(3) (modification of Part 1 of the Compulsory Purchase Act 1965) is also modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired or enforce the restrictive covenant imposed, subject to compliance with that section as respects compensation.

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

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

(c) Section 12 was amended by section 56(2) of and part 1 of Schedule 9 to, the Courts Act 1971 (c.23).

(d) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c.15).

(e) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c.34) and S.I. 2009/1307.

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

“SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1.—(1) This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 23 (application of the Compulsory Purchase (Vesting Declarations) Act 1981) of the Immingham Open Cycle Gas Turbine Order 20[X] in respect of the land to which the notice to treat relates.

(2) But see article 24(3) (acquisition of subsoil only) of the Immingham Open Cycle Gas Turbine Order 20[X] which excludes the acquisition of subsoil only from this Schedule.

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

Counter-notice requiring purchase of land

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

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

Response to counter-notice

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

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

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

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

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

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

Determination by Upper Tribunal

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

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or

(b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant,
- (b) the use to be made of the right or covenant proposed to be acquired or imposed, and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

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

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

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

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

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKENTable 7

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on land plan</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the Authorised project</i>
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<u>(1)</u> <u>Plot</u>	<u>(2)</u> <u>Purpose for which temporary possession may be taken</u>
<u>01</u>	<u>Temporary use as a construction and laydown area to facilitate construction and commissioning of Work No.1, Work No.2, Work No.4, Work No.5 and Work No.6</u>
<u>03</u>	<u>Temporary use as a construction and laydown area to facilitate construction and commissioning of Work No.1, Work No.2, Work No.4, Work No.5 and Work No.6</u>
<u>04</u>	<u>Temporary use as a construction and laydown area to facilitate construction and commissioning of Work No.1, Work No.2, Work No.4, Work No.5 and Work No.6</u>
<u>11</u>	<u>Temporary use as a construction and laydown area to facilitate construction and commissioning of Work No.1, Work No.2, Work No.4, Work No.5 and Work No.6</u>
<u>13</u>	<u>Temporary use as a construction and laydown area to facilitate construction and commissioning of Work No.1, Work No.2, Work No.4, Work No.5 and Work No.6</u>
<u>19</u>	<u>Temporary use as a construction and laydown area to facilitate construction and commissioning of Work No.1, Work No.2, Work No.4, Work No.5 and Work No.6</u>

PROTECTIVE PROVISIONSPART 1FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

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

2. In this Part—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of a utility undertaker within paragraph (a) of the definition of that term, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that utility undertaker;
- (b) in the case of a utility undertaker within paragraph (b) of the definition of that term, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a utility undertaker within paragraph (c) of the definition of that term—
 - (i) mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
 - (ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991;
- (d) in the case of a utility undertaker within paragraph (d) of the definition of that term—
 - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991; and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act, and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

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

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
- (c) water undertaker within the meaning of the Water Industry Act 1991; and

(a) 1989 c.29.

(d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991, for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

3. This Part does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 11 (temporary prohibition or restriction of use of streets), a utility undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

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

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part, and any right of a utility undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 42 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

7.—(1) Where, in accordance with the provisions of this Part, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

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

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

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

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of twenty-one days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

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

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

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 6(2).

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

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

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 42 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 6(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

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

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

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

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

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

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

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

PART 2
FOR THE PROTECTION OF OPERATORS OF ELECTRONIC
COMMUNICATIONS CODE NETWORKS

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

(2) In this Part—

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

“electronic communications apparatus” has the same meaning as set out in paragraph 5 of the electronic communications code;

“the electronic communications code” has the same meaning as set out in sections 106 to 119 and Schedule 3A of the 2003 Act(b);

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

“network” means—

(a) so much of a network or infrastructure system provided by an operator as is not excluded from the application of the electronic communications code by a direction under section 106(5) of the 2003 Act; and

(b) a network which the Secretary of State is providing or proposing to provide; and

“operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act and who is an operator of a network;

13. The exercise of the powers of article 29 (statutory undertakers) is subject to Part 10 of Schedule 3A of the 2003 Act.

