

Cambridge Waste Water Treatment Plant Relocation Project
Anglian Water Services Limited

Applicant's Response to ISH4 Actions

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Draft Development Consent Order

Action Point 1

Provide justification as to how the proposed Waterbeach Pipeline South element (Schedule 1, Work No. 36) falls within the description of the Proposed Development as set out within the five bullet points listed within the Secretary of State (SoS) s35 of the Planning Act 2008 (PA2008) direction (noting that the application documents do not appear to specify that it would have any connections to the proposed Waste Water Treatment Plant).

All flows from Waterbeach to Milton through the Waterbeach Pipeline South element would be treated at the proposed Waste Water Treatment Plant (once operational). Paragraph 2.11.1 of Project Description chapter of the Environmental Statement describes the diversion of the Waterbeach Pipeline at Milton and the ultimate destination of the flows to the Proposed Development. However, the Applicant acknowledges the potential ambiguity in paragraph 2.11.2 and has amended both paragraphs to resolve this. It is clear from this revised wording that the Waterbeach Pipeline South element is consistent with the third bullet point of the s.35 direction.

Action Point 2

Set out the implications for the dDCO and other application documents were the Waterbeach Pipeline South element to be removed from the dDCO.

In the event the ExA were minded to recommend, and/or the Secretary of State was minded to decide that, the Waterbeach Pipeline South works should be removed from the dDCO, the Applicant would respectfully suggest that consultation on the proposal would need to be undertaken during the Decision period, to enable the relevant parties to comment on the implications and the precise amendments required. The Applicant considers that the amendment would need to be made comprehensively throughout the relevant application documentation (specifically the DCO itself and those documents with which the development must comply, being the DCO plans, the book of reference and management plans) and not only by way of overarching wording which sought to suggest that the particular works were not authorised. Consideration would need to be given as to whether the Order limits should change, or whether wording could be included in the DCO with sufficient clarity and precision to explain that no powers or development would be authorised by the Order on those parts of the Order limits which relate solely to the construction, operation and maintenance of the Waterbeach Pipeline South works. The Applicant suggests that it would not be sufficiently precise for a Statutory Instrument to seek to clarify the land over which powers and development are authorised through wording alone, and the Applicant therefore suggests that the relevant plans and documentation would need to be amended to identify this to provide the necessary clarity and certainty.

Application documents which have been provided for the purpose of Examination and Determination only (such as, for example, the EqIA, Statement of Reasons and Statutory

Nuisance Statement) will not need to be amended because compliance with them is not secured or required by the Order.

Although the Environmental Statement and its Appendices and Figures are required to be certified documents, the Applicant suggests that these would not all need to be changed because they reflect what has been assessed at a point in time. The relevant management plans which are secured by Requirement, however, would need to be changed since the Requirements will necessitate detail to be submitted in accordance with those management plans and should not relate to the Waterbeach Pipeline South.

The **dDCO** would need to be amended in the following manner:

1. Potentially the definitions of Order land and Order limits in article 2 dependent upon how the DCO plans are required to be amended;
2. Schedule 1 – removal of the description of Work No. 36 and references to it in the descriptions of other Work Nos. The number itself would need to be referred to either as “not used” or the subsequent Work Nos would need re-numbering (the Applicant would suggest that the latter would be rather complicated given the consequent implications for other application documentation which refer to the current Work Nos.);
3. Schedule 7 – removal of relevant access points which are required for construction and/or operational purposes relating to the Waterbeach Pipeline South works;
4. Schedule 10 – removal of references to Work No. 36 and the removal of land plots from column (1) which are required only for the Waterbeach Pipeline South works;
5. Schedule 11 – removal of land plots in column (2) which are required only for the Waterbeach Pipeline South works;
6. Schedule 12 – removal of reference to Work No. 34 (Waterbeach Pipeline construction area and compounds) where those references relate to the construction area and compound which is required for the construction of Waterbeach Pipeline South; and
7. Schedule 18 – amendments to reflect updated versions of documents and plans to be certified that would need to be changed to reflect the removal of Waterbeach Pipeline South.

The Applicant currently considers that following **other application documents** would need to be either amended to remove the detail of that section of the Waterbeach Pipeline, or to reflect that those works were not authorised by the DCO:

1. Document 3.3 - the Book of Reference;
2. Potentially document series 4.1 - Location and Scheme Order Limits Plan, to alter the Order limits, unless the DCO were amended through wording to clarify that no powers or development is authorised on those parts of the Order limits which are only required for the construction, operation or maintenance of the Waterbeach Pipeline South works only;
3. Document series 4.2 - General Arrangement Plans;
4. Document series 4.3 - Works Plans;

