

Application by Sunnica Ltd for an Order Granting Development Consent for the Sunnica Energy Farm

The Examining Authority’s schedule of changes to the draft Development Consent Order (dDCO) [\[REP6-013\]](#)

Issued on 10 March 2023

Responses are due by Deadline 9: 12 noon on Friday 17 March 2023.

Ref	ExA’s suggested changes	ExA’s comments
General		
Drafting guidance	When the dDCO is finalised, all internal references, statutory citations and references and legal footnotes should be checked and updated as required. Drafting should be reviewed to follow best practice in Planning Inspectorate Advice Notes 13 and 15 and guidance on statutory instrument drafting from the Office of the Parliamentary Counsel (June 2020).	As stated
Drafting	The Final DCO to be submitted in PDF by the Applicant at Deadline 10 must be accompanied by a MS Word copy in the SI template with the SI template validation report confirming that it is in accordance with the format for the official draft SI template and has passed through the draft SI checker. All outstanding format issues must be addressed before submission and the Applicant must submit the checker reports to show that this has been done by Deadline 10.	As stated
Use of “and/or”	Check use of “and/or”: this is not considered to be suitable for statutory instruments.	As stated
Preamble	Where special powers under Pt 7 Chapter 1 of the 2008 Act (specifically ss 131 and 132) need to be invoked, their application is required to be endorsed on the face of the Orders in the preamble. Check that no such powers need to be added to the preamble.	As stated
Explanatory memorandum	A robust justification should be provided in the Explanatory Memorandum for each Article and Requirement in the dDCO, explaining why the inclusion of the power or requirement is necessary, proportionate to the novelty or controversy relating to the provision. Account should be taken of equivalent provisions in made DCOs, recognising that practice has evolved and the model provisions set out in the infrastructure regulations may no longer be relevant.	As stated



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Articles		
Article 2	“maintain” includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part of, but not remove, reconstruct or replace the whole of, the authorised development and “maintenance” and “maintaining” are to be construed accordingly;	Definition inappropriately focused on authorized development to exclusion of parts of DCO for which replacement of the whole is likely to be irrelevant.
Article 2	“permitted preliminary works” means all or any of— ...; or (h) site clearance (including vegetation removal and demolition of buildings); so however that sub-paragraphs (a), (c), (e), (f) or (g) do not include the formulation of or change to any vehicular access, whether or not on a temporary basis.	To meet SCC’s concern that all works involving the formulation of or change to any vehicular access, whether or not on a temporary basis or not, need to be subject to a prior approval process.
Article 9(1)(b)	Power to alter layout, etc., of streets (b) in the case of the streets specified in column 2 of the table in Part 2 (temporary alteration of layout) of Schedule 5 and Schedule 6 temporarily in the manner specified in relation to that street in column 3.	To make adequate provision for control of reinstatement of public rights of way affected.
Article 9(3)	(3) The undertaker must restore any street that has been temporarily altered under this Order to the reasonable satisfaction of the street authority in accordance with the protective provisions in Schedule 13, Part 13.	To protect the position of the relevant street authority absent alternative provisions in any eventual side agreement.
Article 11(1)	11.—(1) The undertaker, during and for the purposes of constructing or maintaining the authorised development, may temporarily stop up, prohibit the use of, authorise the use of, alter or divert any public right of way and may for any reasonable time only as a last resort in accordance with the detailed Construction Traffic Management Plan approved under Schedule 2 Requirement 16 —	To address concerns of CCC and SCC.



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Article 27	Temporary use of land for constructing the authorised development 27.—(1) The undertaker may, in connection with the construction of the authorised development— ... (b) remove any buildings, agricultural plant and apparatus, drainage, fences, and debris and vegetation from that land;	The applicant should have provided information prior to determination as to where trees and other vegetation will be required for removal to facilitate access, making the excised wording unnecessary.
Article 36	Felling or lopping of trees and removal of hedgerows ... (2) In carrying out any activity authorised by paragraph (1) or (4) the undertaker must— ... (b) ensure all works are carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other more suitable recognised codes of good practice provided these meet or exceed the appropriate British Standards, except for where not practically possible ;	To maintain the effectiveness of the provision.
Requirements		
R.6	Detailed Design Approval ... (i) how the design of that phase has taken account of either— (aa) the arboricultural impact assessment; or (aa)(bb) updated tree surveys for locations within that phase where arboricultural impacts are likely, such surveys to be carried out prior to the submission of these details and to be submitted as part of these details; and (j) programme for landscaping works; and (k) the pre-commencement condition survey of all public rights of way affected by haul road/cable route crossings has been completed in accordance with 5.2.11 of the Construction and Traffic Management Plan, and a reinstatement plan of the public rights of way surfaces and widths agreed,	To meet CCC's concern that a pre-commencement condition survey be completed.
R.7(3)	Fire safety management ... (3) The BFSMP must be substantially entirely in accordance with the outline battery fire safety	In the interests of certainty.



