

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examined the application with the documents that accompanied the application, and the representations made and not withdrawn, has, in accordance with section 83(1) of the 2008 Act, made a report and recommendation to the Secretary of State.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

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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.

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.

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/1724/01DECV2](#)[AU/KCW/LZH/1724/01DECV3](#)] 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;

(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.

“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;

“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/07-21/22660revA] 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;

(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.

“the works plan” means the plan certified as the works plan [Drawing Reference AU/KCW/07-21/22655revA] 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.

(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 contours shown in grey on the restoration profile contour 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).

(a) 1991 c. 59.

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.

(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) 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) 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—

- (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).

(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—

(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.

(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^(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of 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.

(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 enclosures or buildings, 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) storage shed,
- (c) laboratory,
- (d) canteen, welfare facilities and offices,
- (e) car parking area,
- (f) weighbridge,
- (g) wheel washing facilities,
- (h) cess pit, and
- (i) 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;
- ~~“water pipe standoff” means a fixed distance from the outside edge of each Anglian Water pipe within which no development must take place to be approved pursuant to requirement 19.~~

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; and
- (d) the surface water management plan.

(2) Subject to article 5, the finished ground level contours approved pursuant to requirement 4(1)(f) must lie between the grey contours and the green contours shown on the restoration profile contour plan and in areas where no green contours are shown, the finished ground level contours must accord with the grey contours shown on the restoration profile contour plan.

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

(4) 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.

(5) 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) 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) a programme for review meetings;
- (c) the location, number, species, size and planting density of any proposed planting;
- (d) how any invasive species will be managed;
- (e) soil testing and preparation, cultivation, importing of materials and other operations to maximise plant establishment;
- (f) details of proposed finished ground level contours in accordance with requirement 3(2);
- (g) hard surfacing materials;
- (h) vehicular and pedestrian access, parking and circulation areas;
- (i) minor structures, such as furniture, refuse or other storage units, signs and lighting;
- (j) proposed and existing functional services above and below ground, including drainage, power and communications cables and pipelines, manholes and supports;
- (k) details of existing trees to be retained, with measures for their protection during the operations; and
- (l) 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

(a) 1971 c. 80.

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.

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.

Water pipe standoff

~~19.—(1) Subject to sub-paragraphs (2) and (3), no part of phases 18, 19 and 20 of the authorised development must commence until the water pipe standoff has been agreed in writing by the relevant planning authority in consultation with Anglian Water acting reasonably.~~

~~(1) The water pipe standoff as approved in sub-paragraph (1) must be between 7 and 30 metres.~~

~~(2) In default of agreement regarding the water pipe standoff in sub-paragraph (1) between the undertaker, relevant planning authority and Anglian Water, the water pipe standoff will be settled by arbitration in accordance with article 20 (arbitration).~~

Amendments to approved details

~~19.20.~~ 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 in Work No. 3	7.4m high
Any buildings in Work No. 3 (excluding the storage shed)	3.6m high
Work No. 3(b), the storage shed	8m 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

Protective Provisions

PART 1

~~FOR THE PROTECTION OF ELECTRICITY, GAS AND WATER UNDERTAKERS~~~~For the protection of [Anglian Water Services Limited](#)~~Application

~~1. the utility undertakers referred to in this Part of this Schedule.~~ [For the protection of Anglian Water](#) the following provisions have effect, unless otherwise agreed in writing between the undertaker and ~~the utility undertaker concerned~~ [Anglian Water](#).

Interpretation

~~2.~~ In this Part of this Schedule—

~~“Act” means the Water Industry Act 1991;~~

~~“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question~~ [Anglian Water](#) 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(21), 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(22) for the purposes of gas supply; and~~

~~“Anglian Water” means Anglian Water Services Limited;~~

~~“apparatus” means Anglian Water’s twin water mains running between Stamford Road, King’s Cliffe (at grid references TL0130899796 and TL0131499784 or thereabouts) and A43, Duddington (at grid references SK9888300433 and SK9888000429 or thereabouts, respectively) and includes:~~

~~(a) any accessories (as defined by section 219 of the Act) forming part of it,~~

~~(e) 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.~~

~~(b) and includes~~ any structure in which apparatus is or is to be lodged or which gives or will give access to ~~apparatus;~~ [it, and](#)

~~(c) alternative 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;~~

~~21()~~ 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).

~~22()~~ 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.

