

**Planning Inspectorate reference TR040011**

**Unique reference 20023284**

## **Statement**

Portishead Branch Line - MetroWest Phase 1

Western Power Distribution (South West) PLC

Dated

23 November 2020

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**Statement on behalf of Western Power Distribution (South West) PLC (WPD) in response to ExQ1 for Deadline 2 and in advance of the Compulsory Purchase Hearing on 5<sup>th</sup> December 2020**

**1. Background**

- 1.1 WPD is the licenced electricity distribution network operator under Section 6 Electricity Act 1989 (EA1989) for the area in which the Order is proposed to have effect. Section 9 of the EA1989 places a duty on the electricity distributor to develop and maintain an efficient, co-ordinated and economical system of electricity distribution. WPD is therefore a statutory undertaker for the purposes of the project.
- 1.2 Section 127 Planning Act 2008 sets out various protections from compulsory acquisition of statutory undertakers land or interests in land where an undertaker has made a representation and that representation has not been withdrawn.
- 1.3 WPD made a relevant representation on 14 January 2020 and that representation has not been withdrawn.
- 1.4 The Order includes rights to compulsory acquire WPD's interest in land within the Order Land subject to the protective provisions in Part 7 Schedule 16. North Somerset Council has yet to confirm its agreement to WPD's protective provisions.
- 1.5 Without sufficient agreement to protect WPD's assets and provide land rights for WPD to keep and maintain its assets in the railway, WPD will suffer serious detriment to its undertaking and the Order should not be confirmed.
- 1.6 This statement explains WPD's position to assist the examiners in respect of the following matters:
  - (a) WPD's interest as an undertaker pursuant to the National Grid (Hinkley Point C Connection Project) Order 2016 and its interest in the Order Land consequent on that Order.
  - (b) WPD's interest in the Order Land in respect of its existing electricity distribution network.
  - (c) WPD's preferred protective provisions (in response to ExA1 Question CA.1.2).
  - (d) [telecoms]

**2. National Grid (Hinkley Point C Connection Project) Order (Connection Order)**

- 2.1 WPD was granted certain rights as an undertaker pursuant to the Connection Order. In particular the Order permitted works (defined as "WPD Works"). Work No.4D permitted the diversion of a 132kV electricity line known as the "W route" from an overhead line to an underground line beneath the proposed railway within plot 185 and permitted access over plot 183.
- 2.2 At annexe 1 to this statement are the Land Plans and Works Plans for the Connection Order and the Land Plan for the relevant section of the Order showing plots 183 & 185, which highlight the crossover between the two Orders.
- 2.3 WPD's rights under the Connection Order are subject to the consent of National Grid. In respect of Work no.4D, National Grid, through its contractors, is undertaking the works on behalf of WPD. Once completed the works will be handed over to WPD. To date the ducts for the underground cable have been installed under the proposed railway. Cables have or will

shortly be pulled through the ducts, following which they will be energised and the existing overhead line will be removed.

- 2.4 WPD therefore need to ensure that the Order does not extinguish WPD's rights to the existing overhead line until that line is removed, and that the rights for the underground diversion under the Connection Order are preserved and not extinguished by the rights under the Order.
- 2.5 The Statement of Common Ground between North Somerset Council ("NSC") and National Grid does not make reference to WPD's network and works. The SoCG does not consider WPD's rights under the Connection Order or how these will be preserved. WPD has highlighted its queries with National Grid. We would request therefore that NSC in the next iteration of the SoCG is provides clarity around the preservation of WPD's rights under the Connection Order to ensure that those rights are not extinguished by the Order. Were such rights not to be preserved WPD would not be able to maintain its 132kV underground cables in the railway which would have a serious detrimental effect.

### **3. WPD's existing network and diversions**

- 3.1 WPD has provided North Somerset Council proposals to divert some of its electricity cables to accommodate the project. These proposals are mostly diversion of electricity lines on wood poles. The proposals are in the form of offers to undertake works which must be accepted by North Somerset Council within a limited time period. The time period for accepting the proposal is fixed to preserve WPD's position on costs and so as not to limit other works to the network. The time period for accepting the current offers have expired and will need to be re-quoted. We explain this process to clarify that there is no legally binding agreement in place for diverting existing apparatus albeit the diversions have been planned and are unlikely to change. Once the Order is made WPD will need to re-issue the proposals. In the meantime WPD needs to rely on the Protective Provisions (and a subsequent side agreement) to protect its network. Without such protection in place North Somerset Council would acquire rights that could potentially have a serious detriment on WPD's network.
- 3.2 WPD also has assets in the Order Land that will not require diverting but will need to be protected. The protective provisions (and any side agreement) once agreed will ensure the works will not cause a serious detriment to WPD's undertaking.