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	management plan.	
R.8(1)	<p>Landscape and ecology management plan 8.—(1) No phase of the authorised development may commence, and no part of the permitted preliminary works for that phase comprising vegetation removal may start, until a written landscape and ecology management plan (which is substantially must be entirely in accordance with the outline landscape and ecology management plan) has been submitted to and approved by the relevant planning authority for that phase...</p>	In the interests of certainty.
R.11(6)	<p>Fencing and other means of enclosure ... (6) Prior to the date of final commissioning of any phase, any permanent fencing, walls or other means of enclosure for that phase approved pursuant to sub-paragraph (2) must be completed and properly maintained for the operational lifetime of those works.</p>	To make proper provision for maintenance.
R.14	<p>Construction environmental management plan 14.—(1) No phase of the authorised development may commence until a construction environmental management plan (which must by substantially be entirely in accordance with the framework construction environmental management plan)</p>	Error/in the interests of certainty.
R.15	<p>Operational environmental management plan 15.—(1) Prior to the date of final commissioning for any phase, an operational environmental management plan (which must be substantially entirely in accordance with the framework operational environmental management plan)</p>	In the interests of certainty
R.16(1)	<p>Construction traffic management plan and travel plan 16.—(1) No phase of the authorised development may commence until a construction traffic management plan (which must be substantially entirely in accordance with the framework construction traffic management plan)</p>	In the interests of certainty
R.16(3)	<p>Construction traffic management plan and travel plan ...</p>	Drafting improvement/error, and to make adequate



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	<p>(3) No part of the permitted preliminary works for each phase comprising above ground site preparation for temporary facilities for the use of contractors, the diversion and laying of apparatus and or site clearance (including vegetation removal, demolition of existing buildings and structures) may start and the diversion and laying of apparatus so far as it relates to works in the highway (including public rights of way) and the crossing of highways (including public rights of way) for construction purposes may start until a permitted preliminary works traffic management plan for that phase has been submitted to and approved by the relevant county authority for that phase or, where the phase falls within the administrative areas of both the county of Suffolk and the county of Cambridgeshire, both relevant county authorities</p>	<p>provision for the safeguarding of public rights of way</p>
<p>R.24 New requirement</p>	<p>24. Replacement of any Work shall require an application to be made to the local planning authority not less than 6 months before the commencement of any such operation and be agreed in writing. Replacement shall commence in accordance with the approved details.</p>	<p>See comment on Article 2.</p>
<p>Other Schedules</p>		
<p>Schedule 1 Work No.1</p>	<p style="text-align: center;">SCHEDULE 1 AUTHORISED DEVELOPMENT</p> <p>...</p> <p>Work No. 1— a ground mounted solar photovoltaic generating station with a gross electrical output capacity of over 50 megawatts including—</p> <p>(a) Work No. 1A— subject to sub-paragraph (aa), works on the East A Site comprising—</p> <p>(i) solar modules;</p> <p>(ii) solar stations;</p> <p>(iii) electrical cables including electrical cables connecting to Work No. 3A;</p> <p>(iv) monitoring and control systems housed within a control room building or container; and</p> <p>(v) weather stations and direct current (DC) electrical boxes.</p> <p>(aa) Other than works comprised within or for the purposes of sub-paragraph (a)(iii), Work No. 1A works must not be constructed on the land labelled plots 2-02 and 3-01 on the land plans.</p> <p>(b) Work No. 1B— subject to sub-paragraph (ba), works on the East B Site comprising—</p> <p>(i) solar modules;</p> <p>(ii) solar stations;</p> <p>(iii) electrical cables including electrical cables connecting to Work No. 3B;</p> <p>(iv) monitoring and control systems housed within a control room building or container; and</p>	<p>To exclude solar panels and other above ground infrastructure in the event that the SoS determines that the residual adverse impacts of the Applicant's proposals are such that effective mitigation of the adverse impacts would not be achievable and the residual adverse impacts would not be acceptable without excluding these works.</p> <p>SCC's commentary in [REP7-073] and the Applicant's response [REP7-064] refer.</p>



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	<p>(v) weather stations and DC electrical boxes.</p> <p>(ba) Other than works comprised within or for the purposes of sub-paragraph (b)(iii), Work No. 1B works must not be constructed on the land labelled plots 5-03, 5-07, and 7-01 on the land plans, and</p> <p>(c) Work No. 1C— subject to sub-paragraph (ca), works on the West A Site comprising—</p> <p>(i) solar modules;</p> <p>(ii) solar stations;</p> <p>(iii) electrical cables including electrical cables connecting to Work No. 3C;</p> <p>(iv) monitoring and control systems housed within a control room building or container; and</p> <p>(v) weather stations and DC electrical boxes.</p> <p>(ca) Other than works comprised within or for the purposes of sub-paragraph (c)(iii), Work No. 1C works must not be constructed on the land labelled plots 10-21, 11-07, 11-08, 12-02, 13-02, 13-03, 13-04, 14-01, 14-02 and 14-03 on the land plans, and associated development within the meaning of section 115(2) of the 2008 Act including—</p>	
<p>Schedule 1 Work No. 2C</p>	<p><i>[If if solar panels and other above ground infrastructure were to be excluded from parcels W03-W12, within Land Plan Parcel Nos. [REP6-005]10-21, 11-07, 11-08, 12-02,13-02,13- 04,14-01, 14-02, 14-03] then:</i></p> <p>[(e) Work No. 2C— a battery energy storage compound on the West A Site comprising—</p> <p>(i) battery energy storage cells;</p> <p>(ii) a structure protecting the battery energy storage cells comprised in Work No. 2C(i) and ancillary equipment, being either one container or multiple containers joined to each other, mounted on a reinforced concrete foundation slab or concrete piling;</p> <p>(iii) heating, ventilation and air conditioning (HVAC) or liquid cooling systems either housed within the containers comprised in Work No. 2C(ii), attached to the side or top of each of the containers, or located separate from but near to each of the containers;</p> <p>(iv) battery stations;</p> <p>(v) monitoring and control systems housed within a container with the HVAC or liquid cooling systems in Work No. 2C(iii) or located separately in its own container or control room;</p>	<p>It would appear that subject to eventual further robust justification by the Applicant that there would be no need for this work if solar panels and other above ground infrastructure were to be excluded from parcels W03-W12.</p>



