

**THE PLANNING ACT 2008**

**THE INFRASTRUCTURE PLANNING (APPLICATIONS: PRESCRIBED FORMS AND  
PROCEDURE) REGULATIONS 2009 REGULATION 5(2)(c)**

**THE PROPOSED EAST NORTANTS RESOURCE MANAGEMENT FACILITY ORDER 202\***

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**EXPLANATORY MEMORANDUM**

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## 1 Introduction

- 1.1 This memorandum accompanies an application for development consent (the **Application**) by Augean South Ltd (the **Applicant**) for a hazardous waste and low level radioactive waste landfill facility and a hazardous waste treatment facility. This memorandum explains the purpose and effect of each article of, and Schedule to, the draft East Northants Resource Management Facility Order 202\* (the **draft Order**), as required by Regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.
- 1.2 The wording used in the draft Order has been derived from the East Northamptonshire Resource Management Facility Order 2013 as amended by the East Northamptonshire Resource Management Facility (Amendment) Order 2018 (**Original Order**).
- 1.3 The Original Order provides consent for the existing facility (Existing **ENRMF**), which comprises of the following facilities, which are currently being constructed and operated pursuant to the Original Order:
- A hazardous waste landfill facility for the disposal at a direct input of up to 150,000 tonnes per annum of predominantly hazardous waste and limited quantities of low level radioactive waste (LLW) (Work No. 1 in the Original Order) (**Existing Landfill Facility**). Only some of the voids consented under the Original Order have been constructed and filled at the date of this Application and construction and filling will not be complete before the draft Order is granted and so the intention is for this facility to also be consented under the draft Order.
  - A soil treatment facility with a capacity of 200,000 tonnes per annum of contaminated materials comprising predominantly hazardous waste (Work No. 2 in the Original Order) (**Existing Waste Treatment and Recovery Facility**)
- Both of which qualified as nationally significant infrastructure projects exceeding the thresholds for hazardous waste under section 30(1) and 30(2) (a) and section 30(3) and section 30(4)(b) respectively of the Planning Act 2008 (**the 2008 Act**) respectively.
- 1.4 The Application includes a temporal extension, construction of new landfill void, and increased input rates for the Existing ENRMF as consented in the Original Order and described above.
- 1.5 The Application is seeking consent for new landfill void (**Proposed Western Extension**) and for an extension in area, waste input rate and timescales for the operation of the Existing Waste Treatment and Recovery Facility.
- 1.6 Given the need to create a continuous restoration profile for the Existing Landfill Facility and the Proposed Western Extension , this will require some new void to be created on top of and along the western boundary of the landfill void as consented for the Existing Landfill Facility by the Original Order (see Figure EM1 Stage 3 and paragraph 3.7 for more detail). The Applicant intends to operate the extended facility as one cohesive site, and as such the intention is that the draft Order will relate to both the Existing ENRMF and the Proposed Western Extension and will supersede the Original Order.
- 1.7 Additional articles to the Original Order have been included where necessary and in some cases, the draft Order draws from the drafting used in Orders for similar developments made under the 2008 Act and other Acts authorising development.
- 1.8 Because the intention is that the draft Order will supersede the Requirements of the Original Order, we have included a comparison table of the Requirements in the draft Order with the Requirements in the Original Order, which is attached at Schedule 1 to this memorandum.

## 2 Purpose of the draft Order

- 2.1 In overview, the purpose of the draft Order is to grant the Applicant development consent for a Nationally Significant Infrastructure Project (**NSIP**).
- 2.2 The Existing ENRMF receives wastes generated primarily in the centre, east and south of the UK. The Original Order requires use of the Existing ENRMF to cease by 2026, but the need for specialist facilities to serve these areas of the country will continue beyond the duration of the current consent. Therefore the Applicant is applying for a new development consent order for a temporal extension, new landfill void, and increased input rates for the construction and operation of the Existing ENRMF (**Proposed Development**).
- 2.3 The Proposed Development includes:
- The construction of new landfill void in the Proposed Western Extension for the continued disposal of the same range of predominantly hazardous wastes and a limited amount of low level radioactive waste (**LLW**) as deposited at the Existing ENRMF with a capacity of greater than 100,000 tonnes per annum (**tpa**) of hazardous waste which satisfies section 30(1) and section 30(2)(a) of the Act.
  - A proposal for a coherent landform for the restoration of the Existing Landfill Facility and the Proposed Western Extension resulting in the construction of new landfill void in the Existing Landfill Facility to connect with the Proposed Western Extension with a capacity of greater than 100,000 tonnes per annum (**tpa**) of hazardous waste which satisfies section 30(1) and section 30(2)(a) of the Act.
  - A total additional landfill void to be constructed of approximately 2.5 million cubic metres.
  - The winning and working of minerals in the Proposed Development in order to create the landfill void and provide extracted materials for use on site as well as the exportation of clay and overburden for use in engineering, restoration and general fill at other sites.
  - The temporary stockpiling of clay, overburden and soils for use in the construction of the engineered containment system at the site and restoration of the site.
  - The direct input of waste into the Existing Landfill Facility and the Proposed Western Extension will continue at a rate of up to 150,000 tpa.
  - An increase to the hazardous waste throughput of the Existing Waste Treatment and Recovery Facility from 200,000tpa to 250,000tpa which comprises an increase of 50,000tpa compared with the rate consented in the Original Order and the extension of the treatment area to the south while remaining within the Existing ENRMF footprint which satisfies section 30(3) and section 30(4)(b) of the Act.
  - A combined total waste importation rate limit to site for the Proposed Development of 300,000tpa which is an increase of 50,000tpa compared with the rate consented in the Original Order.
  - The LLW which will continue to be disposed of at the ENRMF and will be disposed of in the Proposed Western Extension will be limited to that which is at the lower end of the activity range and typically will have a level of radioactivity of up to 200 Bq/g.
  - The diversion of the overhead electricity cable that crosses the Proposed Western Extension to a trench which follows the route of the water pipes across the Proposed Western Extension and then follows the western margin of the site to the northern corner.