### **4. Protective Provisions**

- 4.1 The protective provisions in Part 7 Schedule 16 of the draft Order are those requested by WPD with the following exceptions:
- (a) In paragraph 81(2)(b) NSC are seeking to limit consequential losses to £500,000 per event.
  - (b) A new clause 83 has been inserted that seeks to exclude any enactment or agreement regulating relations between WPD and NSC or Network Rail in respect of any apparatus laid or erected in land belonging to the undertaker or Network Rail on the date that the Order is made.
- 4.2 In respect (a) WPD consider that this is an unreasonable limitation and places risk on WPD for any losses that exceed this amount. WPD as a regulated statutory undertaker is not in a position to assume the risk of a public project. WPD's customers are not the public as a whole and therefore this limitation places the project risk on to third parties.
- 4.3 In respect of (b) WPD considers that this provision is too wide and it is unable to determine what effect such a limitation would on its network. WPD question why the provisions should be limited by agreements with Network Rail when Network Rail is not the beneficiary of the Order. If NSC considers that existing agreements can be relied on it should exclude WPD's interest from the book of reference. Attached is a table listing all of the plots that WPD has an interest in. These are numerous and to merely refer to a sweeping exclusion does not clarify which plots will benefit from the protective provisions and which will not. WPD considers that NSC

has not made out a compelling interest to acquire interests where it cannot be clear whether the protective provisions will apply or not. It considers that the burden should be on the undertaker and not WPD to provide clarity on this point.

- 4.4 WPD's acceptance of the protective provisions is on the understanding that an Asset Protection Agreement as a side agreement is entered in to between NSC and WPD. Such agreements are standard in DCOs where statutory undertakers' assets are being diverted and provide an additional layer of security that protects the undertaker from serious detriment to its network.
- 4.5 Following a request from Ardent on behalf of NSC WPD (through Osborne Clarke LLP) first provided draft protective provisions and a draft Asset Protection Agreement to Womble Bond Dickinson in November 2018. WBD have indicated that the protective provisions provided are acceptable (subject to the fact that points (a) and (b) above are not WPDs' standard terms and are not agreed) but has not confirmed that position in writing or agreement to conclude an Asset Protection Agreement.
- 4.6 WPD reserve its position on the protective provisions subject to resolving the outstanding conflict issues with the Connection Order as noted above.
- 4.7 At the present time therefore WPD's position is that the protective provisions do not adequately secure protection to ensure that there will be no serious detriment to its network.
- 4.8 A copy of WPD's requested protective provisions is at annexure 2 of this statement.