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	<p>(vi) electrical cables including electrical cables connecting to Work No. 3C; (vii) fire safety infrastructure comprising fire suppression system; and (viii) a water storage structure for the purposes of firefighting comprising fire water tanks and fire water containment.]</p>	
<p>Schedule 1 Work No. 6</p>	<p>Work No. 6— works to create, enhance and maintain green infrastructure, including—</p> <p>(a) Work No. 6A— subject to sub-paragraph (ab), works on the East A Site comprising—</p> <p>(i) soft landscaping including planting;</p> <p>(ii) landscape and biodiversity enhancement measures;</p> <p>(iii) earth works;</p> <p>(iv) permissive paths;</p> <p>(v) hard standing and hard landscaping;</p> <p>(vi) drainage and irrigation infrastructure and improvements or extensions to existing irrigation systems;</p> <p>(vii) fencing, gates, boundary treatment and other means of enclosure; and</p> <p>(viii) improvement, maintenance and use of existing private tracks.</p> <p>(ab) Other than for the purposes associated with the works comprised in the works within subparagraph (a)(iii) of Work No. 1A or within Work No. 4, Work No. 6A must not be constructed on the land labelled plots 2-02 and 3-01 on the land plans.</p> <p>(b) Work No. 6B—subject to sub-paragraph (ba), works on the East B Site comprising—</p> <p>(i) soft landscaping including planting;</p> <p>(ii) landscape and biodiversity enhancement measures;</p> <p>(iii) earth works;</p> <p>(iv) permissive paths;</p> <p>(v) hard standing and hard landscaping;</p> <p>(vi) drainage and irrigation infrastructure and improvements or extensions to existing irrigation systems;</p> <p>(vii) fencing, gates, boundary treatment and other means of enclosure; and</p> <p>(viii) improvement, maintenance and use of existing private tracks.</p> <p>(ba) Other than for the purposes associated with the works comprised in the works within subparagraph (b)(iii) of Work No. 1B or within Work No. 4, Work No. 6B must not be constructed on</p>	



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	<p>the land labelled plots 5-03, 5-07 and 7-01 on the land plans, and</p> <p>(c) Work No. 6C— subject to sub-paragraph (ca), works on the West A Site comprising—</p> <ul style="list-style-type: none"> (i) soft landscaping including planting; (ii) landscape and biodiversity enhancement measures; (iii) earth works; (iv) hard standing and hard landscaping; (v) drainage and irrigation infrastructure and improvements or extensions to existing irrigation systems; (vi) fencing, gates, boundary treatment and other means of enclosure; and (vii) (vii) improvement, maintenance and use of existing private tracks. <p>(ca) Other than for the purposes associated with the works comprised in the works within subparagraph (c)(iii) of Work No. 1C or within Work No. 4, Work No. 6C must not be constructed on the land labelled plots 10-21, 11-07, 11-08, 12-02, 13-02, 13-03, 13-04, 14-01, 14-02 and 14-03 on the land plans.</p>	
<p>Schedule 1 Work No. 10</p>	<p>[Either]</p> <p>Work No. 10— works to create and maintain stone curlew reserve.</p> <p>[or]</p> <p>Work No. 10— works to create and maintain stone curlew reserve.</p>	<p>The deletion of Work No.10 would be if the ExA recommends to the SoS that all panels (and related above ground works) be removed from parcels E05, E12, and E13 and is satisfied that the remaining parts of the development do not require any stone curlew offsetting measures.</p> <p>The retention of Work No. 10 would be if the ExA recommends to the SoS that panels and related above</p>



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		ground works should not be removed from one or more of parcels E05, E12, or E13.												
Schedule 1 Work No. 10	<p>Work No.10...</p> <p>(a) works within highways, including—</p> <p>(i) alteration of the layout of any street permanently or temporarily, including increasing or reducing the width of the carriageway of any street by increasing or reducing the width of any kerb, footway, cycleway, or verge within the street including removal of any vegetation; and altering the level or increasing the width of any such kerb, footway, cycleway or verge within the street including removal of any vegetation; and works for the strengthening, improvement, repair, maintenance or reconstruction of any street;</p>	See comment on Article 27												
Schedule 5	<p style="text-align: center;">PART 1 PERMANENT ALTERATION OF LAYOUT</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="text-align: center;"><i>(1)</i> <i>District</i></th> <th style="text-align: center;"><i>(2)</i> <i>Street [Public/private]</i></th> <th style="text-align: center;"><i>(3)</i> <i>Description of alteration</i></th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">West Suffolk District</td> <td style="text-align: center;">C603 Freckenham Road <i>[Public/private]</i></td> <td style="text-align: center;">Works for the provision of a permanent means of access to the authorised development within the area shown hatched orange on sheets 1 and 4 of the access and rights of way plans, reference AS-4.</td> </tr> </tbody> </table> <p><i>[ETC]</i> ...</p> <p style="text-align: center;">PART 2 TEMPORARY ALTERATION OF LAYOUT</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="text-align: center;"><i>(1)</i> <i>District</i></th> <th style="text-align: center;"><i>(2)</i> <i>Street [Public/private]</i></th> <th style="text-align: center;"><i>(3)</i> <i>Description of alteration</i></th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	<i>(1)</i> <i>District</i>	<i>(2)</i> <i>Street [Public/private]</i>	<i>(3)</i> <i>Description of alteration</i>	West Suffolk District	C603 Freckenham Road <i>[Public/private]</i>	Works for the provision of a permanent means of access to the authorised development within the area shown hatched orange on sheets 1 and 4 of the access and rights of way plans, reference AS-4.	<i>(1)</i> <i>District</i>	<i>(2)</i> <i>Street [Public/private]</i>	<i>(3)</i> <i>Description of alteration</i>				To make clear which roads affected are publicly maintained and which are privately maintained.
<i>(1)</i> <i>District</i>	<i>(2)</i> <i>Street [Public/private]</i>	<i>(3)</i> <i>Description of alteration</i>												
West Suffolk District	C603 Freckenham Road <i>[Public/private]</i>	Works for the provision of a permanent means of access to the authorised development within the area shown hatched orange on sheets 1 and 4 of the access and rights of way plans, reference AS-4.												
<i>(1)</i> <i>District</i>	<i>(2)</i> <i>Street [Public/private]</i>	<i>(3)</i> <i>Description of alteration</i>												