“plan” ~~include~~ **includes** 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.—(2) 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).~~

~~(1) 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.~~

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

~~(3) 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).~~

~~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 (4) — the provisions of this Part of this Schedule.~~

~~(5) 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.—(3) 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).~~

~~(1) 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.~~

Acquisition of land

0. Regardless of any provision in this Order , the undertaker must not acquire any apparatus otherwise than by agreement.

Retained apparatus

~~1.6.—(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 (or any means of access to it) the removal of which has not been required by the undertaker ~~under paragraph 4(2)~~in accordance with section 185 of the Act, the undertaker must submit to ~~the utility undertaker in question~~ Anglian Water a plan of the works to be executed.~~

~~(2) Those works must be executed only (i) if approved by Anglian Water pursuant to sub paragraph (3) below, (ii) in accordance with the plan submitted under ~~subparagraph~~ sub-paragraph (1) and (iii) in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by ~~the utility undertaker~~ Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and ~~the utility undertaker~~ Anglian Water is entitled to watch and inspect the execution of those works.~~

~~(3) Any requirements made by ~~a utility undertaker~~ Anglian Water under sub-paragraph (2) ~~are to~~ must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it. The approval that may be given under that sub-paragraph must not be unreasonably withheld (although may be subject to the said requirements) and shall be assumed to have been given unless Anglian Water gives written notice to the undertaker that it is being withheld entirely or given subject to the said requirements within the same time period.~~

~~If a utility undertaker, in accordance with sub-paragraph (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 (3) if the removal of the apparatus had been required by the undertaker under paragraph 4(2).~~

~~(4) (4) 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.~~

~~(5) (5) The undertaker is not required to comply with sub-paragraph (1) ~~5~~ in a case of emergency but in that case it must give to ~~the utility undertaker in question~~ Anglian Water 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, using its best endeavours to keep the impact of those emergency works on Anglian Water's apparatus, on the operation of its water and sewerage network and on end-users of the services Anglian Water provides to a minimum.

(6) For the purposes of sub-paragraph (1) and without prejudice to the generality of the principles set out in that sub-paragraph:

- (a) the establishment of an access way or haul road and underground works are both deemed to be "works" for the purposes of this paragraph; and
- (b) works are deemed to be in land near Anglian Water's apparatus if those works fall within 20 metres measured from the medial line of the closer of the two water mains forming such apparatus to the works in question.

Expenses and costs

~~2.7.~~—(1) Subject to the following provisions of this paragraph, the undertaker must repay to ~~a utility undertaker Anglian Water~~ all expenses reasonably incurred by ~~that utility undertaker Anglian Water~~ 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) this Part of this Schedule.~~

(2) ~~The~~ There must be deducted from any sum payable under subparagraph (1) 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 Anglian Water~~ by virtue of ~~sub-paragraph subparagraph (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 is~~ not to 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 is to~~ be treated as if it also had been agreed or had been so determined.

~~(4)—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.~~

~~3.8.~~—(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) the construction of any works of authorised development for which development consent is granted by this Order,
- (b) any subsidence resulting from such works or development, or
- (c) any leakage, leachate or radiation resulting from such works or development,

any contamination or 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), any medium conveyed by such apparatus or any property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must—

- (d) ~~(a)~~ bear and pay the cost reasonably incurred by ~~that utility undertaker~~ Anglian Water in making good such damage or restoring the supply; and
- (e) ~~(b)~~ make reasonable compensation to ~~that utility undertaker~~ Anglian Water for any other expenses, loss, damages, penalty (whether legal, regulatory or in relation to regulatory funding) 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~~ Anglian Water on behalf of the undertaker or in accordance with a plan approved by ~~a utility undertaker~~ Anglian Water or in accordance with any requirement of ~~a utility undertaker~~ Anglian Water or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless Anglian Water fails to carry out and execute the works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.

(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.:~~

- (a) any damage or interruption to the extent that it is attributable to the unlawful or unreasonable act, neglect or default of Anglian Water, its officers, servants, contractors or agents;
- (b) any part of the authorised development carried out by Anglian Water in the exercise of any functions conferred by this Order pursuant to a transfer of benefit under article 7; or
- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) ~~A utility undertaker~~ Anglian Water 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 not to be unreasonably withheld or delayed~~) who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(5) Anglian Water must act reasonably in relation to any claim or demand served under subparagraph (1) and use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands and penalties to which a claim or demand under subparagraph (1) applies.