## **5. Telecoms**

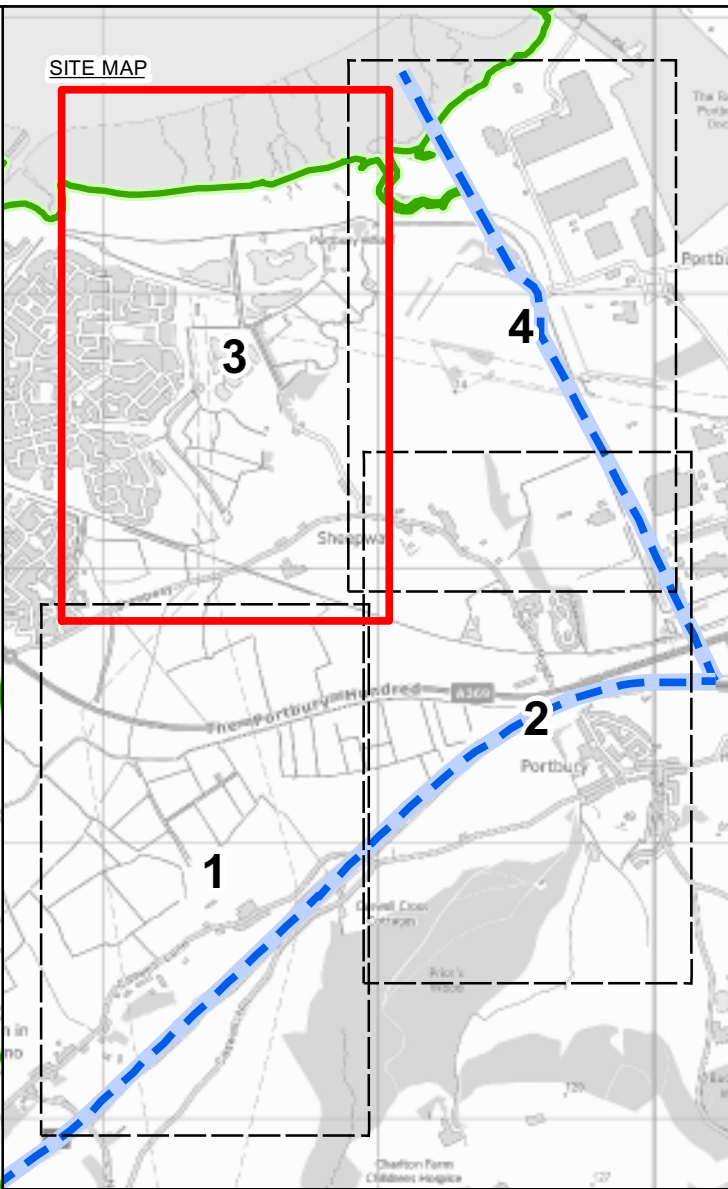
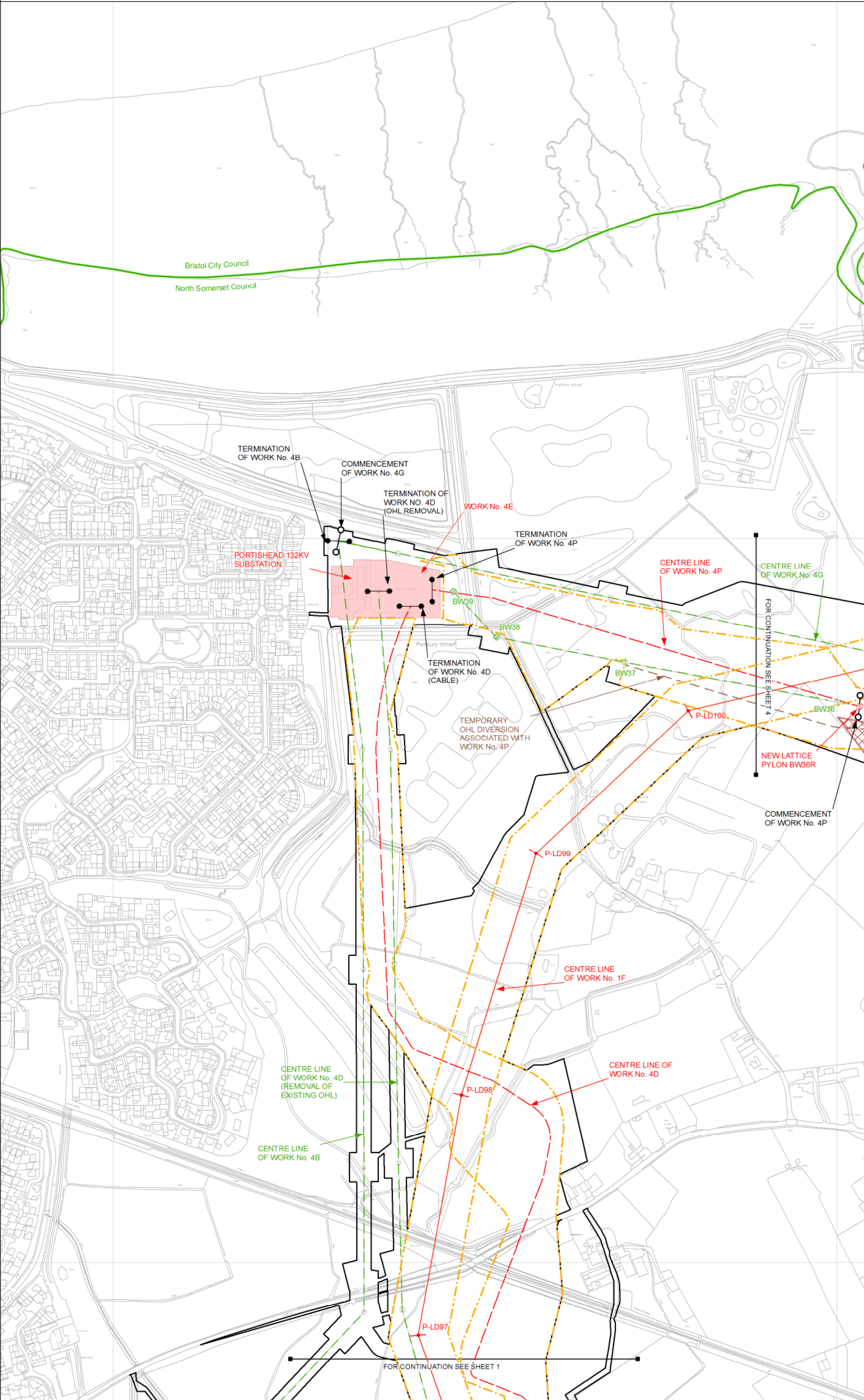
- 5.1 WPD's network is supported by fibre optic cables operated by WPD Telecoms Limited that support the electricity distribution network by managing data between operating assets. The telecoms network is therefore a key part of WPD's operating infrastructure and failure of the fibre optic would have a serious detriment on the distribution network.
- 5.2 WPD Telecoms is securing fibre optic networks in connection with the Connection Order works which need to be protected from the proposed development. As a communication network operator WPD Telecoms will also benefit from the protective provisions in Part 3 Schedule 16. However WPD also needs to ensure that WPD Telecoms network as supported by the Connection Order is not impacted by the Order.
- 5.3 WPD therefore require NSC to demonstrate that the Order will not impact WPD Telecoms rights provided under the Connection Order to confirm that there will be no serious detriment to its undertaking.