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	[ETC]	West Suffolk District	Junction of Freckenham Road and Beck Road <i>[Public/private]</i>	Works to enable the passage to the authorised development of abnormal indivisible loads, including the temporary removal of street signs and street furniture, within the area shown hatched orange on sheet 4 of the access and rights of way plans, reference AS-5.												
Schedule 10	SCHEDULE 10 DOCUMENTS AND PLANS TO BE CERTIFIED <table border="1" data-bbox="495 746 1630 1026" style="margin: 10px auto;"> <thead> <tr> <th data-bbox="495 746 779 823" style="text-align: center;"><i>(1)</i> Document name</th> <th data-bbox="779 746 1064 823" style="text-align: center;"><i>(2)</i> Document reference</th> <th data-bbox="1064 746 1348 823" style="text-align: center;"><i>(3)</i> Revision number</th> <th data-bbox="1348 746 1630 823" style="text-align: center;"><i>(4)</i> Date</th> </tr> </thead> <tbody> <tr> <td data-bbox="495 823 779 890" style="text-align: center;">...</td> <td data-bbox="779 823 1064 890" style="text-align: center;">...</td> <td data-bbox="1064 823 1348 890" style="text-align: center;">...</td> <td data-bbox="1348 823 1630 890" style="text-align: center;">...</td> </tr> <tr> <td data-bbox="495 890 779 1026">framework construction traffic management and travel plan</td> <td data-bbox="779 890 1064 1026">Appendix 13C contained in volume 2 of the environmental statement (document reference 6.2)</td> <td data-bbox="1064 890 1348 1026" style="text-align: center;">4</td> <td data-bbox="1348 890 1630 1026" style="text-align: center;">13/01/2023</td> </tr> </tbody> </table>			<i>(1)</i> Document name	<i>(2)</i> Document reference	<i>(3)</i> Revision number	<i>(4)</i> Date	framework construction traffic management and travel plan	Appendix 13C contained in volume 2 of the environmental statement (document reference 6.2)	4	13/01/2023	In the interests of clarity
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framework construction traffic management and travel plan	Appendix 13C contained in volume 2 of the environmental statement (document reference 6.2)	4	13/01/2023													
Schedule 12 Part 13	PART 13 FOR THE PROTECTION OF THE RELEVANT LOCAL HIGHWAY AUTHORITIES			To make appropriate provision for the protection of relevant local highway authorities												



	<p>Application</p> <p>1. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and the relevant local highway authority.</p> <p>Interpretation</p> <p>2. In this Part of this Schedule—</p> <p>“highway” means, notwithstanding article 2(1) of this Order, a street vested in or maintainable by the relevant local highway authority under the 1980 Act;</p> <p>“plans” includes sections, drawings, specifications and particulars (including descriptions of methods of construction);</p> <p>“relevant local highway authority” means—</p> <ul style="list-style-type: none">(a) Cambridgeshire County Council, in relation to any specified work constructed in the area of that council;(b) Suffolk County Council, in relation to any specified work constructed in the area of that council. <p>“specified work” means so much of any part of the authorised development as forms part of or is intended to become a highway, or part of any such highway;</p> <p>“structure, apparatus or surface” means any highway drainage structure or drainage apparatus, street furniture or carriageway comprised in a specified work.</p> <p>Relevant local highway authority approval of specified works</p> <p>3. Without affecting the application of sections 59(a) (general duty of street authority to coordinate works) and 60(b) (general duty of undertakers to co-operate) of the 1991 Act, before commencing the construction of any specified work, the undertaker must submit to the relevant local highway authority for its approval proper and sufficient plans and must not commence the construction of a specified work until the plans for that specified work have been approved by the relevant local highway authority or settled by arbitration.</p>	
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	<p>4. When signifying approval of plans submitted under paragraph [(3)], the relevant local highway authority may specify any protective works (whether temporary or permanent) which in its reasonable opinion must be carried out before the commencement of the construction of a specified work to ensure the safety or stability of the highway and such protective works must be carried out at the expense of the undertaker.</p> <p>5. If, within 28 days after any plans have been submitted to the relevant local highway authority under paragraph [(3)], it has not intimated its disapproval and the grounds of disapproval, the relevant local highway authority is deemed to have approved them.</p> <hr/> <p>(a) As amended by section 42 of the Traffic Management Act 2004 (c. 18).</p> <p>(b) As amended by section 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).</p> <p>6. In the event of any disapproval of plans by the relevant local highway authority under paragraph [(3)], the undertaker may re-submit the plans with modifications and, in that event, if the relevant local highway authority has not intimated its disapproval and the grounds of disapproval within 28 days of the plans being re-submitted, it is deemed to have approved them.</p> <p>Inspection and supervision of specified works</p> <p>7. Any specified work, and all protective works required by the relevant local highway authority in accordance with paragraph [(4)], must be constructed in accordance with the approved plans for that specified work and an officer of the relevant local highway authority is entitled on giving such notice as may be reasonable in the circumstances, to inspect and watch the construction of such works.</p> <p>Maintenance of specified works by the undertaker</p> <p>8. If any specified work is not maintained by the undertaker in accordance with article 10 (construction and maintenance of altered streets) of this Order to the reasonable satisfaction of the relevant local highway authority, it may by notice require the undertaker to maintain the specified work or any part</p>	