5. Document series 4.4 - Land Plans;
6. Document series 4.5 - Special Category and Crown Land Plans, dependent upon how the Order limits are clarified (i.e. through the DCO wording or through the change to all DCO plans which show the Order limits);
7. Document series 4.6 - Rights of Way Plans, dependent upon how the Order limits are clarified (i.e. through the DCO wording or through the change to all DCO plans which show the Order limits);
8. Document series 4.7 - Access and Traffic Regulation Order Plans;
9. Document series 4.8 - Hedgerow and Tree Preservation Order Plans dependent upon how the Order limits are clarified (i.e. through the DCO wording or through the change to all DCO plans which show the Order limits);
10. Document series 4.11 - Design Plans – Highways;
11. Document series 4.12 - Design Plans – Sewage Tunnel and Longitudinal Sections;
12. Document series 4.13 - Design Plans – Outfall;
13. Document series 4.14 - Design Plans – Waterbeach pipeline long sections;
14. Documents 5.4.2.1 and 5.4.2.2 - Code of Construction Practice (Parts A and B);
15. Document 5.4.2.3 - Outline Decommissioning Plan;
16. Document 5.4.2.4 - Outline Commissioning Plan;
17. Document 5.4.2.5 - Lighting Design Strategy;
18. Document 5.4.6.3 - Outline Soil Management Plan;
19. Document 5.4.8.13 - Biodiversity Net Gain Report;
20. Document 5.4.8.14 - Landscape, Ecological and Recreational Management Plan;
21. Document 5.4.8.18 - Wildlife Hazard Management Plan;
22. Document 5.4.8.24 - Outline Outfall Management and Monitoring Plan;
23. Document 5.4.9.1 - Asset Management Plan;
24. Document 5.4.10.2 - Outline Carbon Management Plan;
25. Document 5.4.13.8 - Framework Archaeological Investigation Mitigation Strategy;
26. Document 5.4.18.2 - Odour Impact Assessment;
27. Document 5.4.18.4 - Preliminary Odour Management Plan;
28. Document 5.4.19.7 - Construction Traffic Management Plan;
29. Document 5.4.19.8 - Operational Workers Travel Plan;
30. Document 5.4.19.9 - Construction Workers Travel Plan;
31. Document 5.4.19.10 - Outline Operational Logistics Traffic Plan;
32. Document 5.4.20.12 - Drainage Strategy;
33. Document 5.4.20.13 - Outline Water Quality Monitoring Plan;
34. Document 7.6 - Design and Access Statement;
35. Document 7.8 - Community Liaison Plan;
36. Document 7.17 - Design Code.

Action Point 3

Update Schedule 1, Work No.3 to refer only to visitor parking rather than public / visitor parking.

The description of Work No. 3 will be amended in the Applicant's final dDCO to be submitted at Deadline 7.

Action Point 4

Confirm whether the proposed office worker parking provision aligns with the South Cambridgeshire Local Plan 2018 Policy TI/3 and Figure 11 (in terms of number of spaces per sqm and with reference to information provided in response to ExQ2.1.8 and ExQ2.20.4).

Adopted SCLP Policy TI/3: Parking Provision includes a table at Figure 11 setting out *Indicative Car Parking Provision* standards for different use classes on a *gross floor area* basis.

SCLP Policy TI/3 requires that car parking provision should be provided '*through a design-led approach in accordance with the indicative standards set out in Figure 11*'. Other relevant criteria of Policy TI/3 state that car parking provision will '*take into consideration the site location, type and mix of uses, car ownership levels, availability of local services, facilities and public transport, and highway and user safety issues, as well as ensuring appropriate parking for people with impaired mobility*' (criterion ii) and that all parking provision must be provided '*in a manner that accords with SCLP Policy HQ/1 [Design Principles] and that the developer must provide clear justification for the level and type of parking proposed*' (criterion v). It is clear, therefore, that the parking provision figures presented in SCLP Figure 11 are not intended to be applied rigidly.

In its answer to the specific question raised by the ExA in ExQ2-1.8 [**REPS-111**], the Applicant has provided an internal breakdown of the floorspace shown within the Gateway Building. This was provided to explain how the space is intended to be used. It would be wholly inappropriate to seek to apply the car parking provision standards in SCLP Policy TI/3 only to the areas of the Gateway Building actually occupied by desks or to seek in some other way to disaggregate the different areas of internal space within the Gateway Building as a means to seek justification for the overall car parking provision proposed. This is because:

- Adopted SCLP Policy TI/3: Parking Provision is clear that the figures in the table at Figure 11 are indicative and are to be applied to different use classes on a gross floor area basis;
- NPPF paragraph 112 is clear that parking standards are not to be treated as maximums except where there is a clear and compelling justification to do so (which is not evident in this instance);
- The Gateway Building is an integral element of the proposed WWTP. It is not intended to be occupied under a separate Use Class independent of the proposed WWTP. The use of this building and the need for staff engaged in a variety of waste water service activities is explained below and has relevance not only to this Action Point matter but also to the Applicant's response to ISH4 Action Point 5;
- The Gateway Building will be used to provide office and associated spaces for employees located on the site (consistent with SCLP Policy E/10: Shared Social Spaces in Employment Areas). Some of this space will also serve a dual-use function for the Discovery Centre, as explained at

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paragraphs 2.13.1 and 2.13.3 of Chapter 2: Project Description in the ES [REP4-022] and at paragraph 9.13.7 and sections 9.14 and 9.15 of the Design and Access Statement [AS-168]. The Building also accommodates meeting space, toilets, plant, kitchen, messing facilities, stair wells, storage, reception, corridors and other circulation.

- Waste water treatment plants are not specifically defined under the Town & Country Planning (Use Classes) Order 1987 (as amended) but are likely to fall either within Use Class B2 'General Industrial' (i.e. use for the carrying on of an industrial process) or to be *sui generis*. Paragraph (4) of article 3 (Use Classes) states that:

"(4) Where land on a single site or on adjacent sites used as parts of a single undertaking is used for purposes consisting of or including purposes falling within — ...

(b) in relation to England, the use described in Schedule 2, Class E, sub-paragraph (g) and Class B2 in Schedule 1 as modified by paragraph (1C)(b), those classes may be treated as a single class in considering the use of that land for the purposes of this Order, so long as the area used for a purpose falling within Class B2, or Class B2 as modified, is not substantially increased as a result."

