



**DRAFT DEVELOPMENT CONSENT ORDER V2 (CLEAN)**

**FOR THE DEVELOPMENT CONSENT ORDER  
APPLICATION FOR THE ALTERATION AND  
CONSTRUCTION OF HAZARDOUS WASTE AND LOW  
LEVEL RADIOACTIVE WASTE FACILITIES AT THE EAST  
NORTHANTS RESOURCE MANAGEMENT FACILITY,  
STAMFORD ROAD, NORTHAMPTONSHIRE**

***PINS project reference: WS010005***

**PINS document reference: 3.1**

**April 2022**



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**202\* No.[\*\*]**

**INFRASTRUCTURE PLANNING**

**The East Northants Resource Management Facility Order 20\*\***

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

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

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An application has been made to the Infrastructure Planning Commission, in accordance with the Infrastructure Planning (Applications and Prescribed Forms and Procedure) Regulations 2009(a), 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 of Part 6 of the 2008 Act(b) and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010(c).

The single appointed person, having examined the application with the documents that accompanied the application, and the representations made and not withdrawn, has, in accordance with section 83(1) of the 2008 Act, made a report and recommendation to the Secretary of State.

The Secretary of State, having considered the report and recommendation of the single appointed person, has decided to make an Order granting development consent for the development described in the application with modifications which in the opinion of the Secretary of State do not make any substantial change to the proposals comprised in the application.

The Secretary of State, in exercise of the powers conferred by sections 114, 115 and 120 of the Planning Act 2008, makes the following Order:

## PART 1

### PRELIMINARY

#### **Citation and commencement**

**1.** This Order may be cited as The East Northants Resource Management Facility Order 202X and shall come into force on the XXXX.

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(a) S.I. 2009/2264, amended by S.I. 2010/602, 2012/635, 2012/2732, 2013/522.  
(b) 2008 c. 29. The relevant provisions of the Planning Act 2008 are amended by Part 6 of Chapter 6 of, and Schedule 13 to, the Localism Act 2011 (c. 20). Following the abolition of the Infrastructure Commission on 1st April 2012 the single person appointed under section 61(2) of the 2008 Act is treated as if appointed by the Secretary of State by virtue of a direction given by the Secretary of State under section 129 of the Localism Act 2011.  
(c) S.I. 2010/103, amended by S.I. 2012/635.

## Interpretation

### 2.—(1) In this 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 1990 Act” means the Town and Country Planning Act 1990(d);

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

“access plan” means the plan certified as the access plan [Drawing Reference AU/KCW/07-21/22659] by the Secretary of State for the purposes of this Order;

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

“apparatus”, unless otherwise provided for, has the same meaning as in Part 3 of the 1991 Act;

“authorised development” means the development and associated development(f) described in Schedule 1 (authorised development) and any other development authorised by this Order;

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

“business days” means Monday to Friday excluding Bank Holidays and other public holidays or days on which general or local elections are held;

“commence” means the carrying out of a material operation (as defined in section 56(4) of the 1990 Act) excluding any operations relating to ecological enhancement works, planting, soil investigations or works in respect of land contamination, archaeological investigations, site clearance, diversion of services, receipt and erection of construction plant and equipment, the erection of temporary fencing, hoardings and erection of site compound buildings and “commence” and “commenced” shall be construed accordingly;

“DEC “ means the document certified as the DCO environmental commitments [Report Reference AU/KCW/LZH/1724/01DECD] by the Secretary of State for the purposes of this Order;

“electronic transmission” means a communication transmitted—

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

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

“environmental statement” means the document of that name submitted with the application for this Order;

“hazardous waste” means waste defined as such in regulation 6 of the Hazardous Waste (England and Wales) Regulations 2005(g) and as may be amended from time to time in these or equivalent regulations;

“hedgerow plan” means the plan certified as the hedgerow removal plan [Drawing Reference AU/KCW/07-21/22661] by the Secretary of State for the purposes of this Order;

“highway”, “highway authority” and “local highway authority” have the same meaning as in the 1980 Act and “highway” includes part of a highway;

“land plan” means the plan certified as the land plan [Drawing Reference AU/KCW/08-21/22752] by the Secretary of State for the purposes of this Order;

“limits of deviation” means the limits of deviation referred to in article 5 (limits of deviation) and shown on the works plan;

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(a) 1961 c.33.

(b) 1965 c.56.

(c) 1980 c.66.

(d) 1990 c.8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the 2008 Act. There are other amendments to the 1990 Act not relevant to this Order.

(e) 2008 c.29.

(f) For the definition of “associated development” see section 115 of the 2008 Act.

(g) S.I. 2005/894, amended by S.I. 2011/988. There are other amendments not relevant to this Order.