Cooperation

4.9.—(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~~ Anglian Water makes requirements for the protection or alteration of apparatus under paragraph 61, the undertaker must use ~~its best all reasonable~~ 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-~~Anglian Water's undertaking, using existing processes where requested by Anglian Water, provided it is appropriate to do so, and Anglian Water must use all reasonable endeavours to co-operate with the undertaker for that purpose.

(2) Where the undertaker identifies any apparatus which may belong to or be maintainable by Anglian Water but which does not appear on any statutory map kept for the purpose by Anglian Water, it shall inform Anglian Water of the existence and location of the apparatus as soon as reasonably practicable.

(3) ~~(4)~~ 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-~~Anglian Water in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

(4) The undertaker and Anglian Water may by written agreement substitute any period of time for those periods set out in this Part of this Schedule.

Monitoring

5.—(1) Where in relation to the proposed construction of any of the authorised development, Anglian Water reasonably requires leak detection monitoring and/or monitoring of the water level in the pipe bedding material to be installed (“pipe bedding monitoring”), and gives written notice to the undertaker of that requirement, the following provisions of this paragraph apply:

- (a) Any leak detection monitoring and pipe bedding monitoring to be installed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such situation as may be agreed between Anglian Water and the undertaker or in default of agreement settled by arbitration in accordance with article 20 (arbitration).
- (b) Anglian Water must, after the leak detection monitoring and pipe bedding monitoring to be installed has been agreed or settled by arbitration in accordance with article 20, and after the grant to Anglian Water of any such necessary facilities and rights over the land, proceed without unnecessary delay to construct and bring into operation the agreed leak detection monitoring and pipe bedding monitoring.
- (c) The undertaker must repay to Anglian Water all expenses reasonably incurred by Anglian Water in, or in connection with, the installation of any leak detection and pipe bedding monitoring apparatus.
- (d) If Anglian Water gives notice in writing to the undertaker that it desires the undertaker to execute any work, or part of any work in connection with the installation of leak detection or pipe bedding monitoring apparatus or the undertaker and Anglian Water otherwise agree, that work, instead of being executed by Anglian Water, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Anglian Water at the cost of the undertaker.
- (e) Anglian Water must share all monitoring data arising from the installation of the leak detection monitoring and pipe bedding monitoring with the undertaker on a quarterly basis.

Expert Determination

6.—(1) Article 20 (arbitration) shall apply to any difference as to the legal interpretation of this Schedule and as provided for in paragraph 1(3).

(2) Save as provided for in sub-paragraph (1) or sub-paragraph 1(3) any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers or the President of the Institution of RICS or the President of the Institution of Engineering and Technology (as relevant and agreed between Anglian Water and the undertaker, both acting reasonably and without delay).

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

(4) The costs and fees of the expert and the costs of Anglian Water and the undertaker are payable by the parties in such proportions as the expert may determine. In the absence of such determination the costs and fees of the expert are payable equally by the parties who shall each bear their own costs.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 14 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;
- (c) issue a decision within 14 days of receipt of the submissions under sub-paragraph (b); and
- (d) give reasons for the decision.

(6) The expert must consider where relevant—

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

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 20.

PART 2

~~FOR THE PROTECTION OF WESTERN POWER DISTRIBUTION LIMITED (EAST MIDLANDS) PLC~~

For the protection of Western Power Distribution Limited (East Midlands) Plc

Application

7. For the protection of Western Power Distribution Limited (East Midlands) plc the following provisions, unless otherwise agreed in writing between the undertaker and Western Power Distribution Limited (East Midlands) plc, have effect.

Interpretation

8. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable WPD to fulfil its statutory functions in a manner not less efficient than previously and where the context requires includes any part of such alternative apparatus;

“alternative rights” means all and any necessary legal easements, leases, consents, or permissions required by WPD in order to permit or authorise a diversion and to permit or authorise WPD to lay, keep, operate, maintain, adjust, repair, alter, relay, renew, supplement, inspect, examine, test and remove the alternative apparatus;

“apparatus” means electric lines or electrical plant as defined in the Electricity Act 1989^{23a}, belonging to or maintained by WPD;

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

“functions” includes powers and duties;

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

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

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

“undertaker” means Augean South Ltd (Company No. 04636789) or such other person as has the benefit of the Order;

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

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

other terms have the meaning given in article ~~11~~2 (interpretation).