The gross floor area of the Gateway Building comprises only part of the total gross floor area of the buildings on the Proposed Development. Total gross floor area is as shown in the table below:

Building	Occupiers	Dimensions (m)	Gross Floor Area (m ²)
Gateway building (2 floors)	Office and technical workers	51.3 x 15.9	1,225
Workshop	Work, technical workers and office workers	55 x 16	880
Ferric Dosing Plant kiosk	workers	20 x 5	100
Boiler House	workers	20 x 20	400
Sludge Thickening Building	workers	28 x 18	504
Blower building	workers	25 x 15	375
DNO Enclosure	workers	5 x 10	50
GRP Kiosks for Motor Control Centres (up to 13 no. as per paragraph 2.13.20 of ES Chapter 2: Project Description – REP5)	workers	27 x 6 (13 no.)	2,106
		Total:	5,640

The indicative parking standards set out in Table 11 of SCLP Policy TI/3 only apply to car parking. No standards are provided for HGVs, trailers, coaches or visitors and the reasonable presumption therefore is that these requirements are best assessed by the Applicant. In the case of the visitor and coach parking, the amount of spaces proposed reflects the Applicant's assessment of need for visitors attending meetings on site and recognising the opportunity that the Discovery Centre will play in enabling people to understand and interact with water recycling processes and Anglian Water's wider sustainability agenda, transparently showing what Anglian Water does while offering unique educational opportunities (see ES Chapter 11: Community [REP4-028]).

Table 2-23: Building sizing in ES Chapter 2 Project Description [REP4-022] identifies the parking provision at the proposed WWTP but omits 2 no. disabled spaces outside the bund (this table is being updated for submission at Deadline 6).

The table in Part 18 of the dDCO defines the parameter number for parking spaces. It reflects the table (at page 99) submitted by the Applicant as Hearing Action Point 93 [REP4-087] which breaks down these spaces to the different needs arising as follows:

(1) Item	(2) Main parameters	(3) Maximum height
Vehicle parking	4,000m ²	N/A
	56 operational staff (including LGVs); 7 HGVs; 3 trailers; 12 visitor vehicle parking spaces (including two disabled spaces); 1 visitor coach parking space Provision for 50 bicycles	

Applying the indicative standards in Table 11 of SCLP Policy TI/3 on different bases to assess the appropriateness of the proposed 56 operational staff (including LGVs) parking spaces gives the following comparison:

Use Class / Indicative Car Minimum Cycle Notes nature of activity:	Indicative Standard:	Calculation:	Indicative Total Spaces:	Notes:
B2 Use (based on total gross floor area shown on Works Plans)	1 space per 50m ²	5,640 @ 1:50	113	
Blended B1 (now E(g)(iii)) and B2 Use (based on total gross floor area)	1 space per 50m ² + 1 space per 25m ² (under 2,500m ²)	1,225 @ 1:25 + 4,415 @ 1:50	137	49 (B1) + 88 (B2)
A: Sui Generis	On merit (see below)			

Table 11 of SCLP Policy TI/3 does not provide an indicative car parking standard for *sui generis* use except under the heading 'Food and Drink' where two standards are quoted – 7 spaces per 10 employees and 1 space per staff. Neither would appear to be applicable to the Proposed Development. Appropriate parking provision would therefore depend on the needs of staff to perform their function. Applying the anticipated employee/attendee numbers at the Proposed Development (as set out in Table 5-1 Operational Staff Numbers of ES Chapter 2 Project Description [REP4-022]) and the needs/reasoning for these personnel being on site as set out in the Applicant's response to ExQ2-20.11 [REP5-111] and in the table below indicates a total maximum personnel on site at any one time of 56.

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Role	No. of persons	Function and rationale for being located at the Proposed WWTP
AW WWTP Operational and maintenance staff	6	Site operatives, technicians and management
AW Technical/managerial Visitors	2	
Deliveries & contractors supporting the WWTP operation (waste water and sludge, consumables)	2	
Tanker/ HGV drivers using the office facilities and driving related to the WWTP operations	6	
Office workers using the facility daily (WROL) and other AW staff such as Water resources	30	<p>The WROL team have been based at Milton House since the 1990's when the original department was created. It provides vital services across AW's region including all the tanker, septic tanker, cake wagon and contractor deliveries (currently 7 drivers) including incident response coordination. Cambridge WWTP accounts for around 10% of their workload but they control 100% of all the HGV logistics of those HGVs that serve Cambridge WRC. The WROL office team makes sure HGVs stay on the routes planned for them and can react to incidents on the road network as well as responding to business incidents in an efficient and planned way. It is a vital part of AW's business that is optimally based on AW's operational site at Cambridge WWTP which is centrally located within the region creating the ability to visit AW's other WWTPs and customers within normal working hours no matter the location. If this team were not accommodated in the Proposed Development, then an alternative base with equally good access to the region's highway network (i.e. avoiding traffic congestion in, for example, central Cambridge) would be needed both to accommodate their office needs and to house their storage of equipment, IT, resources, and documentation.</p> <p>The Applicants Water Resources team has been based at Milton House since 1990's. It performs a vital role within the AW business, planning and securing water resources for AW customers within the region.</p>
AW Network Technicians	10	As a fully integrated business with multiple teams working together to deliver water recycling operations for customers across its region (including Cambridge), it is very typical for the Applicant to have regional network teams based at AW's combined WWTP/STC plants. This allows for all the relevant teams that are fundamental in the wastewater treatment process to work closely

		<p>together and communicate efficiently. At times of severe weather events it allows the business to combine both treatment and networks to resolve issues at the point of most effect which are normally at the larger WWTP sites. Network teams do not only operate, maintain, and manage sewers but also manage pumping stations that deliver the waste water from regional areas to the combined WWTP/STC. Making sure pumping stations and WWTPs work in harmony is vital to maintain permit compliance and avoid preventable storm spills. As well as this vital communication between these operational teams, having a base capable of supporting materials stores, team briefings, training and a hub of operations for the teams also means AW can operate as efficiently as it can for its customers. Regular interaction (both planned and ad hoc) between all operational teams – which includes treatment, sludge, maintenance, bioresources, networks, scientific and process support, optimisation as well as other technical and managerial support - takes place at the existing Cambridge WWTP and is an essential part of the effective running of AW’s business. If the Network team were not able to relocate with the rest of the wider resource team, it would necessitate a new depot being created in the region for them to be based from accommodating an office for management, IT facilities, equipment store, information management and specialist vans such as camera equipment. Moving would reduce efficiency and effectiveness of the business to the detriment of the services it provides.</p>
Total:	56	