“low level waste” means radioactive waste comprising solid low level radioactive waste typically with a specific activity of up to 200Bq/g;

“maintain” includes maintain, inspect, repair, remove, clear, refurbish, reconstruct, demolish, replace and improve and “maintenance” shall be construed accordingly;

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

“original order” means the East Northamptonshire Resource Management Facility Order 2013 as amended by the East Northamptonshire Resource Management Facility (Amendment) Order 2018;

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

“relevant planning authority” means North Northamptonshire Council or the local planning authority for the area in which the land to which the relevant provision of this Order applies is situated from time to time;

“Requirements” means the requirements listed in Part 1 of Schedule 2 (Requirements), and any reference to a numbered Requirement is to be construed accordingly;

“restoration concept scheme” means the scheme certified as the restoration concept scheme [Drawing No. ENORTH 028] by the Secretary of State for the purposes of this Order;

“restoration profile contour plan” means the plan certified as the restoration profile contour plan [Drawing Reference AU/KCW/07-21/22660] by the Secretary of State for the purposes of this Order;

“the site” means land within the Order limits;

“statutory undertaker” means any statutory undertaker for the purposes of section 127(8), of the 2008 Act (statutory undertakers’ land) and includes a public communications provider as defined in section 151(1) of the Communications Act 2003(b);

“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;

“the undertaker” means Augean South Ltd (Company No. 04636789) or such other person as has the benefit of this Order under section 156(1) of the 2008 Act;

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

“Western Power Distribution” means Western Power Distribution (East Midlands) Plc (company number 02366923), whose registered office is at Avonbank, Feeder Road, Bristol, BS2 0TB

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

“the works plan” means the plan certified as the works plan [Drawing Reference AU/KCW/07-21/22655] by the Secretary of State for the purposes of this Order.

(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.

(3) References in this Order to numbered Requirements are to the Requirements with those numbers in Schedule 2.

(4) All distances, directions and lengths referred to in this Order are approximate.

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(a) 1981 c. 67. The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1992 (c.34). There are other amendments to section 7 which are not relevant to the Order.

(b) 2003 c. 21.

(5) Any reference in this Order to a work identified by the number of the work is to be construed as a reference to the work of that number authorised by Schedule 1 of this Order.

(6) The expression “includes” shall be construed without limitation.

## PART 2 PRINCIPAL POWERS

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

3. Subject to the provisions of this Order and to the Requirements in Schedule 2 (requirements) attached to this Order the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

### **Effect of the Order on the original order**

4.—(1) The undertaker must not start operational use of Work No. 1A, Work No. 2, or Work No.3 under this Order until notice has been served on the relevant planning authority that the undertaker is ceasing to operate those works under the original order.

(2) Upon service of the notice under paragraph (1) construction, operation and maintenance of Work No.1A, Work No.2 and Work No.3 will cease under the original order and from that date the authorised development will be constructed, operated and maintained in accordance with the provisions of this Order and the plans certified under article 18.

(3) From the date of the notice served under paragraph (1) the requirements in Schedule 2 of the original order will not apply in relation to the authorised development.

### **Limits of deviation**

5.—(1) In carrying out, maintaining or diverting the authorised development, the undertaker may—

- (a) construct any such work within the lateral limits of deviation or extents of work shown on the works plans for the relevant work;
- (b) in relation to Work No. 1 only deviate the works vertically upwards to a limit of 1 metre from the extents shown on the restored landform profile plan;
- (c) deviate the works vertically downwards to any extent as may be found necessary to construct the authorised development, subject to approval by the Environment Agency.

(2) The maximum limits of deviation specified in sub-paragraphs (1)(a), (1)(b) and (1)(c) do not apply where it is demonstrated by the undertaker to the relevant planning authority’s satisfaction, and certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or materially different environmental effects to those identified in the environmental statement.

### **Benefit of the Order**

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 the works for which the consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

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

7.—(1) The undertaker may, with the consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), includes references to the transferee or the lessee.

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

(4) The consent of the Secretary of State is not required under this article where the transfer or grant is made to Western Power Distribution for the purposes of undertaking Work No. 5.

### **Power to construct and maintain the authorised development**

**8.** The undertaker may at any time construct and maintain the authorised development, except to the extent that this Order or an agreement made under this Order, provides otherwise.

### **Maintenance of drainage works**

**9.—**(1) Nothing in this Order, or the construction, maintenance or operation of the authorised development under it, affects any responsibility for the maintenance of any works connected with the drainage of land, whether that responsibility is imposed or allocated by or under any enactment, or otherwise, unless otherwise agreed in writing between the undertaker and the person responsible.

(2) In this article “drainage” has the same meaning as in section 72 (interpretation) of the Land Drainage Act 1991(a).