Precedence of 1991 Act in respect of apparatus in streets

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

No acquisition except by agreement

10. Regardless of any provision in this Order, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

11.—(1) If, in the exercise of the powers conferred by this Order, the undertaker requires that apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of WPD to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, alternative rights acquired or granted for the alternative apparatus and the alternative apparatus is in operation and access to it has been provided if necessary to the reasonable satisfaction of WPD in accordance with sub-paragraphs (2) to (10) or with such alternative or supplementary provisions as the undertaker and WPD may agree between them.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to WPD written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed.

(3) If as a direct consequence of the exercise of any of the powers conferred by this Order WPD reasonably needs to remove or divert any of its apparatus and the removal of that apparatus has not been required by the undertaker under sub-paragraph (2) then WPD must give to the undertaker written notice of that requirement, together with a plan of the work proposed, and of the proposed

^(23a) 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).

position of the alternative apparatus to be provided or constructed and this Part has effect as if the removal or diversion of such apparatus had been required by the undertaker under sub-paragraph (2).

(4) If as a direct consequence of the removal or diversion of apparatus under sub-paragraph (2) or (3) alternative apparatus is to be constructed in land owned or controlled by the undertaker then the undertaker must afford to WPD the necessary facilities alternative rights and any necessary third party consent or approvals for the construction of alternative apparatus in the other land owned or controlled by the undertaker.

(5) If the undertaker or WPD requires to remove or divert any apparatus placed within the Order land and alternative apparatus is to be constructed in land not owned or controlled by the undertaker as a consequence of the removal or diversion of apparatus then WPD shall use its reasonable endeavours to obtain alternative rights in the land in which the alternative apparatus is to be constructed.

(6) If alternative apparatus is to be constructed in land not owned or controlled by the undertaker and WPD is unable to obtain such alternative rights as are mentioned in sub-paragraph (5), the undertaker and WPD shall consider whether there is an alternative engineering solution that can achieve the diversion without the need for the use of compulsory powers. Should such an alternative engineering solution not be practicable and deliverable in a reasonable timescale and at a reasonable cost (which shall be determined by the undertaker acting reasonably), WPD may but shall not be compelled to use the powers of compulsory acquisition set out in this Order or the Electricity Act 1989 to obtain the necessary facilities and rights in the land outside the Order limits in which the alternative apparatus is to be constructed in accordance with a timetable agreed between WPD and the undertaker.

(7) Any alternative apparatus required pursuant to sub-paragraphs (2) or (3) must be constructed in such manner and in such line or situation as may be agreed between WPD and the undertaker or in default of agreement settled in accordance with paragraph 16.

(8) WPD must, after the alternative apparatus to be provided or constructed has been agreed or settled pursuant to paragraph 16, and after the acquisition by or grant to WPD of any such facilities and alternative rights as are referred to in sub-paragraphs (2) to (6), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required to be removed under the provisions of this Part of this Schedule.

(9) Regardless of anything in sub-paragraph (8), if the undertaker gives notice in writing to WPD that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by WPD, must be executed by the undertaker—

- (a) in accordance with plans and specifications and in such line or situation agreed between the undertaker and WPD, or, in default of agreement, determined in accordance with paragraph 16; and
- (b) without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of WPD.

(10) Nothing in sub-paragraph (9) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus or alternative apparatus, or execute any filling around the apparatus or alternative apparatus (where the apparatus or alternative apparatus is laid in a trench) within 600 millimetres of the point of connection or disconnection.

Facilities and rights for alternative apparatus

12.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to WPD facilities and alternative rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and alternative rights are to be granted upon such terms and conditions as may be agreed between the undertaker and WPD or in default of agreement settled in accordance with paragraph 16.

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

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker;
- (b) have regard to the terms and conditions, if any, applicable to the apparatus for which the alternative apparatus is to be substituted;
- (c) have regard to WPD's ability to fulfil its service obligations and comply with its licence conditions; and
- (d) have regard to the standard form rights WPD ordinarily secures for the type of alternative apparatus to be constructed in the circumstances similar to the authorised development.

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

Retained apparatus

13.—(1) Not less than 60 days before the undertaker intends to start the execution of any specified work where the removal of the apparatus in question has not been required under paragraph 11, the undertaker shall submit to WPD a plan of the works to be executed. Any submission must note the time limits imposed on WPD under sub-paragraph (3) below.