Setting the maximum parameter for operational staff (including LGVs) at 56 parking spaces therefore represents a ratio of 1 space per employee which the Applicant considers is reasonable in the context of the indicative standards in SCLP Policy TI/3 to ensure sufficient spaces have been properly planned for and are provided to accommodate flexibility from fluctuations in activity and staff numbers and to avoid shortfall situations. The Operational Workers Travel Plan [REP4-070] will ensure that, as operational activity intensifies when the proposed WWTP reaches full capacity and particularly after 2041 when future increases in capacity are to be accommodated through, for example, the provisions of additional modules within the earth embankment, demand for these parking spaces (for example, through increased staff numbers) is effectively managed and there will not be a need to increase provision.

Based on the above, the Applicant is of the opinion that the proposed parking provision is necessary and justified and is consistent with SCLP Policy TI/3.

Action Point 5

Provide details of the floorspace / facilities (including floorspace in square metres (sqm)) which are currently envisaged to be located in the Gateway Building in the event that the Examining Authority (ExA) and / or the SoS considers that the office floorspace and Discovery Centre do not constitute associated development for the purposes of PA2008. How much floorspace could be created if an internal floor was installed in the proposed Workshop Building (e.g. above the messing facilities and adjacent rooms).

The Applicant has responded to Action Points 5 and 6 together as the issues are closely related.

Action Point 6

Provide a detailed note on why the Applicant considers the Gateway Building, parking to the front of it and the workshop building to fall within the definition of 'associated development' under PA2008, noting that some of the functions they would provide do not appear to be necessary for the direct day-to-day operation of the proposed Waste Water Treatment Plant (WWTP).

Section 115 (1)(b) Planning Act 2008 states that development consent may be granted for (inter alia) "associated development". Section 115(2) then defines "associated development" as meaning development which "is associated with the development within subsection 1(a) (or any part of it)".¹ In deciding whether the Gateway Building is "associated development" the ExA and the SoS need to ask themselves whether the uses proposed to be undertaken within it are associated with the principal development (or part of it) which is the subject of the Section 35 Direction.

In answering that question, the Applicant notes that there is no requirement within the Act for it to prove that there is no alternative to those uses being undertaken within the Gateway Building. Consequently, the question of whether office workers or the Discovery Centre could theoretically be accommodated in a different building, or in a different location, is not relevant to whether those uses and the building in which the Applicant proposes to accommodate them are associated development.

In addition, the Applicant highlights the broad purposive intent of Parliament in enacting section 115(2) as noted by Cranston J in *R. (on the application of Innovia Cellophane Ltd) v Infrastructure Planning Commission [2011] EWHC 2883 (Admin)*². At paragraph 29 of the judgment he stated (our emphasis):

In my opinion, the statutory object and Parliamentary intention confirm that this is the correct interpretation of the term dwelling in section 115 of the 2008 Act. As already explained the 2008 Act aimed to create a streamlined, efficient and predictable planning system for nationally significant infrastructure projects. One

¹ The exclusion in s115(2)(b) does not apply in this case, and the project is located in England for the purposes of s115(3).

² The judgement considered the question of whether a workers accommodation campus was excluded from being associated development on the basis that it formed a dwelling for the purposes of section 115

way it did this was by rationalising the development consent regimes to create, as far as possible, a single consent regime with a harmonised set of requirements and procedures. That key purpose is given effect to in section 115(1) by permitting applications for development consent to cover not just the nationally significant infrastructure project itself but also associated development such as, as in this case, the specially built, temporary campus type accommodation for the large number of workers needed for its construction. To allow the local planning authority to determine the issue of this accommodation would lead to the piecemeal consent system which the 2008 Act was intended to overcome.

In formulating its application the Applicant has had regard to *Guidance on associated development applications for major infrastructure projects (DCLG, April 2013)*, and in particular to the core principles set out in section 5. Having regard to those it is the Applicant's position that the proposed uses to be accommodated in the Gateway Building are aligned to those principles.

The Gateway Building has been designed as an integral part of the design of the Proposed Development, in accordance with the principles of Good Design set out in the National Policy Statement (Section 3.5), as further interpreted through the National Infrastructure Commission's Design Principles.

The evolution of this multi-function building is described in the Design and Access Statement [AS-168] - see particularly Chapter 3 - Consultation - page 34, Chapter 6 - Evolution of Design, page 81 and Chapter 9 - Engineering and Architectural Proposals, pages 148-159.