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	<p>of it in accordance with article 10 to such extent as the relevant local highway authority reasonably requires for as long as the obligation to maintain the specified work under article 10 applies.</p> <p>9. If the undertaker has failed to begin taking steps to comply with the reasonable requirements of any notice issued under paragraph [(8)] or in any event has not subsequently made reasonably expeditious progress towards their implementation within 28 days beginning with the date on which a notice in respect of any work is served on the undertaker, the relevant local highway authority may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the undertaker.</p> <p>10. In the event of any dispute as to the reasonableness of any requirement of a notice served under paragraph [(8)], the relevant local highway authority must not, except in a case of emergency or to prevent the occurrence of danger to the public, exercise the powers conferred by paragraph [(9)], until the dispute has been finally determined.</p> <p>Payment of fees for approving and supervising the construction of specified works</p> <p>11. On submission of the plans for a specified work, the undertaker must pay the relevant local highway authority 2% of the anticipated cost of constructing the specified work to cover the relevant local highway authority's reasonable fees, costs, charges and expenses in approving the plans for and in supervising construction of the specified work.</p> <p>12. The relevant local highway authority may apply to the undertaker for up to two further payments (limited in each case to a maximum of 2% of the anticipated cost of constructing the specified work) if it reasonably considers that its fees, costs, charges and expenses in approving plans for and supervising construction of the specified work will exceed the amount the undertaker must pay under paragraph [(11)].</p> <p>13. The undertaker must use reasonable endeavours to agree to pay any amount reasonably sought by the relevant local highway authority under paragraph [(12)] (having regard to the extent of the outstanding work in respect of which the relevant local highway authority is likely to incur fees, costs, charges and expenses) and following agreement must pay any such amount.</p>	



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	<p data-bbox="400 285 1648 421">14. The undertaker must repay to the relevant local highway authority, all reasonable fees, costs, charges and expenses reasonably incurred by it in approving the plans for and supervising construction of a specified work which have not otherwise been covered by a payment made under paragraphs [(11)] to [(13)].</p> <p data-bbox="400 445 1648 756">15. The relevant local highway authority must repay to the undertaker (or, with the undertaker's agreement, offset against any amounts for which the undertaker is otherwise liable to that relevant local highway authority) any payment or part of a payment made under paragraphs [(11) to [(13)]] which exceeds the fees, costs, charges and expenses it has incurred in approving plans for and in supervising the construction of a specified work and in response to a written request from the undertaker (served no earlier than after the final adoption or restoration of all of the specified works under article 10(1) and (3) as the case may be) the relevant local highway authority must provide to the undertaker a financial summary containing detailed evidence of how the payments received by the relevant local highway authority under paragraphs [(11)] to [(13)] have been spent.</p> <p data-bbox="400 812 613 836">Commuted sums</p> <p data-bbox="400 868 1648 1075">16. In respect of a structure, apparatus or surface installed or altered as result of a specified work in relation to which the relevant local highway authority is, or is to become, liable to maintain, the undertaker must pay to the relevant local highway authority (at the time when the relevant structure, apparatus or surface is, in accordance with this Order, to become maintainable by the relevant local highway authority) a commuted sum to reflect any additional cost that may be incurred by the relevant local highway authority over an appropriate timeframe in maintaining that structure, apparatus or surface.</p> <p data-bbox="400 1099 1648 1203">17. The amount of the commuted sum referred to in paragraph [(16)] is to be determined with reference to the detailed design of that structure, apparatus or surface and agreed between the relevant local highway authority and the undertaker, both acting reasonably.</p> <p data-bbox="400 1243 725 1267">Consents and agreements</p> <p data-bbox="400 1299 1648 1326">18. Wherever in this Part of this Schedule provision is made with respect to the approval or consent of the</p>	