## **Annexure 1**

### **Plans**



NATIONAL GRID (HINKLEY POINT C CONNECTION PROJECT) ORDER  
WORKS PLANS  
(REGULATION 5(2)(j))  
SECTION F  
SHEET 3 OF 4  
NORTH SOMERSET COUNCIL & BRISTOL CITY COUNCIL

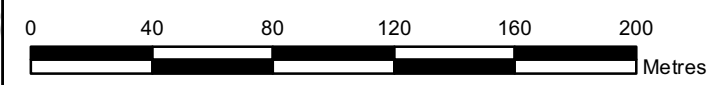


- Key**
- LATTICE PYLON (NEW)
  - LATTICE PYLON (REMOVED)
  - T PYLON
  - WOOD POLES
  - ORDER LIMITS
  - LOCAL AUTHORITY BOUNDARY
  - SECTION BOUNDARY
  - COMMENCEMENT OF WORK
  - TERMINATION OF WORK
  - LIMIT OF DEVIATION
  - LIMIT OF DEVIATION & ORDER LIMITS
  - TEMPORARY OHL DIVERSION
  - NEW UNDERGROUND CABLE
  - NEW OVERHEAD LINE
  - OVERHEAD LINE TO BE REMOVED
  - SITE COMPOUND
  - WORK AREA

**Notes**

This drawing is scaled at paper size A1, therefore any prints taken at smaller sizes will affect accuracy of the measurement units and should not be scaled against.

Coordinate System: British National Grid  
Units: Metre  
Projection: Transverse Mercator  
Datum: OSGB 1936  
Scale Factor: 0.9996  
X Centroid Coordinate: 348441  
Y Centroid Coordinate: 176775



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| ISSUE | DATE     | COMMENTS                             | DRAW | CHKD | APPD |
|-------|----------|--------------------------------------|------|------|------|
| B     | FEB 2016 | UPDATED TO REFLECT THE ORDER AS MADE | JC   | LD   | JB   |
| A     | MAR 2015 | FIRST ISSUE                          | JC   | LD   | JB   |