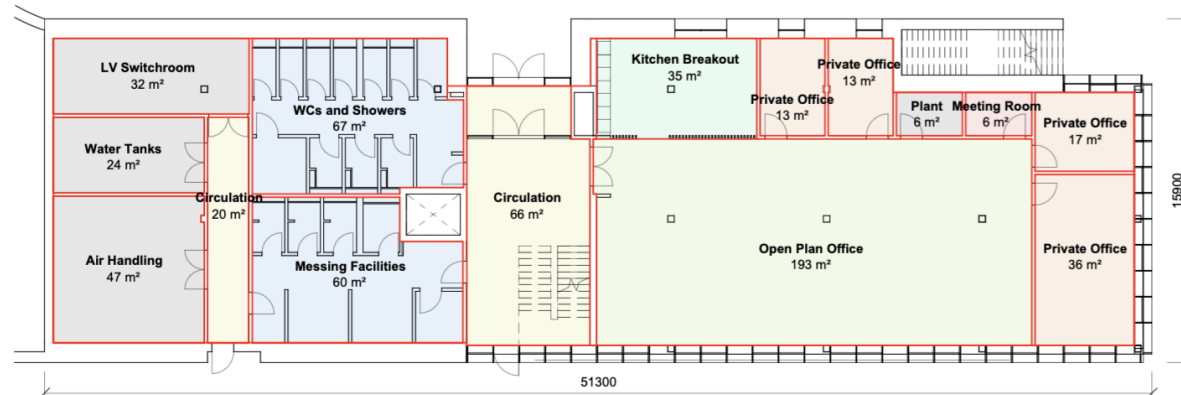
The Gateway Building provides a variety of functions, all associated with the waste water treatment plant, as summarised in the table below. The building footprint secured through the Development Consent Order parameters, would deliver a gross internal floorspace of approximately 1225m², split over two floors. While the parameters for the Gateway Building secured in the DCO could, in practice, deliver a greater gross internal area, the Applicant has limited the floor area of office space and multi-use space to this 1225m² gross internal area in a revision to the Design Code ([REP6-7.17, GBD.11]). An indicative layout of this 1225m² gross internal floorspace (giving rise to an indicative net internal area of 1151m²) is provided at page 15 of the Design Code (drawing 2645-G-91-02 Rev C) , duplicated below. It should be noted that in some instances, due to rounding, the totals in the table in the left of the figure vary slightly from the floorspace areas shown on the plan.

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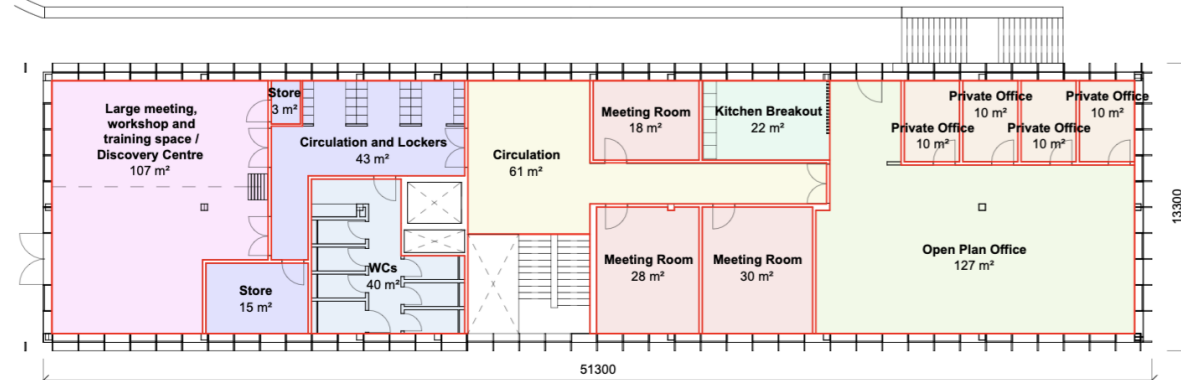
The stated areas are approximate only. Exact areas to be measured by others.

The stated areas are preliminary and subject to change as the design develops. Figures are rounded to the nearest whole number.

Room by Room	
Name	Area
00 Ground Floor	
Air Handling	47 m ²
Circulation	86 m ²
Kitchen Breakout	35 m ²
Lift space, voids and internal walls	30 m ²
LV Switchroom	32 m ²
Meeting Room	6 m ²
Messing Facilities	60 m ²
Open Plan Office	193 m ²
Plant	6 m ²
Private Office	80 m ²
Water Tanks	24 m ²
WCs and Showers	67 m ²
	665 m ²
01 First Floor	
Circulation	61 m ²
Circulation and Lockers	43 m ²
Discovery Centre	107 m ²
Kitchen Breakout	22 m ²
Lift space, voids and internal walls	29 m ²
Meeting Room	76 m ²
Open Plan Office	127 m ²
Private Office	38 m ²
Store	18 m ²
WCs	40 m ²
	560 m ²
Total:	1225 m²



00 Ground Floor Room Area Plans
1:200



01 First Floor Room Area Plans
1:200

Rev	Date	Notes	Plan	Notes	Title	Status	Project	Drawing No.	Scale	Architect
A	07.02.24	For Information		Do not scale from drawing. Discrepancies to be brought to the attention of the author. Not for construction. Any areas given are approximate only and should be checked with the QS. Electronic drawings are uncontrolled documents and are issued for information only. Any dimensions not nominated must be referred to the author for confirmation. © Owers Warwick Architects Ltd This document should not be relied on or used in circumstances other than those for which it was originally prepared and for which Owers Warwick Architects Ltd were commissioned.	Room by Room Area Plans	For Information	Cambridge Waste Water Treatment Plant Relocation Project	2645-G-91-02	1:200 @ A3	ARCHITECTS OWERS WARWICK 13-15 Covent Garden Cambridge CB1 2HS www.owarchitects.com design@owarchitects.com 01223 464455
B	28.03.24	For Information								
C	02.04.24	For Information								

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Indicative use	Indicative net internal area (NIA) broken down by use
Office space for 20 operational workers (see note 1 below)	167 m ²
Meeting rooms and kitchen space associated with operational worker office space	98 m ²
Office space for 30 WROL and Water Resources employees, carrying out functions currently delivered at the Milton WWTP (see note 2 below)	272 m ²
Meeting rooms and kitchen space associated with WROL and Water Resources office use	41 m ²
Educational facilities in the form of the Discovery Centre including store, internal circulation and locker space (see note 3 below)	168 m ²
Messing and toilet facilities	167 m ²
Circulation areas	147 m ²
Plant rooms	109 m ²
Indicative Net Internal Area	1169 m²
Lift space, voids and internal walls	56 m ²
Gross Internal Area	1225 m²

The office floorspace described above, totalling 439 m² for 50 employees, provides an average floorspace per worker of just over 8.75m², plus appropriately sized meeting rooms and kitchen space. This compares favourably with the British Council for Offices (BCO) optimum level of occupancy density for space planning of 10 – 12m² (*The Future of UK Office Densities*, BCO 2022).