## **PART 3**

### **SUPPLEMENTAL POWERS**

#### **Access to works**

**10.—**(1) The undertaker may, for the purposes of the authorised development and subject to paragraph (2), with the consent of the street authority (such consent not to be unreasonably withheld or delayed) following consultation by the street authority with the relevant planning authority, form and lay out such means of access (permanent or temporary) shown on the access plan or improve existing means of access, within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) The consent of the street authority is not required for the formulation, laying out or improvement of a new or existing means of access as shown on the access plan and described in Schedule 1 (authorised development).

#### **Discharge of water**

**11.—**(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 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.

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(a) 1991 c. 59.

(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) is to be determined as if it were a dispute under section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).

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

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

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

(5) The undertaker must 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.

(6) 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 Regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016.

(8) In this article—

- (a) “public drain” means a drain which belongs to the Homes and Communities Agency, the Environment Agency, an internal drainage board, a joint planning board, a local authority; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(b) have the same meaning as in that Act.

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

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

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

(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 or occupier of the land.

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

- (a) must, if so required on entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes or bore holes.

(4) No trial holes or bore holes may be made under this article—

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(a) 1991 c. 56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c. 37). There are other amendments to this section which are not relevant to this Order.

(b) 1991 c. 57.



- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority, but such consent must not be unreasonably withheld.

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

(6) If either a highway authority or a street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—

- (a) under paragraph (4)(a) in the case of a highway authority; or
- (b) under paragraph (4)(b) in the case of a street authority; that authority is deemed to have granted consent.

(7) 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.

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

**13.**—(1) The undertaker may fell or lop or cut back any roots of any tree or shrub near any part of the authorised development, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with 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, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(4) The undertaker may, for the purposes of carrying out the authorised development —

- (a) remove the important hedgerows as are within the Order limits and specified in Schedule 5 (removal of important hedgerows); and
- (b) without limitation on the scope of sub-paragraph (a), and with the consent of the local authority in whose area the hedgerow is located, remove or translocate any hedgerow within the Order limits.

(5) The grant of consent of a local authority in terms of paragraph (4)(b) must not be unreasonably withheld.

(6) If a local authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (4)(b) the local authority is deemed to have granted consent.

(7) In this article “hedgerow” and “important hedgerow” have the same meaning as in the Hedgerow Regulations 1997(a).

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(a) S.I. 1997/1160, as amended by S.I. 2003/2155, S.I. 2015/1997, S.I. 2015/377, S.I. 2009/1307 and S.I. 2013/755.

**PART 4**  
**MISCELLANEOUS AND GENERAL**

**Application of landlord and tenant law**

**14.**—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised 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) No enactment or rule of law regulating the rights and obligations of landlords and tenants is to prejudice the operation of any agreement to which this article applies.

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

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

**Protective Provisions**

**15.** Schedule 6 (protective provisions) of this Order has effect.

**Planning permission**

**16.** If planning permission is issued under the 1990 Act for development any part of which is within the Order limits following the publication of this Order that is—

- (a) not itself a nationally significant infrastructure project under the 2008 Act or part of such a project; and
- (b) required to complete or enable the construction, use or operation of the development authorised by this Order,

then the carrying out, use or operation of such development under the terms of the planning permission does not constitute a breach of the terms of this Order.

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

**17.**—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraphs (a), (c), (d), (e), (g) or (ga) of section 79(1) of that Act 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—

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(a) 1990 c. 43, amended by section 103 of the Clean Neighbourhoods and Environment Act 2005 (c. 16). There are other amendments to the Environmental Protection Act 1990 not relevant to this Order.

- (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 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(a); 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—
- (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and that the nuisance is attributable to the use of the authorised development which is being used in accordance with Requirement 5; or
  - (ii) is a consequence of the use of the authorised development 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 any 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.

### **Certification of plans etc**

**18.**—(1) The undertaker shall, as soon as practicable after the making of this Order, submit to the Secretary of State copies of the following plans and documents—

- (a) the access plan;
- (b) the hedgerow plan;
- (c) the works plan;
- (d) the restoration profile contour plan;
- (e) the restoration concept scheme; and
- (f) the DEC

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

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

### **Service of Notices**

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

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

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(a) 1974 c. 40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 (c. 25). There are other amendments to the Control of Pollution Act 1974 not relevant to this Order.

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

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

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

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

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

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

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

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

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

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation will be final and will take 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 will not be taken to exclude the employment of any method of service not expressly provided for by it.

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

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(a) 1978 c. 30.