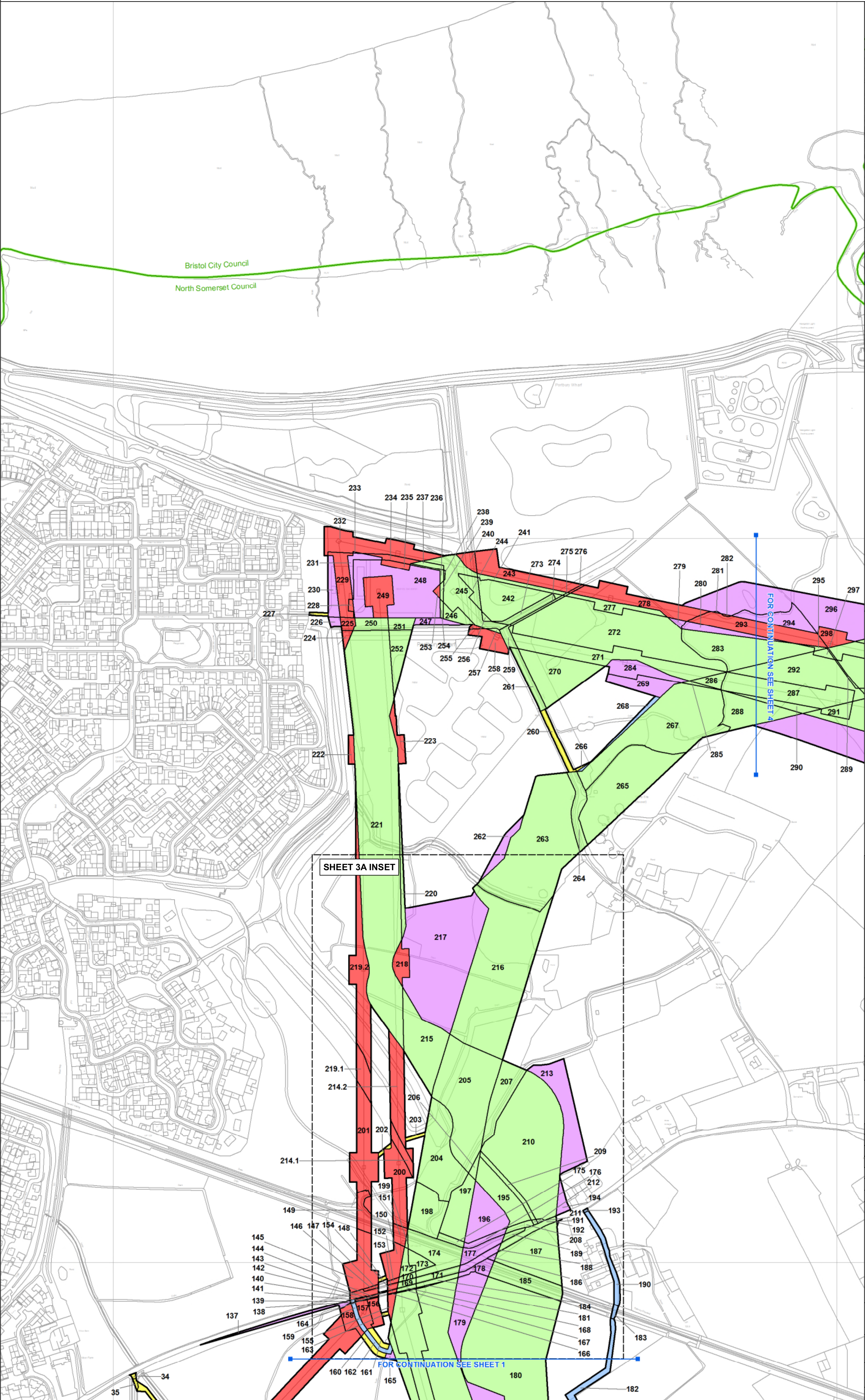
**Title**

NATIONAL GRID (HINKLEY POINT C  
CONNECTION PROJECT) ORDER  
WORKS PLANS  
(REGULATION 5(2)(j))  
SECTION F  
NORTH SOMERSET COUNCIL &  
BRISTOL CITY COUNCIL

|                   |                 |         |
|-------------------|-----------------|---------|
| nationalgrid      |                 |         |
| NG INVESTMENT No. | APPLICATION No. | GIS     |
| 20897             | EN020001        | A1      |
| NG DRAWING No.    | DRAWING No.     | SCALE   |
| 13/NG/0385        | F/WP/PS/3       | 1:2,500 |
| SHEET 3 OF 4      | N/A             | ISSUE   |
|                   |                 | B       |



NATIONAL GRID (HINKLEY POINT C CONNECTION PROJECT) ORDER  
LAND PLANS  
(REGULATION 5(2)(i)(ii) & (iii))  
SECTION F  
SHEET 3 OF 4  
NORTH SOMERSET COUNCIL & BRISTOL CITY COUNCIL





- Key:
- Limits of Land to be Acquired or used
  - Land subject to compulsory acquisition of all estates and interests
  - Land subject to temporary possession for construction, mitigation, access, etc
  - Land subject to compulsory acquisition of permanent new rights
  - Land subject to compulsory acquisition of permanent new rights – subsoil only
  - Land subject to compulsory acquisition of permanent new rights in subsoil and temporary possession at surface level
  - Structures in land subject to compulsory acquisition together with temporary possession at ground level
  - Structures in land subject to compulsory acquisition of all estates and interests together with compulsory acquisition of permanent new rights
  - Area of proposed permanent traffic regulation, but no compulsory acquisition

Colourings on the land plans are provided to assist interpretation. The provisions of the Order determine the nature of interests sought to be acquired.