Ref	ExA's suggested changes	ExA's comments
	<p>relevant local highway authority, that approval or consent must be in writing and may be given to such reasonable terms and conditions as the relevant local highway authority may require in the interests of safety or to ensure highway construction standards are met in order to minimise inconvenience to persons using the highway, but must not be unreasonably withheld.</p> <p>Disputes</p> <p>19. Any difference or dispute arising between the undertaker and the relevant local highway authority under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and the relevant local highway authority, be determined by arbitration in accordance with article [39] (arbitration) of this Order.</p> <p>Saving for the 1991 Act</p> <p>20. This Part of this Schedule does not apply to any works comprised in the authorised development in respect of which the relations between the undertaker and the relevant local highway authority are regulated by Part 3 (street works in England and Wales) of the 1991 Act.</p>	
Schedule 12 Part 14	<p style="text-align: center;">PART 14</p> <p style="text-align: center;">FOR THE PROTECTION OF SOUTH STAFFORDSHIRE WATER PLC</p> <p>Application</p> <p>1. For the protection of SSW the following provisions have effect unless otherwise agreed in writing between Sunnica Limited (“Sunnica”) and SSW.</p> <p>2. The provisions of Part 1 of Schedule 12 (Protective Provisions for the Protection of [Water] Undertakers, etc.) in so far as they relate to the removal of apparatus, do not apply in relation to apparatus to which this Part of this Schedule applies.</p>	To make appropriate provision for the protection of apparatus of South Staffordshire Water PLC



Ref	ExA's suggested changes	ExA's comments
	<p data-bbox="398 284 1650 347">3. This Part of this Schedule does not apply to apparatus in respect of which the relations between Sunnica and SSW are regulated by the provisions of Part 3 of the 1991 Act.</p> <p data-bbox="398 395 584 427">Interpretation</p> <p data-bbox="398 451 813 483">4. In this Part of this Schedule—</p> <p data-bbox="398 499 1650 563">“alternative apparatus” means alternative apparatus adequate to enable SSW to fulfil its statutory functions in a manner no less efficient than previously;</p> <p data-bbox="398 579 701 611">“apparatus” means—</p> <ul data-bbox="499 627 1650 850" style="list-style-type: none"><li data-bbox="499 627 1650 691">(a) mains, pipes or other apparatus belonging to or maintained by SSW for the purposes of water supply;<li data-bbox="499 707 1469 738">(b) any drain or works vested in SSW under the Water Industry Act 1991; and<li data-bbox="499 754 1650 850">(c) any sewer which is so vested in SSW or is the subject of a notice of intention to adopt by SSW given under section 102(4) of that Act or an agreement to adopt by SSW made under section 104 of that Act, <p data-bbox="398 866 1650 1002">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 any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;</p> <p data-bbox="398 1018 920 1050">“functions” includes powers and duties;</p> <p data-bbox="398 1066 1650 1129">“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;</p> <p data-bbox="398 1145 1375 1177">“plans” includes sections, drawings, specifications and method statements; and</p> <p data-bbox="398 1193 1650 1289">“SSW” means South Staffordshire Water Plc and includes its successors in function and/or any successor in respect of any land interests or any successor as a water undertaker within the meaning of the Water Industry Act 1991.</p>	



Acquisition of apparatus

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

Alternative apparatus

6.—(1) If, in the exercise of the powers conferred by this Order, Sunnica 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 SSW 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 SSW.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, Sunnica requires the removal of any apparatus placed in that land, it must give to SSW 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.

(3) The proposed position of the alternative apparatus to be provided or constructed is subject to approval by SSW (such approval not to be unreasonably withheld or delayed). In the event that SSW (acting reasonably) considers the proposed position of the alternative apparatus to be unsuitable, SSW shall (acting reasonably) propose an alternative position for the alternative apparatus and must give Sunnica written notice of such alternative position for the alternative apparatus within 28 days of the service of a notice under sub-paragraph (2). Any dispute regarding the alternative apparatus (including but not limited to the proposed position and/or the alternative proposed position) which cannot be agreed between the parties is to be determined in accordance with article 39 (arbitration).

(3a) Any alternative apparatus to be constructed in land of Sunnica under this Part of this Schedule is to be constructed in such manner and in such line or situation as may be agreed between SSW and Sunnica such agreement to be within 28 days of the service of a notice under sub-paragraph (2) (or within 28 days of service of a notice under sub-paragraph (3) where SSW has proposed an alternative position for the alternative apparatus under sub-paragraph (3) which is acceptable to Sunnica), or in default of such agreement settled by arbitration in accordance with article 39 (arbitration).



Ref	ExA's suggested changes	ExA's comments
	<p>(4) In any case where alternative apparatus is to be provided or constructed under sub-paragraphs (2) or (3), or if in consequence of the exercise of any of the powers conferred by this Order SSW reasonably needs to remove any of its apparatus, Sunnica must, subject to sub-paragraph (5), afford to SSW the necessary facilities and rights for the construction of alternative apparatus in other land of Sunnica and subsequently for the maintenance of that apparatus and SSW shall be entitled to recover its reasonable costs incurred in securing such necessary facilities and rights from Sunnica subject to paragraph 9(3) below.</p> <p>(5) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of Sunnica, or Sunnica is unable to afford such facilities and rights as are mentioned in sub-paragraph (4), in the land in which the alternative apparatus or part of such apparatus is to be constructed, SSW must, on receipt of a written notice to that effect from Sunnica, 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.</p> <p>(6) SSW must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 39 (arbitration), and after the grant to SSW of any such facilities and rights as are referred to in sub-paragraph (4) or (5), proceed without unreasonable delay (having regard to the operational requirements of SSW) to construct and bring into operation the alternative apparatus and subsequently to allow Sunnica to remove any apparatus as required to be removed by Sunnica (acting reasonably) under the provisions of this Part of this Schedule PROVIDED THAT to the extent that any reasonable costs are incurred by SSW as a result of the removal of such apparatus then such reasonable costs shall be recoverable in full from Sunnica.</p> <p>(7) Regardless of anything in sub-paragraph (6), if Sunnica gives notice in writing to SSW 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 of Sunnica, that work, instead of being executed by SSW, must be executed by Sunnica without unreasonable delay under the superintendence, if given, and to the reasonable satisfaction of SSW.</p> <p>(8) Nothing in sub-paragraph (7) authorises Sunnica 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 6 metres of the apparatus without the written consent of SSW (such consent not to be unreasonably withheld or denied).</p>	