## Arbitration

20. Any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled in arbitration, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

Signed by authority of the Secretary of State for Housing, Communities and Local Government

	<i>Name</i>
Address	Secretary of State for Housing, Communities and Local Government
Date	Department for Housing, Communities and Local Government

## SCHEDULES

### SCHEDULE 1

Articles 2 and 10

#### Authorised Development

A nationally significant infrastructure project as defined in section 14(1)(p) and 30 of the 2008 Act comprising—

**Work No.1** – A hazardous waste landfill facility for the disposal at a direct input rate of up to 150,000 tonnes per annum of predominantly hazardous waste together with small quantities of low level waste on the areas identified on the works plan comprising-

**Work No. 1A** – the construction and filling of a landfill including -

- (a) extraction and stockpiling of soil, clay and other suitable materials for engineering and restoration purposes and the exportation of some clay and other suitable materials,
- (b) all other associated engineering works to construct the landfill phases including a leachate collection system,
- (c) a landfill gas pump and gas flare,
- (d) surface water management and pumping systems including ponds as needed.

**Work No. 1B** – the construction and filling of a landfill including -

- (a) extraction and stockpiling of soil, clay and other suitable materials for engineering and restoration purposes and the exportation of some clay and other suitable materials,
- (b) all other associated engineering works to construct the landfill phases including a leachate collection system,
- (c) surface water management and pumping systems including ponds as needed.

**Work No.2** – A hazardous waste facility, namely the alteration of an existing waste treatment and recovery facility with an increase from the capacity of 200,000tpa in the original order to a capacity of 250,000tpa of predominantly hazardous wastes including -

- (a) a modular plant located on a concrete pad with associated surface water drainage and collection,
- (b) stocking areas, stocking bays with concrete walls and storage lagoons,
- (c) process, reagent, acid waste, water or other liquid storage tanks,
- (d) storage silos,
- (e) feed hoppers,

- (f) screens,
- (g) conveyors,
- (h) washing units,
- (i) separators,
- (j) mixing vessels,
- (k) sedimentation units,
- (l) bioremediation area,
- (m) a mobile crusher on a campaign basis,
- (n) open concrete lined settlement tanks,
- (o) a process control office and staff welfare facilities,
- (p) bunded fuel storage tanks and an electricity generator in an insulated container.

**Work No. 3** – the site reception area which will include -

- (a) site access and surfaced access road,
- (b) laboratory,
- (c) canteen, welfare facilities and offices,
- (d) car parking area,
- (e) weighbridge,
- (f) wheel washing facilities,
- (g) cess pit, and
- (h) bunded fuel storage tanks.

**Work No. 4** – the conversion of a culverted drain to an open watercourse with associated ecological works.

**Work No. 5** – the diversion of an overhead electricity cable.

And for the purposes of or in connection with the construction of Work No.1, Work No. 2 and Work No. 3 further development within the order limits consisting of—

- (a) monitoring bore holes;
- (b) leachate storage tanks;
- (c) bunded fuel storage tanks;
- (d) security cameras;
- (e) lighting;
- (f) internal site roads; and
- (g) hardstanding and bunding.

And for the purposes of or in connection with the construction of any of those works mentioned above further development within the order limits consisting of—

- (a) boundary fencing;
- (b) surface water collection ponds;
- (c) surface and foul water drainage;
- (d) the restoration of the site including the creation of footpaths and tracks for public access and retention of the car parking area; and
- (e) aftercare.

## SCHEDULE 2 Requirements

Articles 2, 3 and 4

### **Interpretation**

**1.** In this Schedule—

- “archaeological mitigation strategy” means the strategy at Appendix DEC A of the DEC;
- “boundary design principles” means the principles set out in Appendix DEC B of the DEC;
- “dust management scheme” means the scheme at Appendix DEC H of the DEC ;
- “ecological management, monitoring and aftercare plan” means the plan at Appendix DEC E of the DEC;
- “new works” means Work Nos. 1B, 4 and 5 for which development has not yet commenced at the date this Order takes effect.
- “noise and vibration management plan” means the plan at Appendix DEC L of the DEC;
- “operational site” means Work Nos. 1A, 2 and 3 which are consented under the original order.
- “phase” means the relevant phase referred to in the phasing sequence table.
- “phasing sequence table” means the table in Appendix DEC D of the DEC.
- “relevant parameters” means the parameters set out in Schedule 4 and in Appendix DEC C of the DEC;
- “soil handling and management scheme” means the scheme at Appendix DEC I of the DEC;
- “stockpile management scheme” means the scheme at Appendix DEC J of the DEC;
- “surface water management plan” means the plan at Appendix DEC F of the DEC;
- “traffic management plan” means the plan at Appendix DEC K of the DEC;

### **Time limits**

**2.** The authorised development must commence within 5 years of the coming into force of this Order.

### **Detailed design**

**3.—(1)** The authorised development must be carried out in accordance with the following approved plans and schemes listed in this Requirement (except for minor amendments as approved in writing by the relevant planning authority)—

- (a) the access plan;
- (b) the works plan;
- (c) the boundary design principles;
- (d) the restoration profile contour plan;
- (e) the surface water management plan;

(2) All parts of the authorised development comprised in Work No.2 and Work No. 3 must be constructed in accordance with the relevant parameters.