The Portishead Branch Line  
(MetroWest Phase 1) Order 2019  
Plan Unit: Land Plan  
Scale: 1:500  
Date: 15 November 2019  
Author: Ardent Management

Scale: 1:500 (A1)

Drawn By: [Name]  
Checkd By: [Name]  
Rev: 72

Drawn By: [Name]  
Checkd By: [Name]  
Rev: 72

Drawn By: [Name]  
Checkd By: [Name]  
Rev: 72



**Annexure 2**  
**Protective Provisions**



## PART 7

### FOR THE PROTECTION OF WESTERN POWER DISTRIBUTION LIMITED (SOUTH WEST) PLC

#### **Application**

1. For the protection of Western Power Distribution Limited (South West) plc as referred to in this Part 7 of Schedule 16 the following provisions, unless otherwise agreed in writing between the undertaker and Western Power Distribution Limited (South West) plc, have effect.

#### **Interpretation**

2. In this Part of this Schedule—

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

“alternative rights” means all and any necessary legal easements, consents, or permissions required by WPD in order to permit or authorise a diversion;

“apparatus” means electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by WPD;

“diversion” means an alteration to the WPD network in order to enable or facilitate the authorised development;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

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

“specified work” means so much of any of the authorised development that is carried out within 6 metres of any apparatus;

“WPD” means Western Power Distribution (South West) plc (company number 02366894) whose registered office is at Avonbank, Feeder Road, Bristol, BS2 0TB;

“WPD network” means WPD’s distribution network operated pursuant to its distribution licence issued pursuant to section 6 of the Electricity Act 1989; and

for the avoidance of doubt, all other terms as defined in article 2 (interpretation) of this Order.

#### **Precedence of 1991 Act in respect of apparatus in streets**

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

#### **No acquisition or extinguishment except by agreement**

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

#### **Removal of apparatus**

5.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that WPD's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of

WPD to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation and access to it has been provided if necessary to the reasonable satisfaction of WPD in accordance with sub-paragraphs (2) to (11) .

(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, it must give to WPD 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 WPD reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraphs 5(2)(a), (b) and (c), afford to WPD the necessary facilities and rights for the construction of alternative apparatus in other land owned or controlled by the undertaker and subsequently for the maintenance of that apparatus.

- (a) If, for the purpose of executing any works, the undertaker requires to remove or divert any apparatus placed within the Order land, and alternative apparatus or any part of such alternative apparatus is to be constructed in land other than the Order land as a consequence of the removal or diversion of apparatus, then the undertaker shall use its reasonable endeavours to obtain alternative rights in other land in which the alternative apparatus is to be constructed.
- (b) Should the undertaker not be able to obtain the alternative rights required under sub-paragraph (a) then the undertaker and WPD shall use reasonable endeavours to agree a reasonably practicable and mutually agreeable alternative engineering solution which does not require alternative apparatus to be constructed in land other than Order land and does not require alternative rights.
- (c) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker and the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (a) and an alternative engineering solution cannot be agreed in accordance with sub-paragraph (b), WPD shall on receipt of written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to a requirement on WPD to use its compulsory purchase powers to this end unless WPD elects to do so.

(3) Any alternative apparatus required pursuant to sub-paragraph 5(2) must be constructed in such manner and in such line or situation as may be agreed between WPD and the undertaker or in default of agreement settled in accordance with paragraph 8.

(4) WPD must, after the alternative apparatus to be provided or constructed has been agreed or settled pursuant to paragraph 8, and after the grant to WPD of any such facilities and rights as are referred to in sub-paragraph 5(2), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(5) Regardless of anything in sub-paragraph 5(4), if the undertaker gives notice in writing to WPD 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 the undertaker, that work, instead of being executed by WPD, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of WPD.