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

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or

(b) there is any interruption in the supply of the service provided by an operator, the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

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

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 42 (arbitration).

15. This Part of this Schedule does not apply to—

(a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or

(a) 2003 c.21 as amended by the Digital Economy Act 2017 (c.30).

(b) added by Schedule 1 of the Digital Economy Act 2017 (c.30).

(b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

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

PART 3

FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICAL AND GAS UNDERTAKER

Application

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

Interpretation

18. In this Part of this Schedule—

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

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

“apparatus” means—

(a) in the case of an electricity undertaker, electric lines or electrical plant as defined in the Electricity Act 1989(b), belonging to or maintained by that undertaker; and

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

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

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

“commence” has the same meaning as in article 2 (interpretation) of the Order and commencement shall be construed to have the same meaning save that for the purposes of this Part only the term commence and commencement shall include any [below ground surveys, monitoring or operations or receipt and erection of construction plant and equipment within 15 metres of any apparatus];

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

(a) 1991 c.22.

(b) 1989 c.29.

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

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

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

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

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

“National Grid” means—

- (a) National Grid Electricity Transmission plc (company number 2366977) whose registered office is at 1-3 Strand, London WC2N 5EH; and
- (b) National Grid Gas plc (company number 200600) whose registered office is at 1-3 Strand, London WC2N 5EH,

as the context shall require;

“specified works” means any of the authorised development or activities undertaken in association with the authorised development which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 23(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 23(2) or otherwise; and/or
- (c) include any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Grid’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22”; [and/or (c) activity that is referred to in development near overhead lines EN43-8 and HSE’s guidance note 6 “Avoidance of Danger from Overhead Lines”].

On Street Apparatus

19. Except for paragraphs 20 (apparatus in stopped up streets), 25 (retained apparatus; protection), 27 (expenses) and 28 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Grid in streets subject to temporary prohibition or restriction

20. Notwithstanding a temporary prohibition or restriction under the powers of article 11 (temporary prohibition or restriction on the use of streets), National Grid will be at liberty at all times to take all necessary access across any street and/or to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

Protective works to buildings

21.—(1) The undertaker, in the case of the powers conferred by article 33 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of National Grid or any interruption in the supply of electricity and/or gas, as the case may be, by National Grid is caused, the undertaker must bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

- (a) pay compensation to National Grid for any loss sustained by it; and
- (b) indemnify National Grid against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by that undertaker, by reason of any such damage or interruption.

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

Acquisition of land

22.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire or take temporary possession of any land interest or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid otherwise than by agreement, such agreement not to be unreasonably withheld.

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

(3) Any agreement or consent granted by National Grid under paragraph 25 or any other paragraph of this Part of this Schedule, must not be taken to constitute agreement under sub-paragraph (2).

Removal of apparatus

23.—(1) If, in the exercise of the agreement reached in accordance with paragraph 22 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of an undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in question in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid 56 days advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph

(3) afford to National Grid to its satisfaction (taking into account paragraph 24(1) below) the necessary facilities and rights—

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

(b) subsequently for the maintenance of that apparatus.

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

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

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

Facilities and rights for alternative apparatus

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration under paragraph 42 (arbitration) of this Part of this Schedule and the arbitrator shall make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of gas undertaker

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

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

(a) the exact position of the works;

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

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

(d) the position of all apparatus;

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

(f) any intended maintenance regimes.

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

(4) Any approval of National Grid required under sub-paragraph (2)—

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

(b) must not be unreasonably withheld.

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

(6) Works executed under sub-paragraph (1) or (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (4), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) or (7) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

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

(8) If National Grid in accordance with sub-paragraph (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 17 to 19 and 22 to 24 apply as if the removal of the apparatus had been required by the undertaker under paragraph 23(2).

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

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

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

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

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

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 28.