Ref	ExA's suggested changes	ExA's comments
	<p>(9) In relation to any works which will or may be situated on, over or within 6 metres measured in any direction of any apparatus, the plan to be submitted to SSW under sub-paragraph (1) must be detailed, include a method statement and describe—</p> <ul style="list-style-type: none">(a) the exact position of the works;(b) the level at which they are proposed to be constructed or renewed;(c) the manner of their construction or renewal including details of excavation and positioning of plant;(d) the position of all apparatus including existing apparatus and apparatus to be retained; (e) by way of detailed drawings, every alteration proposed to be made to such apparatus; and (f) any maintenance required. <p>7.—(1) Where, in accordance with the provisions of this Part of this Schedule, Sunnica affords to SSW facilities and rights for the construction and maintenance in land of Sunnica of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between Sunnica and SSW or in default of agreement settled by arbitration in accordance with article 39 (arbitration).</p> <p>(2) In settling those terms and conditions in respect of alternative apparatus to be constructed within 6 metres of any existing apparatus of SSW, the arbitrator must—</p> <ul style="list-style-type: none">(a) give effect to all reasonable requirements of SSW for ensuring the protection of the existing apparatus and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with the existing apparatus; and(b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the existing apparatus for which the alternative apparatus is to be substituted. <p>(3) If the facilities and rights to be afforded by Sunnica 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 SSW than the facilities and rights enjoyed by SSW in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject,</p>	



Ref	ExA's suggested changes	ExA's comments
	<p>the arbitrator must make such provision for the payment of compensation by Sunnica to SSW as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.</p> <p>Existing apparatus: protection and access</p> <p>8.—(1) Not less than 42 days before starting the execution of any of the authorised works that are near to, or will or may affect, any apparatus the removal of which has not been required by Sunnica under paragraph 6(2), Sunnica must submit to SSW a plan, section and description of the works to be executed.</p> <p>(2) Those works are to 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 SSW for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and an officer of SSW is entitled to watch and inspect the execution of those works.</p> <p>(3) Any requirements made by SSW under sub-paragraph (2) must be made within a period of 28 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.</p> <p>(4) If SSW in accordance with sub-paragraph (3) and in consequence of the works proposed by Sunnica, reasonably requires the removal of any apparatus and gives written notice to Sunnica of that requirement, paragraphs 1 to 7 apply as if the removal of the apparatus had been required by Sunnica under paragraph 6(2).</p> <p>(5) Nothing in this paragraph precludes Sunnica from submitting at any time or from time to time, but in no case less than 42 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.</p> <p>(6) Sunnica is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to SSW 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.</p>	



Expenses

9.—(1) Subject to the following provisions of this paragraph, Sunnica must repay to SSW the reasonable expenses incurred by SSW in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus (including reasonable costs or compensation payable in connection with the acquisition of land for that purpose) which may be required in consequence of the execution of any of the authorised works.

(2) The value of any apparatus removed under the provisions of this Part of this Schedule (other than apparatus that is re-used by SSW acting reasonably as alternative apparatus) is to be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

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

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions except where this has been solely due to using the nearest currently available type; 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 Sunnica or, in default of agreement, is not determined by arbitration in accordance with article 39 (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 type, capacity, dimensions, or at the existing depth required to maintain the existing operational requirement, as the case may be, the amount which apart from this paragraph would be payable to SSW by virtue of sub-paragraph (1) is to be reduced by the amount of that excess (save to the extent that it is not possible in the circumstances (or it would be unlawful due to a statutory or regulatory change) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth).

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

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



Ref	ExA's suggested changes	ExA's comments
	<p>(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.</p> <p>(5) An amount which apart from this sub-paragraph would be payable to SSW in respect of works under sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on SSW 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.</p> <p>(6) Any dispute as to whether a financial benefit is conferred in accordance with sub-paragraph (5) or as to the amount of such financial benefit which cannot be agreed is to be determined in accordance with article 39 (arbitration).</p> <p>Damage to apparatus: costs, losses, etc.</p> <p>10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the authorised works any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of SSW or there is any interruption in any service provided or in the supply of any goods, by SSW Sunnica must—</p> <p>(a) bear and pay the cost reasonably incurred by SSW in making good such damage or restoring the supply; and</p> <p>(b) make reasonable compensation to SSW for any other expenses, loss, damages, penalty or costs incurred by SSW, by reason or in consequence of any such damage or interruption.</p> <p>(2) Nothing in sub-paragraph (1) imposes any liability on Sunnica with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of SSW, its officers, servants, contractors or agents.</p> <p>(3) SSW must give Sunnica reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of Sunnica (such consent not to be unreasonably withheld</p>	