(6) Nothing in sub-paragraph 5(5) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 600 millimetres of the apparatus.

(7) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to WPD 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 WPD or in default of agreement settled in accordance with paragraph 8.



(8) In settling those terms and conditions in respect of alternative apparatus to be constructed in the land of the undertaker, the expert must—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker; 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 apparatus constructed in the land for which the alternative apparatus is to be substituted.

(9) 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 expert less favourable on the whole to WPD 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 expert must make such provision for the payment of compensation by the undertaker to WPD as appears to the expert to be reasonable having regard to all the circumstances of the particular case.

(10) If in accordance with the provisions of this Part of this Schedule WPD require that alternative apparatus of better type, of greater capacity or of greater dimensions, or at a greater depth is necessary in substitution for existing apparatus which for WPD's network requirements is over and above what is necessary as a consequence of and for the purpose of the authorised development WPD must deduct the cost of such additional requirements from the amount payable by the undertaker pursuant to sub-paragraph 7(1).

(11) For the purposes of sub-paragraph 5(10) 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.

- (a) 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.

**6.—**(1) Not less than 28 days before the undertaker intends to start the execution of any specified work, the undertaker must submit to WPD a plan, section and description of the works to be executed. Any submission must note the time limits imposed on WPD under sub-paragraph 6(3).

(2) Subject to sub-paragraph 6(3) the undertaker must not commence any works to which sub-paragraph (1) applies until WPD has given written approval of the plan so submitted, and identified any reasonable requirements it has in relation to the carrying out of the works such approval not to be unreasonably withheld or delayed.

(3) If by the expiry of 21 days beginning with the date on which a plan, section and description under sub-paragraph 6(1) are submitted WPD has not advised the undertaker in writing of its approval or disapproval of the plans and any reasonable requirements for the alteration or otherwise for the protection of the apparatus, or for securing access to it, it shall be deemed to have approved the plans, sections or descriptions as submitted.

(4) The works referred to in sub-paragraph 6(1) must be executed only in accordance with the plan, section and description submitted under sub-paragraph 6(1) and in accordance with any reasonable requirements as may be notified in accordance with sub-paragraph 6(2) by WPD and WPD is entitled to watch and inspect the execution of those works.

(5) At all times when carrying out any works authorised under the Order the undertaker must comply with WPD's *Avoidance of Danger from Electricity Overhead Lines and Underground Cables* (2014), the Energy Network Association's *A Guide to the Safe Use of Mechanical Plant in the Vicinity of Electricity Overhead Lines* (undated), the Health and Safety Executive's *GS6 Avoiding Danger from Overhead Power Lines* and the Health and Safety Executive's *HSG47 Avoiding Danger from Underground Services (Third Addition)* (2014) as the same may be replaced from time to time.

(6) If WPD, in accordance with sub-paragraph 6(2) 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 subject to sub-paragraph 6(3), paragraphs 6(1) to (5) apply as if the removal of the apparatus had been required by the undertaker under sub-paragraph 5(2).

(7) Nothing in this paragraph 6 precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(8) The undertaker is not required to comply with sub-paragraph 6(1) in a case of emergency but in that case it must give to WPD 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 6(2) in so far as is reasonably practicable in the circumstances.

### **Expenses and costs**

7.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to WPD the proper and reasonable expenses reasonably incurred by WPD in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any alternative apparatus arising as a result of the powers conferred upon the undertaker pursuant to this Order.

(2) Subject to sub-paragraphs 7(3) and 7(3), if by reason or in consequence of the construction of any specified work, 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 WPD the undertaker is to—

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

(3) Nothing in sub-paragraph 7(2) 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 WPD, its officers, servants, contractors or agents.

(4) WPD 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, is to have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(5) WPD shall not be liable to the undertaker for any losses or costs incurred by the undertaker resulting from delays to the authorised development as a result of its failure to undertake works to deliver any alternative apparatus.

### **Expert determination**

8.—(1) Article [58] (*arbitration*) applies to any difference as to the legal interpretation of this Schedule and as provided for in sub-paragraph 8(7).

(2) Save as provided for in sub-paragraph 8(1) or sub-paragraph 8(7) any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use reasonable endeavours to do so within 14 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.



(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 14 days of receipt of the submission;
- (c) issue a decision within 28 days of receipt of the submissions under sub-paragraph 8(5)(b); and
- (d) give reasons for the decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party; and
- (e) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article [58].