Note 1

It should be noted that, as at the current WWTP at Milton, and in common with many other organisations, the above space would be used flexibly. However, it is proposed that the first-floor office space and meeting areas would be primarily used by the WWTP operational team. The first-floor location provides sightlines into the plant inside the earthwork bank, facilitating operations, including oversight of tanker arrivals. The proposed primary users would be site operatives, technicians, management, visitors and the network technicians associated with the proposed WWTP (detailed further in Action Point 4).

Note 2

The flexible space on the ground floor would primarily be allocated for 30 office workers at the Proposed Development, delivering two different functions:

- The WROL team have been based at Milton House since the 1990's when the original department was created. It provides vital services across AW's region including all the tanker, septic tanker, cake wagon and contractor deliveries (currently 7 drivers) including incident response coordination. Cambridge WWTP accounts for around 10% of their workload but they control 100% of all the HGV logistics of those HGVs that serve Cambridge WRC. The WROL office team makes sure HGVs stay on the routes planned for them and can react to incidents on the road network as well as responding to business incidents in an efficient and planned way. It is a vital part of AW's business that is optimally based on AW's operational site at Cambridge WWTP which is centrally located within the region creating the ability to visit AW's other WWTPs and customers within normal working hours no matter the location. 24 spaces have been allocated for WROL use.
- The Applicant's Water Resources team has been based at Milton House since 1990's. It performs a vital role within the AW business, planning and securing water resources for AW customers within the region. 6 spaces have been allocated for Water Resources team use.

Note 3

Educational uses have been embedded in the project design from the early stages of consultation and are actively supported by the host local authorities. The functionality required to provide education on the water treatment process could not be delivered elsewhere, and is therefore clearly associated with the proposed WWTP. Visitor facilities are, for example, provided by a number of water companies at facilities including the Lake Windermere Water Treatment Plant (United Utilities), the Headingley and Ewden Water Treatment Works (Yorkshire Water) and the Saltford WWTP (Wessex Water). The Discovery Centre has capacity to accommodate school classes of maximum 30 pupils with teacher supervision. Lockers for each pupil are provided in the lobby area which also provides access to dedicated toilet facilities to meet safeguarding requirements.

From the above description, the applicant suggests that it is clear that the functions of the Gateway Building are directly associated with the proposed waste water treatment works. The 6 water resources spaces are reasonably associated with Proposed Development, with those functions having been delivered at the existing WWTP for over two decades. In any event, the small amount of office space associated with those water resources uses (54 m², 20% of the net internal ground floor meeting space), would not materially change the overall associated nature of the Gateway Building. Furthermore, the water resources use of those six spaces are likely to be temporary in nature, and will be gradually superseded in time, providing flexibility of available office space as the operational staff numbers increase as the proposed WWTP grows beyond 2041 (subject always to the DCO Requirements in respect of car parking provision and sustainable travel).

As a multi-functional building established in accordance with the above principles, the Gateway Building is not severable from the rest of the project. Furthermore, the Applicant would not seek to create an additional internal floor within the Workshop Building because the activities proposed for the Gateway Building (office space, visitor facilities) would not be compatible with an active workshop area. Bringing white collar workers in direct contact with an operational space will be in contravention of the project's Design Principle 7 set out in the Design and Access Statement. The Applicant's clerical workforce who work both directly in the WWTP and/or in an associated manner are best placed in a separate building to reduce the risk to their health and safety from moving vehicles, internal building noise and chemical handling. The principles of "placemaking" embodied in the concepts of Good Design apply as much to workers as to visitors or local residents. Anglian Water's workers are entitled to facilities which extend beyond the solely functional. Separating activities aids wellbeing by providing a high-quality environment for breaks allowing them a safe place to take breaks and relax away from the operational places of work.

For the avoidance of doubt, the Workshop Building is clearly Associated Development, supporting the ongoing operation of the development. The main functions of that building are listed in the Design and Access Statement [AS-168, Section 9.19, page 160]. As discussed below at Action Point 8, the building is appropriately sized for the supporting functions it provides.

The visitor car parking in front of the Gateway Building serves visiting users of the facilities both within the building and the WWTP itself. The visitor car parking is not severable from the Gateway Building, the Applicant considers that both are associated development.

Action Point 7

Indicate any necessary consequential changes to the dDCO and other application documents should the ExA and / or SoS consider that any elements, such as the Gateway Building (Work No.19) and parking to the front of it (Work No.3) do not constitute associated development for the purposes of PA2008.

As described in respect of Action Points 5 and 6 above, the Applicant respectfully suggests that ExA is incorrect in applying a test of "necessity for direct day-to-day operation" in respect of the definition of associated development.

As set out in the Applicant's response to Action Points 5 and 6 above, the nature of the Gateway Building is such that it is integrated into the design of the Proposed Development. Were ExA or the Secretary of State to consider that it was not associated development then consequential changes to the DCO or application documents would be unlikely to be possible without significant changes to the full application package, including project design, plans, environmental statement and management schemes. Such amendments would be likely to constitute material changes for which further consultation would be required.

The car parking spaces at the front of the Gateway Centre are for visitors. Given the linkage between the visitor parking spaces and the function of the Gateway Building, the Applicant considers it unlikely that the ExA or Secretary of State would consider the status of the car parking spaces in isolation from the Gateway Building.