Ref	ExA's suggested changes	ExA's comments						
	<p>or delayed) and in the event of any dispute to be settled by arbitration in accordance with article 39 (arbitration).</p> <p>Enactments and agreements</p> <p>11. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between Sunnica and SSW in respect of any apparatus laid or erected in land belonging to Sunnica on the date on which this Order is made.</p>							
Schedule 13	<p>PROCEDURE FOR DISCHARGE...</p> <p>Fees</p> <p>5.—(1) Where an application is made to the relevant authority for consent, agreement or approval in respect of a requirement only, a fee shall is to be paid to that relevant authority as follows—</p> <table border="1" data-bbox="405 810 1608 1257"> <thead> <tr> <th data-bbox="405 810 1330 880"><i>Requirement</i></th> <th data-bbox="1330 810 1608 880"><i>Fee</i></th> </tr> </thead> <tbody> <tr> <td data-bbox="405 880 1330 1023"> <p>Category 1: reserved matters (major)</p> <p>Requirement 6: Detailed design approval</p> </td> <td data-bbox="1330 880 1608 1023"> <p>In accordance with subparagraphs (2), (3) and (4)</p> </td> </tr> <tr> <td data-bbox="405 1023 1330 1257"> <p>Category 2: minor reserved matter and other details</p> <p>Requirement 11: Fencing and other means of enclosure</p> <p>Requirement 12: Surface and foul water drainage</p> <p>Requirement 21: Permissive paths</p> <p>Requirement 22: Decommissioning and restoration</p> </td> <td data-bbox="1330 1023 1608 1257"> <p>£2,028</p> </td> </tr> </tbody> </table>	<i>Requirement</i>	<i>Fee</i>	<p>Category 1: reserved matters (major)</p> <p>Requirement 6: Detailed design approval</p>	<p>In accordance with subparagraphs (2), (3) and (4)</p>	<p>Category 2: minor reserved matter and other details</p> <p>Requirement 11: Fencing and other means of enclosure</p> <p>Requirement 12: Surface and foul water drainage</p> <p>Requirement 21: Permissive paths</p> <p>Requirement 22: Decommissioning and restoration</p>	<p>£2,028</p>	<p>To make proper provision for the reimbursement of the costs of RPAs in discharging requirements.</p>
<i>Requirement</i>	<i>Fee</i>							
<p>Category 1: reserved matters (major)</p> <p>Requirement 6: Detailed design approval</p>	<p>In accordance with subparagraphs (2), (3) and (4)</p>							
<p>Category 2: minor reserved matter and other details</p> <p>Requirement 11: Fencing and other means of enclosure</p> <p>Requirement 12: Surface and foul water drainage</p> <p>Requirement 21: Permissive paths</p> <p>Requirement 22: Decommissioning and restoration</p>	<p>£2,028</p>							



Ref	ExA's suggested changes	ExA's comments
	<p>Category 3: re-approvals</p> <p>(i) In respect of any Category 1 or Category 2 requirement where an application is made for discharge in respect of which an application has been made previously; and</p> <p>(ii) Requirement 5: Approved details and amendments to them.</p>	£462
	<p>Category 4: Other</p> <p>Requirement 3: Phasing of the authorised development and date of final commissioning</p> <p>Requirement 7: Fire safety management</p> <p>Requirement 8: Landscape and ecology management plan</p> <p>Requirement 10: Stone curlew</p> <p>Requirement 13: Archaeology</p> <p>Requirement 14: Construction environment management plan</p> <p>Requirement 15: Operational environment management plan</p> <p>Requirement 16: Construction traffic management plan</p> <p>Requirement 17: Operational noise</p> <p>Requirement 18: Ground conditions</p> <p>Requirement 19: Water management plan</p> <p>Requirement 20: Skills, supply chain and employment</p>	£116
	Calculation and refund of Category 1 fees	



Ref	ExA's suggested changes	ExA's comments
	<p>(2) Subject to sub-paragraph (3) and (4) below, applications for discharge of requirement 6 shall be calculated as follows —</p> <p>(a) where the area of gross floor space / gross site area to be created by the development does not exceed 40 metres, £234;</p> <p>(b) where the area of the gross floor space / gross site area to be created by the development exceeds 40 square metres, but does not exceed 75 square metres, £462;</p> <p>(c) where the area of the gross floor space / gross site area to be created by the development exceeds 75 square metres, but does not exceed 3750 square metres, £462 for each 75 square metres of that area;</p> <p>(d) where the area of gross floor space / gross site area to be created by the development exceeds 3750 square metres, £19,049; and an additional £115 for each 75 square metres.</p> <p>(3) For the purpose of the calculation of fees pursuant to paragraph 5(2)—</p> <p>(a) the gross site area shall be taken as consisting of the area of land to which the application relates;</p> <p>(b) the area of gross floor space created by the development shall be ascertained by external measurement of the floor space, whether or not it is bounded (wholly or partly) by external walls of a building;</p> <p>(c) the gross floor space / gross site area to be created by the development exceeds 75 square metres and is not an exact multiple of 75 square metres, the area remaining after division of the total number of square metres of gross floor space by the figure of 75 shall be treated as being 75 metres.</p> <p>(4) The maximum total fee payable to each local planning authority for discharge of requirement 6 shall be £300,000.</p>	



Ref	ExA's suggested changes	ExA's comments
	<p>(5) Any fee paid under this Schedule shall be refunded to the undertaker within 8 weeks of— (a) the application being rejected as invalidly made.</p> <p>(6) Nothing in paragraph (5) shall prevent lawful reimbursement according to statute of reasonable costs towards enforcement monitoring during the lifetime of the application, whether or not paid prior to commencement.</p>	

End of schedule