(3) Work No. 4 must be carried out in accordance with the details set out in the approved phasing, landscaping and restoration scheme submitted pursuant to Requirement 4.

(4) Development of the new works must not commence until a detailed drainage design in accordance with the surface water management plan has been submitted to and approved by the relevant planning authority following consultation with the Environment Agency.

## **Phasing, landscaping and restoration**

4.—(1) The authorised development must be carried out in accordance with the ecological management, monitoring and aftercare plan and the first stage of the phasing sequence table until the phasing, landscaping and restoration scheme is approved pursuant to sub paragraph (2).

(2) Within 24 months of the date of this Order the undertaker must submit a phasing, landscaping and restoration scheme in accordance with the principles set out in the ecological management, monitoring and aftercare plan and the restoration concept scheme to the relevant planning authority for approval following consultation with the Environment Agency.

(3) The phasing, landscaping and restoration scheme submitted must include details of phasing timescales and all proposed hard and soft landscaping works, ecological mitigation and enhancement measures including—

- (a) programme for the progressive filling, capping and phased restoration of the land including all landscaping, restoration and aftercare works which are in accordance with the phasing sequence table;
- (b) the location, number, species, size and planting density of any proposed planting;
- (c) how any invasive species will be managed;
- (d) soil testing and preparation, cultivation, importing of materials and other operations to maximise plant establishment;
- (e) details of proposed finished ground level contours in accordance with restored landform profile plan;
- (f) hard surfacing materials;
- (g) vehicular and pedestrian access, parking and circulation areas;
- (h) minor structures, such as furniture, refuse or other storage units, signs and lighting;
- (i) proposed and existing functional services above and below ground, including drainage, power and communications cables and pipelines, manholes and supports;
- (j) details of existing trees to be retained, with measures for their protection during the operations; and
- (k) the location of fuel storage and leachate tanks, extraction and monitoring facilities and any other infrastructure required for the aftercare works.

(4) Not later than 24 months from the date the phasing, landscaping and restoration scheme is approved pursuant to sub paragraph (1) and then again at least every two years from that date the undertaker must submit an updated phasing, landscaping and restoration scheme for approval and if necessary arrange a review meeting with the relevant planning authority to discuss any changes.

(5) Any tree or shrub planted as part of an approved landscaping and restoration scheme that, within a period of 10 years after planting, is removed, dies or becomes, in the opinion of the 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 relevant planning authority.

(6) The undertaker must restore the site by 31 December 2046 at the latest and all landscaping, restoration and aftercare works must be carried out for a minimum period of 20 years in accordance with the extant phasing, landscaping and restoration scheme in place at the time those works are being carried out and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

(7) The undertaker must provide public access to the authorised development in accordance with the details set out in the phasing, landscaping and restoration scheme.

## **Noise**

5. The authorised development must be carried out, operated and maintained in accordance with the noise and vibration management plan.



### **Stockpiles and soil**

6.—(1) The stockpiles must be managed in accordance with the details set out in the stockpile management scheme during the operation of the authorised development.

(2) The authorised development must be carried out in accordance with the environmental commitments set out in the dust management scheme and soil handling and management scheme, which includes a bird hazard management plan.

### **Disposal of waste**

7. No waste materials may be disposed of at the site other than hazardous wastes and low level waste together with suitable waste materials used for restoration purposes.

### **Quantities of waste**

8.—(1) The maximum quantities of waste that will be imported to the waste treatment and recovery facility per annum will be 250,000 tonnes and directly to the landfill will be 150,000 tonnes. The combined total amount of waste that can be imported to the site per annum shall not exceed 300,000 tonnes.

(2) The total quantity of low level waste disposed of at the site in the period up to 31 December 2046 (or its earlier closure) shall not exceed 448,000 tonnes in relation to Work No. 1A and 700,000 tonnes in relation to Work No. 1B.

### **Archaeological mitigation strategy**

9.—(1) The new works must be carried out, operated and maintained in accordance with the archaeological mitigation strategy

(2) Development of the new works must not commence until a written scheme of investigation has been submitted to and approved by the relevant planning authority and the investigation of the new works must be carried out in accordance with the approved written scheme of investigation.

### **Vehicular access**

10. The only vehicular access for the authorised development permitted is by way of the existing access to the site on to the Stamford Road shown on the access plan.