Retained apparatus: protection of electricity undertaker

26.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to works which will or may be situated on, over, under or within (i) [15] metres measured in any direction of any apparatus, or (ii) involve embankment works within [15] metres of any apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

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

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

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;
- (f) written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers; and
- (h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic.

(4) The undertaker must not commence any works to which sub-paragraph (2) or (3) apply until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraph (2) or (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6) or (8); and,
- (b) must not be unreasonably withheld.

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

(7) Works executed under sub-paragraph (1) or (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph

(6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grids' satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and National Grid shall give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraph (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 17 to 19 and 22 to 24 apply as if the removal of the apparatus had been required by the undertaker under paragraph 23(2).

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

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

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

(b) comply with sub-paragraph (12) at all times.

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

Expenses

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

(a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid;

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 23(3); and/or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;

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

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

(d) the approval of plans;

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

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

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

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

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 42 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

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

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

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

Indemnity

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

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

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

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

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

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents; and
- (b) any authorised development and/or any other works authorised by this Part of this Schedule carried out by National Grid as an assignee, transferee or lessee of National Grid with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 7 (consent to transfer benefit of order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised development yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 28.

(4) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) National Grid must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands and penalties to which the indemnity under this paragraph 28 applies or to which paragraph 27 (expenses) applies. If requested to do so by the undertaker, National Grid shall provide an explanation of how any claim has been minimised. The undertaker shall only be liable under this paragraph 28 for claims reasonably incurred by National Grid.

Enactments and agreements

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

Co-operation

30.—(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker or an undertaker requires the removal of apparatus under paragraph 23(2) or an undertaker makes requirements for the protection or alteration of apparatus under paragraph 27, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of National Grid’s undertaking and each undertaker shall use its best endeavours to co-operate with the undertaker for that purpose.

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

Access

31. If in consequence of the agreement reached in accordance with paragraph 22(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable

National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

32. Save for differences or disputes arising under paragraphs 23(2), 23(4), 24(1), 25 and 27(5) any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 42 (arbitration).

Notices

33. The plans submitted to National Grid by the undertaker pursuant to paragraphs 25(1) and 26(1) must be sent to National Grid Plant Protection at plantprotection@nationalgrid.com or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 4

FOR THE PROTECTION OF PHILLIPS 66 LIMITED

34. In this Part of this Schedule—

“P66” means Phillips 66 Limited (Company number 00529086); and

“the pipelines” means 4 pipelines crossing the Order limits owned and operated by P66 used at various times for the passage of multi-purpose hydrocarbon fuels and all ancillary apparatus including such works and apparatus properly appurtenant to the pipelines as are specified by section 65(2) of the Pipe-lines Act 1962(a).

35. Before commencing any part of the authorised development which would have an effect on the operation or maintenance of the pipelines and access to them, the undertaker must submit to P66 plans and sections of the proposed works and such further particulars as P66 may, within 28 days from the day on which plans and sections are submitted under this paragraph, reasonably require.

36. No works comprising any part of the authorised development which would have an effect on the operation, maintenance or abandonment of the pipelines and access to them are to be commenced until plans and sections in respect of those works submitted under paragraph 35 have been approved by P66.

37. Any approval of P66 required under paragraph 36 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as P66 may require to be made for—

- (a) the continuing safety and operational viability of the pipelines; and
- (b) the requirement for P66 to have uninterrupted and unimpeded access to the pipelines at all times.

PART 5

FOR THE PROTECTION OF ANGLIAN WATER

38. For the protection of Anglian Water, the following provisions shall, unless otherwise agreed in writing between the undertaker and Anglian Water, have effect.

(a) 1962 c.58.

39. In this Part of this Schedule—

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

“apparatus” means—

- (a) any works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage; and
- (b) any drain or works vested in Anglian Water under the Water Industry Act 1991,
- (c) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102 (4) of the Water Industry Act 1991 or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any sewer, drain, or works (within the meaning of section 219 of that Act) and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus.