(2) Subject to sub-paragraph (3) below the undertaker shall not commence any works to which sub-paragraph (1) applies until WPD has identified any reasonable requirements it has for the alteration or protection of the apparatus, or for securing access to it.

(3) If by the expiry of 60 days beginning with the date on which a plan under sub-paragraph (1) is submitted WPD has not advised the undertaker in writing of any reasonable requirements for the alteration or protection of the apparatus, or for securing access to it, it shall be deemed not to have any such requirements and the undertaker shall be at liberty to proceed with the works.

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

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

(6) If WPD, in accordance with sub-paragraph (2) and in consequence of the works proposed by the undertaker, reasonably requires the removal or diversion of any apparatus and gives written notice to the undertaker of that requirement, this Part of this Schedule applies as if the removal or diversion of the apparatus had been required by the undertaker under paragraph 11(2).

(7) Nothing in this paragraph 13 precludes the undertaker from submitting at any time or from time to time, but in no case less than 60 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.

(8) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to WPD notice as soon as is reasonably practicable and a plan of those

works as soon as reasonably practicable subsequently and must comply with any reasonable requirements stipulated by WPD under sub-paragraph (2) and with sub-paragraphs (4) and (5) in so far as is reasonably practicable in the circumstances. Nothing in this sub-paragraph prevents WPD from exercising its rights under sub-paragraph (6).

Expenses and costs

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

(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 WPD requires that alternative apparatus of better type, of greater capacity, of greater dimensions or at a greater depth is necessary in substitution for existing apparatus which for WPD's network requirements is over and above what is necessary as a consequence of and for the purpose of the authorised development, WPD shall reduce the cost of such additional requirements from the amount payable by the undertaker pursuant to sub-paragraph (1).

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

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

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph 15(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.

15.—(1) Subject to sub-paragraph (2), if by reason or in consequence of the construction of any specified work or any subsidence resulting from any of those works any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of WPD the undertaker is to—

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

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

(3) WPD must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, is to have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) WPD must act reasonably in relation to any claim or demand served under sub-paragraph (1) and use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands and penalties to which a claim or demand under sub-paragraph (1) applies.

(5) WPD's liability to the undertaker for negligence or breach of contract, in respect of each diversion, shall be limited to the value of that diversion and WPD shall not otherwise be liable to the undertaker for any losses or costs incurred by the undertaker resulting from delays to the authorised development as a result of its failure to undertake works to deliver any alternative apparatus.

Expert determination

16.—(1) Article 20 (arbitration) shall apply to any difference as to the legal interpretation of this Schedule and as provided for in sub-paragraph (7).

(2) Save as provided for in sub-paragraph (1) or sub-paragraph (7) any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers or the President of the Institution of RICS or the President of the Institution of Engineering and Technology (as relevant and agreed between WPD and the undertaker, both acting reasonably and without delay).

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

(4) The costs and fees of the expert and the costs of WPD and the undertaker are payable by the parties in such proportions as the expert may determine. In the absence of such determination the costs and fees of the expert are payable equally by the parties who shall each bear their own costs.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 14 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;
- (c) issue a decision within 14 days of receipt of the submissions under sub-paragraph (b); and
- (d) give reasons for the decision.

(6) The expert must consider where relevant—

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

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 20.

PART 3

~~FOR THE PROTECTION OF NATIONAL GRID AS GAS UNDERTAKER~~

For the protection of National Grid as Gas Undertaker

Application

17.—(1) For the protection of National Grid as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 7 (consent to transfer benefit of Order) –

- (a) any agreement of the type mentioned in subparagraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid.

Interpretation

18. In this Part of this Schedule—

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

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than: (i) “A-” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings; and “A3” if the rating is assigned by Moody’s Investors Services Inc.;

“acceptable insurance” means a third party liability insurance effected and maintained by the undertaker with a limit of indemnity of not less than £100,000,000 (one hundred million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained for the construction period of the authorised works which constitute specified works and arranged with an internationally recognised insurer of repute operating in the London and worldwide insurance market underwriters whose security/credit rating meets the same requirements as an “acceptable credit provider”, such policy shall include (but without limitation):

- (a) a waiver of subrogation and an indemnity to principal clause in favour of the National Grid; and
- (b) contractors’ pollution liability for third party property damage and third party bodily damage arising from a pollution/contamination event with cover of £10,000,000.00 (ten million pounds) per event or £20,000,000.00 (twenty million pounds) in aggregate;