- The operational hours of the site will not change from those already consented in the Original Order.
  - Restoration of the whole site to generally domed profiles to create a coherent restoration landform.
  - Restoration of the site to improved biodiversity and nature conservation interest using the soils available at the site as well as suitable imported materials. The site will be restored to a mosaic structure of woodland with shrubby edges, flower meadow grassland, scattered trees, hedgerows and waterbodies.
  - Completion of the landfilling and restoration operations by December 2046 and removal of the Existing Waste Treatment and Recovery Facility.
  - Retention of infrastructure until 2046 and the retention of long term management infrastructure beyond this date.
- 2.4 The Applicant has had specific regard to paragraphs 1.2.1 and 2.2.1 of the National Policy Statement for Hazardous Waste. Paragraph 1.2.1 explains the effect of section 30 of the Act and the relevant thresholds that need to be complied with. Paragraph 2.2.1 confirms that *"proposals for hazardous waste facilities that might handle a relatively small proportion of low level radioactive waste alongside hazardous waste are within the scope of this NPS where those facilities are NSIPs."* The main purpose of both the Existing Landfill Facility and the Proposed Western Extension is for the disposal of **hazardous waste** and both these facilities will meet the threshold of 100,000tpa of hazardous waste disposal, excluding the LLW.
- 2.5 The Original Order limits the quantity of LLW to be disposed of at the Existing Landfill Facility in requirement 8 to ensure the main purpose of the facility for the disposal of hazardous waste is preserved. The draft order also includes an updated requirement 8 to ensure the Proposed Western Extension void space is preserved for predominantly hazardous waste and limits the amount of LLW that can be disposed of in that void.
- 2.6 A detailed explanation of the Proposed Development is set out in the chapters 5 to 9 of the Environmental Statement (Application Document Ref 5.2) which accompanies the Application.
- 2.7 The Proposed Development does not require any compulsory acquisition of land. All works will take place on land which the Applicant has a freehold or leasehold interest in or has an option over. Similarly no compulsory acquisition or suspension or extinguishment of rights of any other party is required in order to deliver the Proposed Development.
- 2.8 Western Power Distribution (East Midlands) Plc (WPD) is listed in Part 3 of the Book of Reference. Whilst WPD do not have any specific rights noted on the title for the land within the Order Limits. WPD has the benefit of a contractual wayleave and apparatus which will be diverted as part of the proposed development as described in Section 5.2 of the Environmental Statement (PINS document reference 5.2), Appendix ES5.1 (PINS document reference 5.4.5.1) and Work No.5 in the draft Order. Consultation was undertaken with WPD as part of the Scoping (Annex 1 of Appendix ES2.2 (PINS document reference 5.4.2.2) and pre-application consultation (Table 2 of Appendix CRP to the Consultation Report, PINS document reference 4.2.16) and has continued since (Appendix ES5.1 (PINS document reference 5.4.5.1)).
- 2.9 The Applicant is currently liaising with WPD with regard to granting the necessary easements over the Proposed Western Extension to facilitate the diversion. The Applicant intends to enter into all necessary agreements with WPD as soon as possible and in any event before the end of the examination.

- 2.10 There is a small area of land, which falls outside the Applicant's ownership which forms part of a naturally formed swallow hole drainage feature (shown as plot 11 on the Land Plan (PINS document reference 2.2)). The majority of the swallow hole drainage feature including the basal drainage point, is situated on land for which the Applicant has an option and is considered to be adequate to facilitate drainage from part of the Order Land. However, the entirety of the fenced perimeter of the swallow hole drainage feature has been included within the Order limits so that Article 11 of the draft Order applies to the drainage feature. No works are proposed in this area and no additional rights are sought as part of the Application.
- 2.11 Although no compulsory acquisition is proposed, the Book of Reference (PINS document reference 3.4) summarises details of Category 1, Category 2 and Category 3 persons for the purposes of sections 42(1)(d), 44, 56(2)(d) and 57 of the 2008 Act.
- 2.12 With respect to plot 3 in the Book of Reference which is noted to be unregistered land for the surface ownership, the Applicant confirms the following:
- 2.13 The Existing ENRMF Site was transferred by Bernard Charles Howard, Roy George Howard, Percival William Howard and Anthony Frederic Howard trading as Howard Farms to Atlantic Freeholds (No. 2) Limited (trading as Atlantic Waste) on 10 July 2003. The Atlantic Waste entity was then purchased by the Applicant in 2004 which included this land interest, and the acquisition completed on 15 December 2004. The area of land referred to appears to have been excluded from the Land Registry polygon for NN252039 in error as it was included on the TR1 for the transfer sent to the Land Registry.
- 2.14 The Applicant has been in occupation of the entirety of the Existing ENRMF Site since 2004 and has been operating it under the East Northamptonshire Resource Management Facility Order 2013 (as amended) for a period of 7 years and prior to that under relevant planning permissions for a period of 9 years. There is a boundary fence in place around the southern perimeter of the Existing ENRMF Site including plot 3, which has not been challenged and the adjacent landowners, Howard Farms Limited, were formally consulted on the red line boundary for the proposed development and made no comments.
- 2.15 For these reasons, the Applicant is confident it has sufficient control over plot 3 and will make an application to the Land Registry to correct the title plan for NN252039 to show the true extent of the land transferred to Atlantic Freeholds (No. 2) Limited in 2003 which is now in the Applicant's ownership. If the Applicant was not confident it had sufficient interest in the land, it would have applied for compulsory acquisition powers.

### **3 Construction and operation of the landfill**

3.1 The construction of a hazardous waste landfill facility can be broken down into the following stages:

- Creation of the void (excavation and engineering);
- Filling of the void (placement and covering of waste);
- Capping (engineering); and
- Restoration (soil movement and placement prior to planting).