“functions” includes powers and duties

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

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

40. The undertaker must not interfere with, build over or near to any apparatus within the Order Land or carry out the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or carry out any filling around the apparatus (where the apparatus is laid in a trench) within the standard protection strips which are the strips of land falling the following distances to either side of the medial line of any relevant pipe or apparatus—

- (a) 2.25metres where the diameter of the pipe is less than 150 millimetres;
- (b) 3 metres where the diameter of the pipe is between 150 and 450 millimetres;
- (c) 4.5 metres where the diameter of the pipe is between 450 and 750 millimetres; and
- (d) 6 metres where the diameter of the pipe exceeds 750 millimetres,

unless otherwise agreed in writing with Anglian Water, such agreement not to be unreasonably withheld or delayed, and such provision being brought to the attention of any agent or contractor responsible for carrying out any work on behalf of the undertaker in writing.

41. The alteration, extension, removal or re-location of any apparatus must not be implemented until—

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

42. In the situation, where in exercise of the powers conferred by the Order, the undertaker acquires any interest in any land in which apparatus is placed and such apparatus is to be relocated, extended, removed or altered in any way, an alteration or extension must not take place until Anglian Water has established to its reasonable satisfaction, contingency arrangements in

order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus.

43. Regardless of any provision in this Order or anything shown on any plan, the undertaker must not acquire any apparatus otherwise than by agreement with Anglian Water, and before extinguishing any existing rights for Anglian Water to use, keep, inspect, renew and maintain its apparatus in the Order land, the undertaker shall, with the agreement of Anglian Water, create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for Anglian Water such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 42 (arbitration).

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

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

46. If for any reason or in consequence of the construction of any of the works referred to in paragraphs 41 to 43 and 45 above any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker shall—

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

47. Anglian Water must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, penalties and costs to which the provisions of this Part 5 apply. If requested to do so by the undertaker, Anglian Water shall provide an explanation of how any claim has been minimised. The undertaker shall only be liable under paragraph 46 for claims reasonably incurred by Anglian Water.

PART 6

FOR THE PROTECTION OF CLH PIPELINE SYSTEM (CLH-PS) LTD

48. In this Part of this Schedule—

“CLH” means CLH Pipeline System (CLH-PS) Ltd (Company number 09497223); and

“the pipeline” means the pipeline crossing the Order limits owned and operated by CLH used at various times for the passage of multi-purpose hydrocarbon fuels and all ancillary apparatus including such works and apparatus properly appurtenant to the pipeline as are specified by section 65(2) of the Pipe-lines Act 1962.

49. Before commencing any part of the authorised development which would have an effect on the operation or maintenance of the pipeline and access to it, the undertaker must submit to CLH plans and sections of the proposed works and such further particulars as CLH may, within 28 days from the day on which plans and sections are submitted under this paragraph, reasonably require.

50. No works comprising any part of the authorised development which would have an effect on the operation, maintenance or abandonment of the pipeline and access to it are to be commenced until plans and sections in respect of those works submitted under paragraph 49 have been approved by CLH.

51. Any approval of CLH required under paragraph 50 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as CLH may require to be made for—

- (a) the continuing safety and operational viability of the pipeline; and
- (b) the requirement for CLH to have uninterrupted and unimpeded access to the pipeline at all times.

PART 7

FOR THE PROTECTION OF CENTRICA STORAGE LIMITED

52. In this Part of this Schedule—

“Centrica” means Centrica Storage Limited (Company number 03294124); and

“the pipeline” means the pipeline crossing the Order limits owned and operated by Centrica used at various times for the passage of multi-purpose hydrocarbon fuels and all ancillary apparatus including such works and apparatus properly appurtenant to the pipeline as are specified by section 65(2) of the Pipe-lines Act 1962.

53. Before commencing any part of the authorised development which would have an effect on the operation or maintenance of the pipeline and access to it, the undertaker must submit to Centrica plans and sections of the proposed works and such further particulars as Centrica may, within 28 days from the day on which plans and sections are submitted under this paragraph, reasonably require.