### **Control of vehicular movements**

11. Vehicular traffic associated with this authorised development must comply with the traffic management plan and be controlled as follows:

- (a) The undertaker must direct that all heavy goods vehicles entering and leaving the site except local collections shall travel direct to and from the A47 Trunk Road via Stamford Road north of the access point with no such vehicles travelling along Stamford Road towards King's Cliffe village south of the site access point.
- (b) Signs informing vehicle drivers of the requirements in paragraph (a) above shall be maintained in a visible location near to the egress on site.
- (c) Facilities shall be provided for site operatives within the site to observe the direction of vehicle entry to and exit from the site.

### **Site security**

12. The site security measures including the 1.8m palisade fence around the gas compound shall be maintained throughout the life of the operations at the site and beyond until the relevant planning authority, in consultation with the Environment Agency, determines and confirms in writing that the site security measures are no longer required and thereafter, any fences shall be removed within a period of 3 months.

### **Wheel cleaning**

13. Wheel cleaning facilities shall be provided on the site with appropriate drainage and thereafter maintained to the satisfaction of the relevant planning authority. The wheels of all vehicles leaving the site shall be cleansed of mud and other debris to prevent mud being carried onto the public highway. All vehicles transporting materials in connection with the authorised development shall be adequately sheeted to the satisfaction of the relevant planning authority.

### **Hours of operation**

14.—(1) Except as may otherwise be approved in writing by the relevant planning authority in temporary limited circumstances, all waste treatment, waste disposal, site preparation, levelling and restoration operations and any associated activities shall be restricted to between the hours of 07.00 and 18.00 on Mondays to Fridays and 07.00 and 13.00 on Saturdays, and subject to sub paragraph (2), no such operations may be carried out on the site on Sundays or public holidays.

(2) On a public holiday between the hours of 07.00 and 18.00, the following activities may be carried out—

- (a) the delivery of up to 20 loads a day of air pollution control residues;
- (b) the processing in the waste treatment and recovery facility (Work No.2) of those residues; and
- (c) the stockpiling and management of the processed residues within the waste treatment and recovery facility (Work No.2).

(3) For the purposes of this paragraph “public holiday” means Christmas Day, Good Friday or a day which under section 1 of the Banking and Financial Dealings Act 1971(a) is a bank holiday in England.

### **Gas flare structures**

15. Except in respect of minor amendments approved in writing by the relevant planning authority the height of—

- (a) the gas compound fencing shall not exceed 1.8m above existing ground level;
- (b) any building, plant, machinery, foundation, hardstanding, roadway, bunding, structure or erection in the nature of plant or machinery used in connection with the gas flare and pumping station shall not exceed 2m above existing ground level; and
- (c) any gas flare flue shall not exceed 10m above existing ground level.

### **Floodlighting**

16.—(1) All floodlighting including mobile units shall be directed towards the ground to minimise light spillage from the site and except for emergencies will only be operating within the hours of operation specified in Requirement 14.

(2) No additional permanent or temporary floodlighting shall be installed at the site, until after consultation with the relevant planning authority, and a written scheme for the management and mitigation of artificial light emissions has been submitted to and approved by the relevant planning authority.

### **Cessation of development**

17. The landfilling of waste and the operation of the waste treatment and recovery facility hereby permitted shall cease not later than 31 December 2046 by which time the land and the access shall be restored or reinstated in accordance with the Requirements of this Order.

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(a) 1971 c. 80.

## **Removal of plant and machinery**

18. Except to the extent required for aftercare purposes as approved pursuant to the phasing, landscaping and restoration scheme under Requirement 4, any building, plant, machinery, foundation, hardstanding, roadway, structure or erection in the nature of plant or machinery used in connection with the authorised development shall be removed from the site when they are respectively no longer required for the purpose for which they were installed and in any case not later than 31 December 2046 upon completion of the aftercare of the site.

## **Amendments to approved details**

19. Where any Requirement requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority, the approved details shall be taken to include any amendments that may subsequently be approved in writing by the relevant planning authority.

# **SCHEDULE 3**

Article 1 and Schedule 2

## **Procedure for approvals under requirements**

### **1. In this Schedule**

“discharging authority” means the relevant planning authority.

## **Applications made under Requirements**

2. This Schedule applies to an application made by the undertaker to a discharging authority for any consent, agreement or approval under a Requirement.

## **Decision Period**

3.—(1) The discharging authority must give written notice to the undertaker of its decision on the application before the end of the decision period.

(2) In sub-paragraph (1), “the decision period” means—

- (a) where the discharging authority does not give written notice under paragraph 4(1) or 4(2) requiring further information, the period of eight weeks from the later of
  - (i) the day immediately following the day on which the authority receives the application, and
  - (ii) the day on which the authority receives the fee payable under paragraph 5; or
- (b) where the discharging authority gives written notice under paragraph 4(1) or 4(2) requiring further information, the period of eight weeks from the day immediately following the day on which the undertaker provides the further information; or
- (c) such longer period as may be agreed in writing by the undertaker and the discharging authority.