All of these are construction activities, but are also linked to the operation of the facility to achieve the purpose set out in section 30(1)(b) "the final disposal of hazardous waste"

3.2 The Existing Landfill Facility comprises 11 phases of landfilling as shown on Figure ES5.1 (Application Document Ref. 5.3.5.1). Landfilling operations are complete in Phases 1 and 2 which are capped and partially restored.

3.3 Landfilling operations are completed in Phases 3, 4, 5 and the southern part of Phase 6. Phases 3, the northern part of Phases 4 and 5 and the southern part of Phase 6 are capped with the remaining areas of Phases 4 and 5 covered with temporary capping.

3.4 Currently landfilling operations are being carried out in the northern part of Phase 6, in Phase 10 and in Phase 7. Phase 6 and Phase 10 are shortly due to be capped and the construction of Phases 8 and 9 will commence during 2021.

3.5 Phase 11 will not be excavated and engineered and Phases 7, 8, 9 and 11 will not be completely filled and capped and restored until the last stages of the proposed development because of their interaction with the Proposed Western Extension (see Figure EM1 below).

3.6 A construction stage is not considered as a separate stage to the operation of the development for a hazardous waste landfill facility as the operations of extraction, construction of the engineered void, landfilling, construction of the engineered cap and restoration are sequential and take place concurrently in different phases of the site as the development proceeds.

3.7 Figure EM1 shows three stages of development of the central landfill area (i.e. where the Existing Landfill Facility and the Proposed Western Extension interact) for the Proposed Development. The figure is not drawn to scale and has been exaggerated to show more clearly in schematic form the features of each stage. The three stages show the location of the boundary between Works No 1A and Works No 1B identified in the draft Order and this Explanatory Memorandum.

- 3.8 **Stage 1:** This presents the current situation on the western boundary of the Existing Landfill Facility. The waste is being deposited in phases into voids that have been constructed within the order limits of the Original Order. The Proposed Western Extension currently comprises unexcavated arable fields. If the draft Order is granted for the Proposed Western Extension this schematic would be representative of the operations at the site prior to the commencement of the operations in the Proposed Western Extension.
- 3.9 **Stage 2:** This stage presents the first step in the creation of a new landfill void within the Proposed Western Extension. In order to landfill the Proposed Western Extension, it is necessary to construct the new landfill void by excavating clay, overburden and soils. Prior to landfilling the new void is lined with a low permeability engineered liner. Landfilling can then commence in the engineered void prepared in the Proposed Western Extension.
- 3.10 **Stage 3:** Due to the creation of the Proposed Western Extension landfill void, additional void space is created within the boundary of the Existing Landfill Facility in order that a continuous restored landform is created. This additional void space is formed from two areas of new fill at the western boundary of the Existing ENRMF:- one over the already consented waste deposition and a smaller area of void at the base of the landfill. The two areas of additional void are shown in a green in Stage 3 and would not be distinguishable in practice from the consented void. This continuous body of waste in the landfill will make the most efficient use of the area available for waste void and will result in the creation of an integrated and consistent restoration profile.

#### **Reason for including Existing Landfill Facility in application**

- 3.11 The Existing Landfill Facility is still in the process of being constructed and filled and work under the Original Order will continue until after the decision date.
- 3.12 The landfill facility consented under the Original Order will be subject to some physical changes as new void will be created on top of and along the western boundary of the landfill void. This change is illustrated in figure EM1.
- 3.13 As the Applicant is preparing new management plans for the Proposed Development as a cohesive site, which will supersede and update the plans approved under the Original Order, it is necessary to include the construction of the Existing Landfill Facility within this application and reapply for consent to construct the Existing Landfill Facility (Work No. 1A) alongside the Proposed Western Extension (Work No. 1B).
- 3.14 This will be beneficial to the Applicant in terms of operation, but also the relevant planning authority in terms of enforcement.

#### **Dealing with the interaction between development consent orders**

- 3.15 The requirements in the Original Order have been duplicated as far as necessary in the draft Order to secure all necessary mitigation. The table at Schedule 1 sets out each requirement in the Original Order and how equivalent mitigation has been secured in the draft Order, or if it is no longer necessary.
- 3.16 Article 4 of the draft Order then requires a notice to be served on the relevant planning authority notifying them that the Applicant will be implementing the draft Order. At which point the requirements in Schedule 2 of the Original Order are disapplied and cease to have effect pursuant to s120(5)(a) of the Act whereby "an order granting development consent may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order"..

From this point the whole site will be operated as a cohesive facility under the requirements in the draft Order.

#### 4 Nationally Significant Infrastructure Project

4.1 The draft Order will provide consent for the Existing Landfill Facility, the Proposed Western Extension and the increase in area, input rates and timescales for the operation of the Existing Waste Treatment and Recovery Facility. Schedule 1 to the draft Order contains a list of numbered works comprising the NSIP.

4.2 These works fall within the definition of an NSIP for the purposes of section 14(1)(p), 30(1) and 30(3) of the Act for the reasons set out below:

- **Work No. 1** is a hazardous waste landfill facility split into two parts:
  - **Work No. 1A**, the construction of the Existing Landfill Facility which was granted consent under the Original Order, subject to an increase in void shown in green in Figure EM1. This is a hazardous waste facility for the disposal of waste by landfill and has a capacity of more than 100,000 tpa which satisfies section 30(1) and section 30(2)(a).
  - **Work No. 1B**, the construction of the Proposed Western Extension which satisfies section 30(1) and section 30(2)(a) as it is a hazardous waste facility for the disposal of waste by landfill and has a capacity of over 100,000 tpa.

Both Work No. 1A and Work No. 1B will also accept a relatively small proportion of LLW alongside hazardous waste.

- **Work No. 2** - An alteration to the Existing Waste Treatment and Recovery Facility, which will increase the capacity for hazardous waste from 200,000 tpa consented under the Original Order to 250,000 tpa. This is an increase greater than 30,000 tonnes per year and as the facility **does not** facilitate the disposal of hazardous waste facility by landfill, it satisfies the threshold in section 30(4)(b) and therefore satisfies section 30(3).