54. No works comprising any part of the authorised development which would have an effect on the operation, maintenance or abandonment of the pipeline and access to it are to be commenced until plans and sections in respect of those works submitted under paragraph 53 have been approved by Centrica.

55. Any approval of Centrica required under paragraph 54 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as Centrica may require to be made for—

- (a) the continuing safety and operational viability of the pipeline; and
- (b) the requirement for Centrica to have uninterrupted and unimpeded access to the pipeline at all times.

PART 8

FOR THE PROTECTION OF ABLE HUMBER PORTS LIMITED

56. For the protection of Able Humber Ports Limited (Company No. 107029) as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and Able.

57. In this part of this Schedule—

“Able” means Able Humber Ports Limited (Company No. 107029) whose registered office is at Ogier House, The Esplanade, St Helier, Jersey JE4 9WG;

“the Able authorised development” means the development authorised by the Able Order;

“the Able Order” means the Able Marine Energy Park Development Consent Order 2014;

“the Able Order land” means the Order land (as defined in the Able Order) or any part of it;

“the Able Order limits” means the Order limits as defined in the Able Order;

“the OCGT authorised development” means the development authorised by this Order; and

“the respective authorised developments” means the OCGT authorised development and the Able authorised development”.

Co-operation during construction

58. If the undertaker proposes to alter the layout of the existing highway access points within plots 2, 8 or 9, it must not submit written details for numbered work 2 so far as it is within those plots for approval to the relevant planning authority in accordance with requirement 5(3) or requirement 8(1) without first obtaining the written consent of Able in respect of the design and layout of the relevant part of numbered work 2.

59. The undertaker must not submit written details for numbered work 6 so far as it is within plots 6 or 7 for approval to the relevant planning authority in accordance with requirement 5(6) without first obtaining the written consent of Able in respect of the siting of the relevant part of numbered work 6.

60.—(1) The undertaker must not exercise the powers under any of the articles of the Order specified in sub-paragraph (2) over or in respect of the Able Order land otherwise than with the prior written consent of Able.

(2) The articles referred to in sub-paragraph (1) are—

- (a) article 8 (power to alter layout etc. of streets);
- (b) article 9 (street works);
- (c) article 10 (construction and maintenance of new or altered means of access);
- (d) article 11 (temporary prohibition or restriction of use of streets);
- (e) article 14 (traffic regulation);
- (f) article 16 (authority to survey and investigate the land);
- (g) article 18 (compulsory acquisition of land);
- (h) article 19 (power to override easements and other rights);
- (i) article 21 (compulsory acquisition of rights etc);
- (j) article 26 (rights under or over streets);
- (k) article 27 (temporary use of land for carrying out the authorised development);
- (l) article 28 (temporary use of land for maintaining the authorised development); and
- (m) article 29 (statutory undertakers).

(3) In the event that VPI withholds its consent pursuant to sub-paragraph (1) it must notify the undertaker in writing of the reasons for withholding such consent and (if applicable) the time period during which such consent will be withheld.

61.—(1) Wherever in this Part of this Schedule provision is made with respect to the approval or consent of Able, that approval or consent shall be in writing (and subject to such reasonable terms and conditions as Able may require), and must not be unreasonably withheld.

(2) In the event that Able does not respond in writing to a request for approval or consent within 28 days of receipt of such a request, Able is deemed to have given its consent, without any terms or conditions.

62. Insofar as the construction of the OCGT authorised development is or may be undertaken concurrently with the Able authorised development, the undertaker shall—

- (a) co-operate with Able with a view to ensuring—
 - (i) the co-ordination of construction programming and the carrying out of works; and
 - (ii) that access for the purposes of constructing the respective authorised developments is maintained for the undertaker and Able and their respective contractors; and
- (b) use reasonable endeavours to avoid any conflict arising from the carrying out of the respective authorised developments.

Arbitration

63. Any difference or dispute arising between the undertaker and Able under this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and Able, be referred to and settled by arbitration.