The Secretary of State's s.35 direction covered the relocation of the existing WWTP and associated development, which the Applicant considers covers existing office functions relocating from Milton. However, should ExA or Secretary of State consider that individual elements of the Gateway Building were not associated development, then it is suggested that such issues could be most appropriately addressed through modification of the floorspace limits in the Design Code, rather than removing the Gateway Building from the project entirely or re-configuring the Workshop Building.

Action Point 8

Noting the Green Belt location, and potential to reduce harm to openness, clarify whether there is scope to reduce the height of the proposed Gateway Building to 5 metres so as not to extend above the height of the proposed earth bund. Also, provide your view as to the implications were the ExA to recommend Schedule 14, Part 18 (buildings and other facilities) be amended in this regard.

It is unclear what benefit reducing the height of the proposed Gateway Building would deliver, given that the potential impacts on Green Belt openness of the Proposed Development arise primarily from the massing effect of the development as a whole, not the relatively discrete effect of this building and the narrow field of vision it takes up (see photomontages accompanying the Landscape and Visual Chapter 15 of the Environmental Statement [APP-127, REP4-033]).

The design of the Gateway Building has evolved through stakeholder engagement, including with the local planning authority in respect of potential effects on Green Belt openness. As

can be seen from the Design and Access Statement, DAS [AS-168], this consultation process, including independent design review from the Design Council, has resulted in the massing of the Gateway Building being significantly reduced. Its design and function are both consciously embedded into the proposed earth bank (e.g. see pages 149 and 155 of the DAS), with the Discovery Centre opening out directly on to the top of the earth bank, providing an important contribution to the "placemaking" principles of Good Design discussed in respect of Action Points 5 and 6 above.

The Applicant considers that it would be inappropriate for ExA to recommend simplistic height reductions to buildings as a means of reducing potential effects on Green Belt openness without supporting landscape and visual assessment. In many cases the functionality of the relevant buildings would be prejudiced by such a decision. If ExA or the Secretary of State were to consider that the Gateway Building significantly and adversely affected Green Belt openness in the overall context of the whole Proposed Development, then any proposed reduction in height would need to be balanced against the resulting overall loss of floorspace and the "placemaking" benefits described above.

The Applicant has carefully considered the parameters set out in Schedule 14, Part 18 and considers that the parameters setting the maximum dimensions of these structures are appropriate. In respect of the Workshop Building, similar comments apply in respect of the assessment of potential effects on Green Belt openness as to the Gateway Building.

The Workshop Building has been sized to house internal gantry cranes and lifts (in the workshop area and fleet workshop area); reduction of height would therefore inhibit the efficient operation of the facility or adversely affect flexibility in the choice of equipment available to the Applicant. The development of the design of the Workshop Building is discussed in the Design and Access Statement, DAS ([AS-168], section 9.17, pages 158-163). ExA's attention is drawn to the photomontages accompanying the Landscape and Visual Chapter 15 of the Environmental Statement [APP-127, REP4-033] and the relatively low level of contribution to massing provided by the Workshop Building, noting that the building (maximum height 10m) will be effectively screened by the earthwork bank (5m) and mature planting on its crest, estimated in the LERMP, [REP5-062] to be a further 10m in height by Year 15.

Action Point 9

Ensure consistency between the term 'Flare Stack' in Schedule 14, Part 15 and the term 'waste gas burner' in Schedule 1, Work No.8(o).

The term 'waste gas burner' in Work No. 8(o) will be amended to 'flare stack' in the Applicant's final dDCO to be submitted at Deadline 7.

Action Point 10

Review Schedule 14 (all Parts) and include references to the relevant Schedule 1 Work Nos in the interests of clarity.

Schedule 14 will be amended to refer to the relevant Work Nos in the Applicant's final dDCO to be submitted at Deadline 7.

Action Point 11

Change 'pink' to 'orange' in Schedule 16 and add a further hedgerow to this schedule as necessary, including an explanation as to whether this is an important hedgerow.

The hedgerow that was incorrectly identified as "pink" between points H19 & H20 in Part 1 of Schedule 16 is not an important hedgerow. This error will be corrected in the Applicant's final dDCO to be submitted at Deadline 7.

In addition, as explained in ISH4, the Applicant had noted some errors in the delineations of hedgerows and important hedgerows on the Hedgerow Regulations and Tree Preservation Plans (App Doc Ref 4.8) and in Schedule 16 of the DCO. The Applicant has now undertaken a full review of the plans and several amendments have been made and updated plans are submitted at Deadline 6. Where necessary the amendments will be reflected in the Applicant's final dDCO to be submitted at Deadline 7. These are:

- The hedgerows falling outside of the Order limits have been removed from the plans;
- The hedgerow previously identified with an orange line between points H25 and H26 is now to be retained and has been removed from the plans. This will be removed from Part 1 of Schedule 16 in the DCO;
- A new hedgerow previously not identified on the plans is to be removed and this is identified with an orange line between points H29 and H30 on the plans. This will be added to Part 1 of Schedule 16 in the DCO;
- Two important hedgerows are to be removed and are shown with pink lines – between points H25 & H26 and points H27 & H28. These will be added at Part 2 of Schedule 16 in the DCO.

Action Point 12

Add the Conservators of the River Cam as a consultee to Schedule 2, Requirement (R) 10 (outfall).

The Applicant will amend Requirement 10 in the final dDCO to be submitted at Deadline 7 to refer to the relevant navigation authority (the Cam Conservancy) as a consultee.

Action Point 13

Liaise regarding the framework archaeological investigation mitigation strategy to address's CCoC's concerns regarding flexibility.