## **5 Associated development**

- 5.1 Pursuant to section 115 of the 2008 Act, development consent can be granted for both the NSIP and associated development.
- 5.2 The Secretary of State for Communities and Local Government has issued guidance entitled Guidance on associated development applications for major infrastructure projects, (April 2013), which sets out the defining characteristics of, and illustrates the types of development that may qualify as associated development. In summary, associated development must not be an aim in itself; it must be subordinate to and necessary for the effective operation of the NSIP, and may include measures that support construction or operation of the NSIP, or measures that are necessary to mitigate the effects of the primary development. Associated development should generally be proportionate to the nature and scale of the NSIP. The guidance clarified that it is for an applicant to decide whether to include something that could be considered as associated development in an application for development consent or whether to apply for consent for it by other means.
- 5.3 Associated development forming part of the Proposed Development is proposed to include:
- **Work No. 3**, works to the existing site reception area which will include works on the existing site access and surfaced access road; laboratory; canteen, welfare facilities and offices; car parking area; weighbridge; wheel washing facilities; cess pit; and 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 along an underground route, and
  - additional works including monitoring boreholes; leachate storage tanks; bunded fuel storage tanks; security cameras; lighting; internal site roads; hardstanding and bunding; boundary fencing; surface water collection ponds; surface and foul water drainage; the restoration of the land including the creation of footpaths and tracks for public access and retention of the car parking area; and aftercare.

## The Draft Order

### 6 Preliminary Provisions

- 6.1 The preamble to the draft Order sets out some key legislative provisions and if made, will explain that an application under section 37 of the 2008 Act has been made to the Secretary of State for an order granting development consent and that the application has been examined by a single appointed person appointed by the Secretary of State pursuant to Chapter 3 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010. If made, the Order will go on to explain that the Secretary of State has considered the examining authority's report and recommendation, has taken into account the environmental information submitted with the application in accordance with regulation 3 of the 2017 EIA Regulations, and has had regard to the documents and matters referred to in section 104(2) of the 2008 Act (which include the National Policy Statements and a Local Impact Report that will be prepared by the relevant planning authority) in deciding to make the Order.

Articles 1 and 2 of the draft Order contain preliminary provisions.

*Article 1* (*Citation and commencement*) provides for the commencement and citation of the draft Order. It includes the date on which the draft Order comes into force, which may or may not be the date on which the draft Order is made.

*Article 2* (*Interpretation*) provides for the interpretation of the draft Order and sets out specific definitions relating to the Proposed Development and its associated development. The "authorised development" is defined as the development and the associated development, the components of which are listed in Schedule 1 of the draft Order.

The following definitions have been included due to the nature of the Proposed Development:

- a) "hazardous waste" means waste defined as such in regulation 6 of the Hazardous Waste (England and Wales) Regulations 2005 and as may be amended from time to time in these or equivalent regulations; and
- b) "low level waste" means radioactive waste comprising solid low level radioactive waste typically with a specific activity of up to 200Bq/g.

It should be noted that Schedule 2 also contains some further definitions of certain terms that relate specifically to the requirements, and Schedule 2 contains further definitions of certain terms that relate specifically to the procedure for discharge of requirements.

Article 2 (2) clarifies that any rights over land that are granted by the draft Order 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.

Article 2 (3) clarifies that references in the draft Order to numbered

requirements are to those requirements numbered in Schedule 2.

Article 2 (4) provides that all distances, directions and lengths referred to in the draft Order are approximate, which allows for some flexibility in the event that it transpires there will be marginal differences in any of the dimensions and ensures they are permitted under the terms of the draft Order. This approach has been adopted in the Wheelabrator Kemsley K3 Generating Station Order 2021.

Article 2 (5) clarifies that any reference to a work number in the draft Order is to be construed by reference to that work number as set out in Schedule 1.

Article 2 (6) provides that the term "includes" is non-limiting.

## 7 Operative Provisions

Articles 3 to 20 of the draft Order contain provisions for and relating to the Proposed Development, and miscellaneous and general provisions.

### **Part 2**

### **Principal Powers**

#### *Article 3*

*(Development consent etc. granted by the Order)* would grant development consent for the authorised development within the draft Order limits, thereby authorising the construction of the main development, associated development and ancillary works. The authorised development means the development described in Schedule 1 (*Authorised development*). This includes further works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement. Article 3 is based on the Model Provisions and follows the approach taken for the Original Order.

#### *Article 4*

*(Effect of the order on the original order)* The undertaker must serve a notice confirming that it is ceasing to operate the Existing ENRMF under the Original Order and is starting to construct, operate and maintain the Proposed Development under the draft Order. Work No. 1 (the Existing Landfill Facility and the Proposed Western Extension) must not be operated under the draft Order until such a notice has been served. A similar provision was included in the Original Order and also the Wheelabrator Kemsley K3 Generating Station Order 2021 (article 4), albeit these articles related to changing from operating a facility pursuant to a planning permission to operating a facility pursuant to a DCO.

Sub-paragraph (2) confirms that the authorised development must be constructed, operated and maintained in accordance with the provisions of the draft Order (ie all Articles and Requirements) and the plans certified under article 18.

Sub-paragraph (3) confirms that the requirements in Schedule 2 of the Original Order no longer apply to the Proposed Development from the date the notice is served. This provides both the undertaker and the relevant planning authority with certainty of which requirements apply to the Proposed Development.

*Article 5*

*(Limits of deviation)* would allow for lateral deviation within the limits shown on the Works plans for each separate Work.

Vertical deviation of Work No. 1 must not exceed 1 metre upwards from the ~~limits~~ grey contours shown on the ~~restored landform~~ restoration profile contour plan, but can be to any extent downwards as required to construct the Proposed Development, subject to the approval of the Environment Agency.