“acceptable security” means either:

- (a) a parent company guarantee from a parent company in favour of National Grid Gas Plc to cover the undertaker’s liability to National Grid Gas Plc to a total liability cap of £100,000,000.00 (one hundred million pounds) (in a form reasonably satisfactory to National Grid and where required by National Grid, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or
- (b) a bank bond or letter of credit from an acceptable credit provider in favour of National Grid Gas Plc to cover the undertaker’s liability to National Grid Gas Plc for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £100,000,000.00 (one hundred million pounds) (in a form reasonably satisfactory to the National Grid);

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any mains, pipes or other apparatus belonging to or maintained by National Grid for the purposes of gas supply, together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

(a) “authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

(b) “commence” and “commencement” in this Part of this Schedule shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Grid’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

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

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid including construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid” means: National Grid Gas plc (Company Number 02006000) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

“Network Code” means the network code prepared by National Grid pursuant to Standard Special Condition A11(3) of its Gas Transporter’s Licence, which incorporates the Uniform Network Code, as defined in Standard Special Condition A11(6) of National Grid’s Gas Transporters Licence, as both documents are amended from time to time;

“Network Code Claims” means any claim made against National Grid by any person or loss suffered by National Grid under the Network Code arising out of or in connection with any failure by National Grid to make gas available for off take at, or a failure to accept gas tendered for delivery from, any entry point to or exit point from the gas national transmission system as a result of the authorised works or any costs and/or expenses incurred by National Grid as a result of or in connection with, it taking action (including purchase or buy back of capacity) for the purpose of managing constraint or potential constraint on the gas national transmission system which may arise as a result of the authorised works

“parent company” means a parent company of the undertaker acceptable to and which shall have been approved by National Grid acting reasonably;

“undertaker” means the undertaker as defined in article 2(1) of this Order;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which:

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 21(2)5(2) or otherwise; and/or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 21(2) or otherwise; and/or
- (c) includes any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Grid’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22”).

On Street Apparatus

19. Except for paragraphs 23 (*retained apparatus: protection*) and 24 (*expenses*) and 25 (*indemnity*) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

Acquisition of land

20.—(1) Regardless of any provision in this Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or ((b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid otherwise than by agreement (such agreement not to be unreasonably withheld).

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid or affect the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid and/or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by National Grid under paragraph 25 or 26 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

21.—(1) If, the undertaker acquires any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Grid to its reasonable satisfaction (taking into account paragraph 24(1) below) the necessary facilities and rights

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

22.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 29 (*Arbitration*) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of gas undertaker

23.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan and, if reasonably required by National Grid, a ground monitoring scheme in respect of those works.

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe —

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until National Grid has given written approval of the plan so submitted.

(4) Any approval of National Grid required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and,
- (b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under sub-paragraphs (1) or (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (5), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(7) Where National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grids' satisfaction prior to the commencement of any specified works for which protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Grid in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 17 to 19 and 22 to 24 apply as if the removal of the apparatus had been required by the undertaker under paragraph 21(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National

Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub paragraph (11) at all times;

(11) At all times when carrying out any works authorised under the Order National Grid must comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(-G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 24.

Expenses

24.—(1) Save where otherwise agreed in writing between National Grid and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid using its own compulsory purchase powers to acquire any necessary rights under paragraph 21(3); or
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 29 (*arbitration*) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount

which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

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

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

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

Indemnity

25.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods or energy, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid and including Network Code Claims other than arising from any default of National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of-

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents;
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 7 (*consent to transfer benefit of order*)—subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 3 will be subject to the full terms of this Part of this Schedule including this paragraph 25.

(4) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement, or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) National Grid must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Grid or in respect of which National Grid has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Grid's apparatus until the following conditions are satisfied:

- (a) unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same to the undertaker in writing; and
- (b) unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid that it shall maintain such acceptable insurance for the construction period of the authorised works which constitute specified works from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same in writing to the undertaker.

(7) In the event that the undertaker fails to comply with sub-paragraph 28(6) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Grid from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

26. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

27.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 21(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 23 the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

28. If in consequence of the agreement reached in accordance with paragraph 20(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

29. Any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 20 (*arbitration*).

Notices

30. Notwithstanding article 19 (service of notices), any plans submitted to National Grid by the undertaker pursuant to this Part must be submitted using the LSBUD system (<https://lsbud.co.uk/>) or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

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.