## **Further Information**

4.—(1) If the discharging authority considers that it requires further information to make a decision on the application, it must give written notice to the undertaker specifying the further information required within seven business days from the day on which it receives the application.

(2) If the relevant Requirement requires that discharging authority to consult a person (referred to in this Schedule as a “consultee”) in relation to the application—

- (a) the discharging authority must consult the consultee within five business days from the day on which it receives the application;

- (b) if the consultee considers that it requires further information to respond to the consultation, it must so notify the discharging authority, specifying what further information is required, within 21 business days from the day on which the discharging authority received the application; and
- (c) within five business days from the day on which it receives any such notification from the consultee, the discharging authority must give written notice to the undertaker specifying the further information required by the consultee.

(3) If the discharging authority, after consultation with any consultee, considers that further information provided by the undertaker in response to a written notice from the discharging authority under sub-paragraph (1) or (2) is not sufficient to allow it to make a decision on the application, it must give written notice to the undertaker specifying what further information is still required, within seven business days from the day on which the undertaker provided the information.

(4) If the discharging authority does not give written notice in accordance with sub-paragraph (1), (2) or (3), it is not entitled to request any additional information in relation to the application without the prior agreement in writing of the undertaker.

### **Fees**

**5.**—(1) The undertaker must pay the authority a fee of £116, or such greater fee as for the time being is payable to the authority in respect of an application for the discharge of a condition imposed on a grant of planning permission, in respect of each application.

(2) The authority must refund the fee paid under sub-paragraph (1) to the undertaker, within the relevant period, if it—

- (a) rejects the application as being invalidly made;
- (b) fails to give the written notice required by paragraph 3(1).

(3) Sub-paragraph (2) does not apply if, within the relevant period, the undertaker agrees in writing that the authority may retain the fee paid and credit it in respect of a future application.

(4) In sub-paragraphs (2) and (3) “the relevant period” means the period of eight weeks from, as the case may be—

- (a) the day on which the authority rejects the application as being invalidly made;
- (b) the day after the day on which the decision period expires.

### **Appeal to the Secretary of State (procedure)**

**6.**—(1) The undertaker may appeal to the Secretary of State against—

- (a) the discharging authority’s refusal of an application;
- (b) the discharging authority’s grant subject to conditions of an application;
- (c) the discharging authority’s failure to give the written notice required by paragraph 3(1);
- (d) a written notice given by the discharging authority under paragraph 4(1), 4(2) or 4(3).

(2) In order to appeal, the undertaker must, within 10 business days from the relevant day, send the Secretary of State the following documents—

- (a) its grounds of appeal;
- (b) a copy of the application submitted to the authority;
- (c) any supporting documentation which it wishes to provide.

(3) In sub-paragraph (2), “the relevant day” means—

- (a) in the case of an appeal under sub-paragraph (1)(a) or (1)(b), the day on which the undertaker is notified by the authority of its decision;
- (b) in the case of an appeal under sub-paragraph (c), the day after the day on which the decision period expires;

(c) in the case of an appeal under sub-paragraph (1)(d), the day on which the undertaker receives the authority's notice.

(4) At the same time as it sends the documents mentioned in sub-paragraph (2) to the Secretary of State, the undertaker must send copies of those documents to the authority and any consultee.

(5) As soon as reasonably practicable following receipt of the documents mentioned in sub-paragraph (2), the Secretary of State must—

- (a) appoint a person (referred to in this Schedule as “the appointed person”) to determine the appeal on his behalf;
- (b) give written notice to the undertaker, the authority and any consultee of the appointment and of the appointed person's address for correspondence in relation to the appeal.

(6) Within 20 business days from the day on which the Secretary of State gives notice under sub-paragraph (5)(b), the authority and any consultee—

- (a) may submit written representations in respect of the appeal to the appointed person; and
- (b) must, at the same time, send a copy of any such representations to the undertaker and (if applicable) to each other.

(7) Within 10 business days from the last day on which representations are submitted to the appointed person under sub-paragraph (6), any party—

- (a) may make further representations to the appointed person in response to the representations of another party; and
- (b) must, at the same time, send a copy of any such further representations to each other party.

#### **Appeal to the Secretary of State (powers of the appointed person)**

7.—(1) The appointed person may—

- (a) allow or dismiss the appeal;
- (b) reverse or vary any part of the authority's decision, irrespective of whether the appeal relates to that part;
- (c) make a decision on the application as if it had been made to the appointed person in the first instance.