An element of flexibility in deviation is required so that any construction can respond to ground conditions when the works are carried out. It is sought to provide the necessary (but proportionate degree of) flexibility when constructing that part of the authorised development, reducing the risk that the project as approved cannot later be implemented for unforeseen engineering or geological reasons. The downward limits will be controlled through the environmental permits, so downward deviation is subject to approval by the Environment Agency.

Article 5 is based on the approach taken for the Tees Combined Cycle Power Plant Order 2019 (article 6) and the Southampton to London Pipeline Development Consent Order 2020 (article 6), but has been adapted to be suitable for a hazardous waste landfill facility.

*Article 6*

*(Benefit of the Order)* overrides section 156(1) of the 2008 Act (as permitted by section 156(2)) to give the benefit of the draft Order to the Applicant rather than anyone with an interest in the land. It would be impracticable for a variety of landowners to implement parts of the proposed development in an uncoordinated manner, which might be the case if section 156(1) were to remain.

The purpose of paragraph (2) is to clarify the exceptions where the provisions of the draft Order will self-evidently benefit others. Absent this provision, there would be a contradiction since strictly speaking only the Applicant could benefit from these works.

Article 6 is based on the approach taken for the Southampton to London Pipeline Development Consent Order 2020 (article 7) and only differs from this precedent article in a grammatical sense.

*Article 7*

*(Consent to transfer benefit of Order)* provides for the transfer of the whole or part of the benefit of the draft Order. The exercise of any transferred benefit or rights is subject to the same restrictions, liabilities and obligations as would apply under the Order if those benefits or rights were exercised by the undertaker. The consent of the Secretary of State is required for a transfer or grant, except where it is made to a specified company in respect of a particular work (for example for a particular utility diversion work).

This article is based on article 5 of the model provisions. It differs in that paragraph (4) allows a transfer or grant to Western Power Distribution to take place without the Secretary of State's consent in relation to Work No. 5, on the basis that it is appropriate for that company to be able to carry out those particular works.

The "undertaker" is narrowly defined in the draft Order, so this Article is required to ensure the undertaker is able to transfer the benefit of the draft Order to another company in the future if there was a desire to sell the Proposed Development or action an intragroup transfer.

*Article 8*                      *(Power to construct and maintain authorised project)* makes provision for the construction and maintenance of the authorised project and follows the Model Provisions.

This article was in the Original Order and has been modified to allow power to "construct" as well as maintain the authorised project.

*Article 9*                      *(Maintenance of drainage works)* makes it clear that any realignment of drainage works or other works to them that are carried out as part of the authorised development do not affect the existing allocation of responsibility for maintenance of those drainage works. Responsibility for maintenance of drainage works may sit with the Environment Agency, a lead local flood authority or a landowner. Precedent exists in article 4 of the A14 Cambridge to Huntingdon Improvement Order 2016 and article 5 of The A19/A184 Testo's Junction Alteration Order 2018.

**Part 3**                      ***Supplemental powers***

*Article 10*                      *(Access to works)* authorises accesses to and from public highways, with the approval of the relevant planning authority after consulting the highway authority. It therefore streamlines matters for the undertaker to require only one approval from the relevant authority. This Article broadly follows the approach taken in the Model Provisions, but more closely follows the approach taken in the Southampton to London Pipeline Development Consent Order 2020 (article 15), save that the deemed consent provisions have not been included within this Article as these were not deemed necessary.

This Article has been included to ensure the undertaker has the appropriate powers to construct and improve access to the Proposed Development. Although the access has already been constructed, this was done using the powers in the Original Order. Once the notice pursuant to Article 4(2) is served, those powers will no longer apply, so it is important the dDCO replicates all the powers relied upon to construct the Existing ENRMF. The power may also need to be relied upon in the future if improvements are required to the site access. This power is subject to the consent of the street authority and is therefore proportionate and reasonable.

*Article 11*

*(Discharge of water)* enables the undertaker to discharge water into any watercourse, public sewer or drain in connection with the construction and maintenance of the authorised project with the approval and superintendence (if provided) of the authority to which the watercourse, public sewer or drain belongs (such approval not to be unreasonably withheld) and subject to other conditions. This element of the Article follows the Model Provisions and was also included in the White Moss Landfill Development Consent Order 2015 (article 9).

This Article is required to ensure the undertaker has the necessary consent to discharge water in connection with the Proposed Development and that there is no impediment to the delivery of the Proposed Development.

*Article 12*

*(Authority to survey and investigate the land)* confers upon the undertaker a power to survey and investigate land, including the ability to make trial holes or boreholes, to use and leave apparatus on the land in question and to enter onto land. The Article also makes provision in relation to the payment of compensation and the notice period that must be given to owners and occupiers of land ahead of any surveys.

The Article follows the Model Provisions but with modifications which include monitoring of land, including any watercourses, groundwater, static water bodies or vegetation of the land, and making boreholes and excavations on land. To facilitate the construction and maintenance of the proposed development and to avoid or reduce its impacts, it is important that Augean has a range of powers available to survey and investigate land. The list of activities is also similar to those included and approved in other made DCOs, for example the Southampton to London Pipeline Development Consent Order 2020 and the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014. This Article differs slightly from these made DCOs by not including a wide list of materials from which samples may be taken and adding clarity that approval is deemed to have been given if no decision is notified within 28 days of such application.

In addition, the purpose for which a survey or investigation might be carried out also includes purposes required by the assessment carried out in the Environmental Statement for the authorised project.

As the Applicant is not applying for compulsory acquisition powers as part of the Application, the Applicant is relying on s.120(5)(a) of the 2008 Act to apply s.13 of the 1965 Act as "*an order ....may apply ....a statutory provision which relates to any matter for which provision may be made in the order*".

This Article has been included to provide the undertaker with all the necessary powers to carry out surveys on any land affected by the authorised development which are required by law. This in turn ensures the Proposed Development is deliverable.