PROCEDURE FOR DISCHARGE OF REQUIREMENTS1. In this Schedule 10—

“business day” means a day other than a Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971(a); and

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

Applications made under requirement

2.—(1) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement the relevant planning authority must give notice to the undertaker of their decision on the application within a period of eight weeks beginning with the later of—

- (a) the day immediately following that on which the application is received by the authority;
or
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 3,

or such longer period as may be agreed in writing by the undertaker and the relevant planning authority.

(2) Subject to paragraph 5, in the event that the relevant planning authority does not determine an application within the period set out in sub-paragraph (1), the relevant planning authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Any application made to the relevant planning authority pursuant to sub-paragraph (1) must include a statement to confirm whether it is likely that the subject matter of the application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement and if it will then it must be accompanied by information setting out what those effects are.

(4) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement included in this Order and the relevant planning authority does not determine the application within the period set out in sub-paragraph (1)—

- (a) and is accompanied by a report pursuant to sub-paragraph (3) which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects compared to those in the environmental statement; or
- (b) that it considers that the subject matter of such application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement then the application is to be taken to have been refused by the relevant planning authority at the end of that period.

Further information and consultation

3.—(1) In relation to any application to which this Schedule applies, the relevant planning authority may request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(a) 1971 c.80.

(2) In the event that the relevant planning authority considers such further information to be necessary and the provision governing or requiring the application does not specify that consultation with a requirement consultee is required the relevant planning authority must, within fourteen business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant planning authority must issue the consultation to the requirement consultee within five business days of receipt of the application, and must notify the undertaker in writing specifying any further information requested by the requirement consultee within five business days of receipt of such a request and in any event within twenty-one days of receipt of the application.

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

Fees

4.—(1) Where an application is made to the relevant planning authority for written consent, agreement or approval in respect of a requirement, the fee contained in regulation 16(1)(b) of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012(a) (as may be amended or replaced from time to time) is to apply and must be paid to that authority for each application.

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

- (a) the application being rejected as invalidly made; or
- (b) the relevant planning authority failing to determine the application within nine weeks from the relevant date in paragraph 1 unless—
 - (i) within that period the undertaker agrees, in writing, that the fee is to be retained by the relevant planning authority and credited in respect of a future application; or
 - (ii) a longer period of time for determining the application has been agreed pursuant to paragraph 2 of this Schedule.

Appeals

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

- (a) the relevant planning authority refuses an application for any consent, agreement or approval required by a requirement included in this Order or grants it subject to conditions;
- (b) the relevant planning authority is deemed to have refused an application pursuant to paragraph 2(3);
- (c) on receipt of a request for further information pursuant to paragraph 3 the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or
- (d) on receipt of any further information requested, the relevant planning authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process is to be as follows—

(a) S.I. 2012/2920.

- (a) The undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant planning authority and the requirement consultee;
- (b) The Secretary of State is to appoint a person as soon as reasonably practicable after receiving the appeal documentation and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for his attention should be sent, the date of such notification being the “start date” for the purposes of this sub-paragraph (2);
- (c) The relevant planning authority and the requirement consultee (if applicable) must submit written representations to the appointed person in respect of the appeal within ten business days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (d) The appeal parties must make any counter-submissions to the appointed person within ten business days of receipt of written representations pursuant to sub-paragraph (c) above; and
- (e) The appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within thirty business days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (d);
- (f) The appointment of the person pursuant to sub-paragraph (b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(3) In the event that the appointed person considers that further information is necessary to enable him to consider the appeal he must, within five business days of his appointment, notify the appeal parties in writing specifying the further information required.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the undertaker to the appointed person, the relevant planning authority and the requirement consultee on the date specified by the appointed person (the “specified date”), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within ten business days of the specified date but otherwise is to be in accordance with the process and time limits set out in sub-paragraphs (2)(c) to (2)(e)

(5) On an appeal under this paragraph, the appointed person may—

- (a) allow or dismiss the appeal, or
- (b) reverse or vary any part of the decision of the relevant planning authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to him in the first instance.