(2) The appointed person—

- (a) if he considers that he requires further information to make a decision on the appeal, may by written notice require any party to provide such further information to him and to each other party by a specified date;
- (b) if he gives such a notice, must—
  - (i) at the same time send a copy of it to each other party, and
  - (ii) allow each party to make further representations in relation to any further information provided in response to the notice, within 10 business days from the day on which it is provided.

(3) The appointed person may waive or extend any time limit (including after it has expired) for the provision of representations or information in relation to an appeal.

#### **Appeal to the Secretary of State (supplementary)**

8.—(1) The decision of the appointed person on an appeal may not be challenged except by proceedings for judicial review.

(2) If the appointed person grants approval of an application, that approval is to be taken as if it were an approval granted by the authority in relation to the application.

(3) Subject to sub-paragraph (4), the undertaker must pay the reasonable costs of the appointed person incurred in deciding the appeal.

(4) On written application by the authority or the undertaker, the appointed person may make a direction as to the costs of the parties to the appeal and of the appointed person, including imposing an obligation on any party to pay all or part of such costs to the party which incurred them.

(5) In considering an application under sub-paragraph (4) the appointed person must have regard to the National Planning Practice Guidance: Advice on planning appeals and the award costs or any circular or guidance which may from time to time replace it.

## SCHEDULE 4

Article 2

### Design parameters

<i>(1)</i> <i>Component</i>	<i>(2)</i> <i>Maximum dimensions</i>
Any plant or buildings in Work No. 2	15m high
Any plant or buildings in Work No. 3	7.9m high
Any buildings in Work No. 3	36.5m x 10.5m

## SCHEDULE 5

Article 2 and Article 13

### Removal of important hedgerows

<i>(1)</i> <i>Location of hedgerow</i>	<i>(2)</i> <i>Work to be carried out</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
H02 shown on the hedgerow plan	Removal	Work No. 1B
H03 shown on the hedgerow plan	Removal	Work No.1B

## SCHEDULE 6

Article 2 and Article 15

### Protective Provisions

#### PART 1

#### For The Protection Of Electricity, Gas And Water Undertakers

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

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question 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(a), belonging to or maintained by that utility undertaker;
- (b) in that case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter within the meaning of Part 1 of the Gas Act 1986(b) for the purposes of gas supply; and
- (c) in the case of water undertaker, mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply.

and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

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

“plan” 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 the works to be executed; and

“utility undertaker” means—

- (d) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (e) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
- (f) a water undertaker within the meaning of the Water Industry Act 1991; and

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.

### **On street apparatus**

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

### **Removal of apparatus**

4.—(1) — If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that the utility undertaker’s apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (6).

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are

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(a) 1989 C. 29. The definition of “electricity plant” (in section 64) was amended by paragraphs 24 and 38(1) and (3) of Schedule 6 to the Utilities Act 2000 (c.27).

(b) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by sections 3(2) and 76 of, and paragraphs 1 and 4 of Schedule 6, and Schedule 8 to the Utilities Act 2000 (c. 27), sections 1459(1) and (5) and 197(9) of, and part 1 of Schedule 23 to, the Energy Act 2004 (c. 20) and S.I. 2011/2704.

mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 20 (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 20 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that the undertaker desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

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

5.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 20 (arbitration).

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

#### **Retained apparatus**

6.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 4(2), the undertaker must submit to the utility undertaker in question a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under subparagraph (1) and in accordance with such reasonable requirements as may be made in accordance with subparagraph (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 subparagraph (2) are to be made within a period of 21 days beginning with the date on which a plan under subparagraph (1) is submitted to it.

(4) If a utility undertaker, in accordance with subparagraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written



notice to the undertaker of that requirement, paragraphs 1 to 5 apply as if the removal of the apparatus had been required by the undertaker under paragraph 4(2).

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

(6) The undertaker is not required to comply with sub-paragraph (5) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances.

### **Expenses and costs**

**7.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker all expenses reasonably incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 4(2).

(2) The value of any apparatus removed under the provisions of this Part of this Schedule must be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 20 (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 the utility undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

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

**8.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 4(2) any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

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

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

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

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

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

### **Cooperation**

**9.**—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 4(2) or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 6, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the utility undertaker's undertaking and each utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

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

### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order grants development consent for, and authorises Augean South Limited to alter the existing facilities and construct new facilities for the recovery and disposal of hazardous waste and the disposal of low level waste at the East Northants Resource Management Facility, Stamford Road, Kings Cliffe, Northamptonshire. The Order also authorises further development within the Order limits and provides a defence in proceedings in respect of statutory nuisance. The Order imposes requirements in connection with the development for which it grants development consent.

A copy of the plans and documents referred to in this Order and certified in accordance with article 18 of this Order may be inspected free of charge during working hours at the offices of North Northamptonshire Council, One Angel Square, Northampton, NN1 1ED.