*Article 13* (Felling or lopping of trees and removal of hedgerows) enables the undertaker to fell or lop trees and shrubs for the purposes of preventing obstruction or interference with the authorised project and danger to the authorised project. It also authorises the undertaker to remove any hedgerows as defined in the Hedgerow Regulations 1997 listed in Schedule 5 (removal of important hedgerows). Provision is included for the payment of compensation for loss and damage. The Article broadly follows the Model Provisions but more closely follows the approach in The Norfolk Vanguard Development Consent Order 2022 (article 35) save that, in this Article, provision is made for local authority approval to remove or translocate any hedgerow within the Order limits and this approval is deemed to have been given if no decision is notified within 28 days of such application.

This Article has been included to ensure the Proposed Development can be constructed and operated without interference from trees and shrubs in the vicinity of the development. The ability to fell and lop trees is limited to specific circumstances where the undertaker reasonably believes it is necessary to do so, so is proportionate.

The Article also provides the necessary consent to remove the hedgerows listed in Schedule 5, for which the undertaker would otherwise need consent pursuant to the Hedgerow Regulations 1997.

**Part 4** **Miscellaneous and General**

*Article 14* (Application of landlord and tenant law) overrides the application of landlord and tenant law in so far as it may prejudice the operation of any agreement for leasing the whole or part of the authorised project or the right to operate the same and any agreement for the construction, maintenance, use or operation of the authorised project or any part of it entered into by the undertaker. This is a Model Provision and mirrors the approach taken in the White Moss Landfill Development Consent Order 2015 (article 19).

This Article has been included in case a lease of the Proposed Development is granted in the future. It ensures the operation of the Proposed Development will not be prejudiced by the terms of separate legislative regimes, which regulate landlords and tenants.

*Article 15* (Protective provisions) gives effect to the protective provisions in Schedule 4 (Protective provisions).

*Article 16* (Planning permission) confirms that any planning permission issued subsequent to the draft Order will not constitute a breach of this Order. This is a standard article and mirrors the approach taken in the Southampton to London Pipeline Development Consent Order 2020 (article 40). It has been included to allow the undertaker to apply for future consents pursuant to the Town and Country Planning Act 1990 for other material operations within the Order Limits outwith the DCO without breaching the DCO.

- Article 17* (*Defence to proceedings in respect of statutory nuisance*) provides that no-one shall be able to bring statutory nuisance proceedings under the Environmental Protection Act 1990 in respect of various nuisances listed in section 79(1), if the nuisance is created in the course of carrying out or maintenance of the authorised project and for which notice has been given under section 60 or consent obtained under section 61 or 65 of the Control of Pollution Act 1974 or if the nuisance is unavoidable. It is not considered that any properties will be affected beyond statutory nuisance thresholds, as mitigation measures will be used to control relevant emissions. However, the Applicant considers that this Article should be included in the event that proceedings are brought under Section 82 of the Environmental Protection Act 1990. This approach follows the Model Provisions and was used in the Original Order (article 6).
- Section 158 of the 2008 Act confers statutory authority for the purposes of a defence in civil or criminal proceedings for nuisance. This Article provides a defence to proceedings brought in a magistrates' court under s.82(1) of the Environmental Protection Act 1990 in relation to certain nuisances set out in paragraph 79(1) of that Act.
- This Article provides a defence to those nuisances which may be of relevance to the authorised development, as set out in the Statutory Nuisance Statement **[APP-108]** accompanying the application.
- Article 18* (*Certification of plans etc*) requires the undertaker to submit copies of the documents, plans and sections referred to in the draft Order to the decision maker, for certification as true copies following the making of the draft Order. This is a Model Provision and has been included in the Norfolk Vanguard Development Consent Order 2022 (article 37).
- Article 19* (*Service of notices*) This article governs the proper service of notices required to be given under the Order. In particular it allows service by email with the consent of the recipient, and deals with the situation of service on an unknown landowner. This article was not included in the model provisions but is a sensible addition that has been included in multiple previous orders, including the recent Southampton to London Pipeline Development Consent Order 2020 (article 46). It provides certainty to all parties on the rules that apply to the service of any notices pursuant to the Order, for example the notice required pursuant to Article 4(2).
- Article 20* (*Arbitration*) makes provision for any dispute arising under the provisions of the draft Order and, unless otherwise provided for, to be settled by arbitration. These will include circumstances where the agreement of the relevant local authority is needed but cannot be reached. It will not apply to any appeals against approval or non-determination of requirements. The concept derives from the Model Provisions.



*Schedule 1* (Authorised Development) Schedule 1 specifies the authorised development comprising the scheduled works.

*Schedule 2* (Requirements)

Requirement 2 (Time limits) specifies the time limit for commencing the authorised development as 5 years from the date of the draft Order, as provided for in Regulation 3 of the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010.

Requirement 3 (Detailed design) lists the plans and schemes submitted with the application which contain approved details which must be complied with and are not secured under another requirement

Sub paragraph 2 requires the finished ground level contours submitted pursuant to Requirement 4(3) to lie between the grey contours and the green contours shown on the restoration profile contour plan. The grey contours show the profile required if a 7 metre water pipe standoff is provided (as proposed in the original application) and the green contours show the profile required if a 30 metre water pipe standoff is provided (worst case in terms of potential landscape and visual effects). As the water pipe standoff will be finalised post consent, this part of the requirement sets the limits within which the final profile must be designed. This sub paragraph is subject to the terms of article 5 (limits of deviation).

~~Sub-paragraph 2~~ Sub paragraph 3 requires all authorised development comprised in the waste treatment and recovery facility (Work No. 2) and the site reception area (Work No. 3) to be in accordance with the relevant parameters set out in Schedule 4.

Sub paragraph ~~3-4~~ requires the conversion of the culverted drain to an open watercourse and associated ecological works (Work No. 4) Work No. 4 to be carried out in accordance with the details approved pursuant to Requirement 4.

Sub paragraph ~~4-5~~ secures the submission of the detailed drainage design to the relevant planning authority (who are also the local lead flood authority) following consultation with the Environment Agency, which must be in accordance with the surface water management plan (Application Document Ref. 6.5 Appendix DEC F).