(6) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits.

(7) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to him that there is sufficient material to enable a decision to be made on the merits of the case.

(8) The decision of the appointed person on an appeal is to be final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(9) If an approval is given by the appointed person pursuant to this Schedule, it is to be deemed to be an approval for the purpose of Schedule 2 (requirements) as if it had been given by the relevant planning authority. The relevant planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person’s determination.

(10) Save where a direction is given pursuant to sub-paragraph (11) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be met by the undertaker.

(11) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the advice on planning appeals and award costs published on 3 March 2014 from the Ministry of Housing, Communities and Local Government or any circular or guidance which may from time to time replace it.

SCHEDULE 11

DOCUMENTS AND PLANS TO BE CERTIFIED

Table 8

<i>(1)</i> <i>Document name</i>	<i>(2)</i> <i>Document reference</i>	<i>(3)</i> <i>Revision number</i>	<i>(4)</i> <i>Date</i>
<u>access and rights of way plans</u>	<u>4.4</u>	<u>1</u>	<u>April 2019</u>
<u>book of reference</u>	<u>3.1</u>	<u>1</u>	<u>April 2019</u>
<u>commitments register</u>	<u>18A</u>	<u>1</u>	<u>April 2019</u>
<u>environmental statement</u>	<u>Volume 1, 6.2</u>	<u>1</u>	<u>April 2019</u>
	<u>Volume 2, 6.3</u>	<u>1</u>	
	<u>Volume 3, 6.4</u>	<u>1</u>	
<u>flood risk assessment</u>	<u>12A</u>	<u>1</u>	<u>April 2019</u>
<u>framework biodiversity enhancement and management plan</u>	<u>9H</u>	<u>1</u>	<u>April 2019</u>
<u>framework construction environmental management plan</u>	<u>4A</u>	<u>1</u>	<u>April 2019</u>
<u>framework construction traffic management plan</u>	<u>7C</u>	<u>1</u>	<u>April 2019</u>
<u>framework construction worker travel plan</u>	<u>7B</u>	<u>1</u>	<u>April 2019</u>
<u>framework written scheme of investigation</u>	<u>13E</u>	<u>1</u>	<u>April 2019</u>
<u>indicative lighting strategy</u>	<u>5.6</u>	<u>1</u>	<u>April 2019</u>
<u>land plans</u>	<u>4.2</u>	<u>1</u>	<u>April 2019</u>
<u>works plans</u>	<u>4.3</u>	<u>1</u>	<u>April 2019</u>

DESIGN PARAMETERS

Table 9

<u>(1)</u> <u>Building or structure</u>	<u>(2)</u> <u>Maximum length (metres)</u>	<u>(3)</u> <u>Maximum width (metres)</u>	<u>(4)</u> <u>Maximum height (metres above 0 meters above ordnance datum)</u>	<u>(5)</u> <u>Maximum diameter (metres)</u>
<u>Single gas turbine and generator</u>	<u>30</u>	<u>20</u>	<u>20</u>	=
<u>Gas turbine building</u>	<u>46</u>	<u>25</u>	<u>29</u>	=
<u>Exhaust stack</u>	=	=	<u>56</u>	<u>12</u>
<u>Air intakes</u>	<u>24</u>	<u>16</u>	<u>40</u>	=
<u>Fin-fan cooler</u>	<u>30</u>	<u>15</u>	<u>17</u>	=
<u>Control room, workshops, stores</u>	<u>35</u>	<u>20</u>	<u>16</u>	=
<u>Demineralised tank, firewater tank</u>	=	=	<u>32</u>	<u>24</u>

MODIFICATIONS TO THE ABLE MARINE ENERGY PARK
DEVELOPMENT CONSENT ORDER 2014

Schedule 9 to the Able Marine Energy Park Development Consent Order 2014

1. After paragraph 120 of Schedule 9 insert new Part 16—

“Part 16

FOR THE PROTECTION OF VPI IMMINGHAM B LIMITED

Application

121. The following provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and VPI.

Interpretation

122. In this Part of this Schedule—

“the OCGT authorised development” means the development authorised by the OCGT Order;