Requirement 4 (Phasing, landscaping and restoration) secures the submission of a written phasing, landscaping and restoration scheme in accordance with the principles in the ecological management, monitoring and aftercare plan (Application Document Ref. 6.5 Appendix DEC E) and the restoration concept scheme (Application Document Ref. 2.8).

Prior to the approval of the phasing, landscaping and restoration scheme sub-paragraph (1) confirms that the authorised development must be carried out in accordance with the ecological management, monitoring and aftercare plan (Application Document Ref. 6.5 Appendix DEC E) and the first stage of the phasing sequence table.

(Application Document Ref. 6.5 Appendix DEC D) This ensures the commitments set out in those certified documents are secured and must be complied with until the phasing, landscaping and restoration scheme is approved.

Due to the iterative nature of the restoration process and because species and mixes of planting may need to be altered if certain species are not performing well on the Site, sub paragraph (4) includes a requirement to submit an updated phasing, landscaping and restoration scheme to the relevant planning authority at least every two years from the date the first version of the scheme is approved and if necessary to arrange a meeting with the relevant planning authority to discuss any changes.

Sub paragraph (5) requires any planting that dies or is removed within 10 years of planting to be replaced.

Sub paragraph (6) requires the site to be restored by 31 December 2046 at the latest and that all landscaping and restoration is carried out for a minimum period of 20 years in accordance with the approved landscaping and restoration scheme and to a reasonable standard in line with British Standards or other codes of good practice.

Sub-paragraph (7) secures the commitment to provide public access to the Proposed Development in accordance with the details set out in the phasing, landscaping and restoration scheme. The scheme will be developed in consultation with the relevant planning authority to ensure there is a balance between allowing habitats to become sufficiently established and allowing public access to restored areas.

Requirement 5 (Noise) secures compliance with the noise and vibration management plan (Application Document Ref 6.5 Appendix DEC L)

Requirement 6 (Stockpiles and soil) secures management of the stockpiles in accordance with the stockpile management scheme (Application Document Ref 6.5 Appendix DEC J) and compliance with the dust management scheme (Application Document Ref 6.5 Appendix DEC H) and soil handling and management scheme (Application Document Ref 6.5 Appendix DEC I).

Requirement 7 (Disposal of waste) restricts the types of waste which may be disposed of at the site to hazardous waste and low level waste.

Requirement 8 (Quantities of waste) restricts the rates at which waste may be imported to the site. This Requirement also restricts the quantity of LLW which can be disposed of at the site.

There is an upper limit on the quantity of LLW which can be deposited in the Existing ENRMF which is specified as 448,000tonnes in the Original Order. This was included in the Original Order to ensure that the use of the proposed void space for LLW disposal did not compromise the provision for hazardous waste. In reality the quantity

of LLW accepted at the site to date has been much lower than the cap. This limit will be retained for the Existing Landfill Facility in Requirement 8.

This tonnage limit was determined based on 20% of the landfill void into which LLW could be deposited. In a similar manner, the maximum quantity of LLW which will be deposited in the Proposed Western Extension and new void in the Existing Landfill Facility which equates to approximately 2.5 million cubic metres will be limited to 20% of the total proposed new void, which is 500,000 cubic metres. Based on an assumed density for the LLW deposited at the site of 1.4 tonnes of LLW per cubic metre this gives a tonnage limit for LLW in the Proposed Western Extension of 700,000 tonnes.

Requirement 9 (*Archaeological Mitigation Strategy*) secures compliance with the archaeological mitigation strategy (Application Document Ref 6.5 Appendix DEC A) for the new landfill void in the Proposed Western Extension and requires the submission of a written scheme of investigation for approval before works start on the new landfill void.

Requirement 10 (*Vehicular access*) restricts vehicular access to the site.

Requirement 11 (*Control of vehicular movements*) requires compliance with the traffic management plan (Application Document Ref 6.5 Appendix DEC K) and restricts the vehicular movements to and from the site.

Requirement 12 (*Site security*) secures the necessary site security measures.

Requirement 13 (*Wheel cleaning*) secures on site wheel cleaning facilities.

Requirement 14 (*Hours of operation*) restricts the hours of operation to 07.00 and 18.00 on Mondays to Fridays and 07.00 and 13.00 on Saturdays and restricts the operations on public holidays.

Requirement 15 (*Gas flare structures*) secures a 1.8m fence around the gas flare and restricts the height of the gas flare and any associated buildings, plant or machinery.

Requirement 16 (*Floodlighting*) requires all floodlighting to be pointed towards the ground to minimise light spillage and prohibits any additional lighting to be installed without the approval of a written scheme of management and mitigation.

Requirement 17 (*Cessation of development*) requires the acceptance of waste into the landfill facility (Work No. 1) and operation of the waste treatment and recovery facility (Work No. 2) to cease by 31 December 2046.

Requirement 18 (Removal of plant and machinery) requires the removal of all plant and machinery once the operation of the facility ceases.

Requirement 19 (Water pipe standoff) requires the distance of the water pipe standoff to be agreed with the relevant planning authority in consultation with Anglian Water before development of phases 18, 19 and 20 (the phases that lie adjacent to the water pipes) can be commenced.

Sub paragraph 2 secures a range of 7 metres to 30 metres for the standoff, 7 metres being the Applicant's preferred and originally proposed distance and 30 metres being a distance that is 10 metres larger than the 20 metres standoffs proposed by Anglian Water for other major schemes.

Sub paragraph 3 makes it clear that the matter should be settled by arbitration if an agreement cannot be reached on the water pipe standoff distances.

~~Requirement 19~~ Requirement 20 (Amendments to approved details) allows subsequent amendments to approved details.

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| <i>Schedule 3</i> | <i>(Procedure for approvals under requirements)</i> sets out the procedure for applying to a discharging authority for any consent, agreement or approval under a Requirement.  |
| <i>Schedule 4</i> | <i>(Design parameters)</i> lists the maximum parameters for the authorised development forming part of Work No. 2 and Work No. 3.   |
| <i>Schedule 5</i> | <i>(Removal of important hedgerows)</i> lists the two important hedgerows that need to be removed to facilitate the Proposed Development.   |
| <i>Schedule 6</i> | <i>(Protective provisions)</i> sets out protective provisions for statutory undertakers affected by the authorised development. The protective provisions are for the benefit of Western Power Distribution, Anglian Water and National Grid. |

## SCHEDULE 1

### Comparison table of the Requirements of the Draft Order with the Requirements in the Original Order

Original Req No	Requirement in Original Order	Included in draft Order	Reason
2	Time Limits	Y Requirement 2 Time limits	The time limit for implementation will be five years from the grant of the Order
3	Commencement	N	Replaced by Article 4, so no longer needed
4	Detailed approval	Y Requirement 3 Detailed design	The details secured in the approved plans and schemes listed in the Original Order will be superseded and replaced with the revised plans and schemes listed in this requirement
5	Provision of landscaping and restoration	Y Requirement 4 Phasing, landscaping and restoration	This requirement has been replicated, but amended to require a phasing, landscaping and restoration scheme to be submitted for approval within 24 months of the date the DCO is granted and for an updated scheme to be submitted at least every two years for approval by the relevant planning authority
6	Implementation and maintenance of landscaping and restoration works	Y Requirement 4 Phasing, landscaping and restoration	This requirement has been incorporated into requirement 4 of the draft Order
7	Ecological management plan and aftercare	N	An ecological management, monitoring and aftercare plan (Document Application Ref. 6.5 Appendix DEC E) has been submitted as part of the application so this requirement is no longer needed
8	Stockpiles	Y Requirement 6 Stockpiles and soil	This requirement has been replicated in the draft Order, but the principles will be set out in a standalone document called the stockpile management scheme (Document Application Ref. 6.5 Appendix DEC J). The new requirement also secures compliance with the dust management scheme (Document Application Ref. 6.5 Appendix DEC H) and soil handling and management scheme (Document Application Ref. 6.5 Appendix DEC I)

9	Disposal of waste	Y Requirement 7 Disposal of waste	This requirement has been replicated in the draft Order
10	Quantities of waste	Y Requirement 8 Quantities of waste	This requirement has been replicated in the draft Order, but the quantities have been updated to reflect the capacity of the extended site. The 20% limit on LLW included in the Original Order has been applied to the Proposed Western Extension as well.
11	Vehicular access	Y Requirement 10 Vehicular access	This requirement has been replicated in the draft Order and also secures compliance with the traffic management plan
12	Control of vehicular movements	Y Requirement 11 Control of vehicular movements	This requirement has been replicated in the draft Order
13	Traffic management	N	The Existing ENRMF has not caused an unacceptable impact on the public highway and the extension to the site is not expected to significantly increase traffic movements, so this requirement to keep impacts under review is no longer necessary . However, requirement 11 does secure compliance with the traffic management plan (Document Application Ref. 6.5 Appendix DEC K) .
14	Site security	Y Requirement 12 Site security	This requirement has been replicated in the draft Order.
15	Wheel cleaning	Y Requirement 13 Wheel cleaning	This requirement has been replicated in the draft Order.
16	Hours of operation	Y Requirement 14 Hours of operation	This requirement has been replicated in the draft Order.  In sub-paragraph (3)(a) of requirement 14 an increase from 'up to 10 loads a day' of air pollution control residues on bank holidays to 'up to 20 loads a day' is included. This increase is needed as the numbers of facilities which produce APCR which is managed at the site have increased since the previous application was made. Each facility operates 7 days a week and has the capacity to store the APCR which continues to be generated

			over normal weekends but not where these extend into extra bank holidays.
17	Gas flare structures	Y Requirement 15 Gas flare structures	This requirement has been replicated in the draft Order.
18	Floodlighting	Y Requirement 16 Floodlighting	This requirement has been replicated in the draft Order.
19	Monitoring reports	N	This is not deemed necessary as the monitoring requirements including reporting periods are specified in the Environmental Permits for the site. Monitoring data is received and reviewed by the Environment Agency.
20	Display order on site	N	This was a condition in the original planning permission granted under the Town and Country Planning Act 1990 and was therefore included in the Original Order. It is no longer considered necessary as copies of all granted development consent orders can be reviewed readily on the internet.
21	Information on waste	N	There is a requirement in the Environmental Permits for the site to provide regular returns to the Environment Agency on the types and quantities of waste received at the site.  This does not need to be duplicated in the draft Order.
22	Cessation of development	Y Requirement 17 Cessation of development	This requirement has been replicated in the draft Order, but the timescales have been extended.
23	Review of void consumption	N	It is expected the landfill will be filled by the cessation date, so this is not deemed necessary.
24	Removal of plant and machinery	Y Requirement 18 Removal of plant and machinery	This requirement has been replicated in the draft Order.
25	Requirement of written approval	N	This is now covered in Schedule 3 (Procedure for approvals under requirements).
26	Amendments to approved details	Y Requirement <del>19</del> <a href="#">20</a> Amendments to	This requirement has been replicated in the draft Order.

		approved details	
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**New Requirements in the Draft Order not included in the Requirements in the Original Order**

Req No	Requirement	Reason
5	Noise	This requirement secures compliance with the noise and vibration management plan (Document Application Ref. 6.5 Appendix DEC L) submitted as part of the application.
9	Archaeological mitigation strategy	This requirement secures compliance with the archaeological mitigation strategy (Document Application Ref. 6.5 Appendix DEC A) and requires a written scheme of investigation to be submitted and approved by the relevant planning authority before any development may commence in relation to the Proposed Western Extension.
<a href="#">19</a>	<a href="#">Water pipe standoffs</a>	<a href="#">This requirement secures final details for the water pipe standoffs, which must be between 7 and 30 metres and requires the final distance to be submitted to and approved by the relevant planning authority before any development may commence in relation to phases 18, 19 and 20.</a>