“the OCGT Order” means the Immingham Open Cycle Gas Turbine Order 2020;

“the OCGT Order land” has the same meaning as the term “Order land” in article 2(1) of the OCGT Order;

“the OCGT water connection” means that part of work number 2 of the OCGT authorised development which is to be carried out within plots 6 and 7 of the OCGT Order land;

“VPI” means VPI Immingham B Limited (Company No. 10630563) whose registered office is at 4th Floor, Nova South, 160 Victoria Street, London SW1E 5LB, or any person having the benefit of the OCGT Order pursuant to article 6 and/or 7 of it;

“the Order” means this Order; and

“the respective authorised developments” means the developments authorised by the Order and the OCGT Order respectively.

Regulation of powers over Rosper Road

123.—(1) Subject to VPI complying with paragraphs 57 and 58 of Part 8 of Schedule 9 to the OCGT Order the undertaker must not exercise the powers granted under this Order so as to hinder or prevent—

(a) the construction, operation, use or maintenance of the OCGT water connection; or

(b) access between all parts of the OCGT authorised development and Rosper Road, without the prior written consent of VPI.

(2) Wherever in this Part of this Schedule provision is made with respect to the approval or consent of VPI, that approval or consent must be in writing (and subject to such reasonable terms and conditions as VPI may require), but must not be unreasonably withheld.

(3) In the event that VPI does not respond in writing to a request for approval or consent within 28 days of receipt of such a request, VPI is deemed to have given its consent, without any terms or conditions.

124.—(1) The undertaker must not exercise the powers under any of the articles of the Order specified in sub-paragraph (2) over or in respect of the OCGT Order land otherwise than with the prior written consent of VPI.

(2) The articles referred to in sub-paragraph (1) are—

- (a) article 15 (street works);
- (b) article 16 (temporary stopping up of streets);
- (c) article 17 (access to works);
- (d) article 22 (authority to survey and investigate land);
- (e) article 30 (compulsory acquisition of land);
- (f) article 31 (power to override easements and other rights);
- (g) article 34 (compulsory acquisition of rights etc);
- (h) article 35 (private rights of way);
- (i) article 39 (rights under or over streets);
- (j) article 40 (temporary use of land for carrying out the authorised development);
- (k) article 41 (temporary use of land for maintaining authorised development); and
- (l) article 42 (statutory undertakers).

(3) In the event that VPI withholds its consent pursuant to sub-paragraph (1) it must notify the undertaker in writing of the reasons for withholding such consent and (if applicable) the time period during which such consent will be withheld.

125. Insofar as the construction of the OCGT authorised development is or may be undertaken concurrently with the Able authorised development, the undertaker must—

(a) co-operate with Able with a view to ensuring—

(i) the co-ordination of construction programming and the carrying out of works;
and

(ii) that access for the purposes of constructing the respective authorised developments is maintained for the undertaker and Able and their respective contractors; and

(b) use reasonable endeavours to avoid any conflict arising from the carrying out of the respective authorised developments.

Arbitration

126. Any difference or dispute arising between the undertaker and Able under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Able, be referred to and settled by arbitration.”

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises VPI Immingham B Limited (referred to in this Order as the undertaker) to construct, operate and maintain a gas fired electricity generating station. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 39 (certification of plans etc.) of this Order may be inspected free of charge during working hours at [x].

Schedule H Deemed Consent Under Coast Protection Act 1949

{Insert details of deemed consent}

Schedule I Deemed Licence Under the Food and Environment Protection Act 1985

{Insert details of deemed licence}

Schedule J Trees Subject to Tree Preservation Orders

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Type of tree</i>	<i>Number/reference of tree shown on land plan</i>	<i>Work to be carried out</i>

NOTES

Initial Commencement

Specified date

Specified date: 1 October 2009: see art 1.