The Applicant has discussed the framework archaeological investigation mitigation strategy (AIMS) to ensure sufficient flexibility is allowed for with CoCC and confirmed the following:

- In line with dDCO [REP5-003] Requirement 13, the detailed AIMS using the archaeological evaluation results, will map out the areas that require archaeological investigations and the methodologies that will be applied.
- The detailed AIMS will include the allowance to increase investigation areas if significant remains are shown to extend beyond the limits of the demarked

mitigation areas and will allow for areas to be reduced if remains are found not to extend across the whole of the mapped mitigation areas.

- The framework AIMS (AS-088) sets out the template for providing and agreeing with CCoC Historic Environment Team the mitigation strategy. Requirement 13 provides the requirement process to consent the mitigation the archaeological investigation mitigation.
- The commitment to implement the archaeological investigation mitigation strategy is set out in the CoCP Part A section 7.3 [REP5-050]. This includes the provision of a chance find strategy (and table 4-14 in the CEMP [AS-057]).

The Applicant is awaiting confirmation from CoCC that the position is now agreed with the Historic Environment Team and this clarification addresses their concerns.

Action Point 14

Provide examples of any other DCOs which have had requirements relating to offsite Biodiversity Net Gain (BNG) provision which would or may necessitate a s106 agreement (noting the Planning Practice Guidance requirements relating to such a requirement).

Requirement 6 of the Medworth Energy from Waste Combined Heat and Power Development Consent Order 2024 ("Medworth DCO") granted 20 February 2024 provides for the submission and approval of a biodiversity net gain strategy which must include details of how biodiversity net gain will be secured, 'including onsite and offsite measures'.

The full wording of the Requirement is as follows:

6(1) No part of the authorised development may commence until a biodiversity net gain strategy has been submitted to and approved by the relevant planning authority, in consultation with the relevant statutory nature conservation body.

(2) The biodiversity net gain strategy must include details of how the strategy will secure a minimum of 10% biodiversity net gain, calculated using the biodiversity metric 3.0 published by Natural England in July 2021 or such other biodiversity metric approved by the relevant planning authority in consultation with the relevant statutory nature conservation body, during the operation of the authorised development *including onsite and offsite measures* and be substantially in accordance with the outline biodiversity net gain strategy.

(3) The biodiversity net gain strategy must be implemented as approved under sub-paragraph (1)"

(our emphasis)

As part of the Medworth Examination, the ExA asked in ExQ1.2.4 how Requirement 6 would work in practice. The applicant responded as follows:

"Compliance with the BNG Strategy is secured in sub-paragraph (3) of the BNG Requirement. The Secretary of State can be confident that these measures will be implemented as a failure to do so automatically constitutes an offence under Part 8 of the Planning Act 2008. Accordingly, all parts of the approved BNG strategy have a legislative footing; the inclusion of measures within the strategy simply means that the precise method

of implementation must be approved by the relevant planning authority once the detailed design of the Proposed Development has been finalised (which will be after the DCO has been made)."

Requirement 6 of the Keadby 3 Carbon Capture Power Station Development Consent Order 2022 ("Keadby 3 DCO") granted on 7 December 2022 provides for

(2) The plan submitted and approved pursuant to sub-paragraph (1) must include details of and a timetable for implementation of—

(a) further survey work carried out to establish whether any protected species are present on any of the land affected, or likely to be affected, by that part, and, where a protected species is shown to be present, a scheme of protection and mitigation measures;

(b) measures to protect existing shrub and tree planting that is to be retained; and

(c) biodiversity and habitat mitigation and impact avoidance including the location and species composition of any coir rolls habitat.

(3) The plan submitted and approved pursuant to sub-paragraph (1) must be implemented as approved throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

(4) No part of the authorised development may be commissioned until a landscaping and biodiversity management and enhancement plan that includes a landscape and biodiversity strategy, which specifies maintenance periods, for that part has been submitted to and approved by the relevant planning authority.

(5) The plan submitted and approved pursuant to sub-paragraph (4) must include details of—

(a) implementation and management of all new shrub and tree planting;

(b) measures to enhance and maintain existing shrub and tree planting that is that is to be retained;

(c) measures to enhance biodiversity and habitats within Order Land or land within the Borough of North Lincolnshire that is under the control of the undertaker or other land within the Borough of North Lincolnshire provided it is accompanied by detailed implementation proposals incorporating an implementation timetable;

(d) an implementation timetable and responsibilities for implementation by third parties where appropriate; and

(e) annual landscaping and biodiversity management and maintenance.

(6) Any shrub or tree planted within Works Nos. 1-11 as part of the approved plan that, within a period of five 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 at least of the size as that originally planted unless otherwise agreed with the relevant planning authority.

(7) The plan submitted and approved pursuant to sub-paragraph (4) must be in accordance with the principles of the indicative landscaping and biodiversity management and enhancement plan and must be accompanied by a statement explaining how any planting proposed adjoining the Order limits has been subject to consultation with Keadby with Althorpe Parish Council along with the regard had to feedback received subject to the principles of the indicative landscaping and biodiversity management and enhancement plan.

(8) The plan must be implemented and maintained as approved during the operation of the authorised development unless otherwise agreed with the relevant planning authority

(our emphasis)

The Examiners' Reports and Secretary of State decision letters for both the Medworth and Keadby 3 DCOs have been reviewed but they do not contain any detailed commentary on this point. However, the Applicant considers that such offsite measures required by the respective DCO requirements could be secured by a number of methods, including by future Section 106 agreement. A copy of the Medworth and Keadby 3 DCOs is appended at Appendix A.

Action Point 15

Review the Design Code [REP5-109] in respect of the proposed earth bund (LAN.02) and provide further clarity on parameters, considering whether factors such as Above Ordnance Datum heights, specification of the width of the flat top area (6m minimum), cross referencing to the Landscape, Ecological and Recreational Management Plan (LERMP) (which shows a section at Figure 3.4) and amending the term 'should' to 'shall' (which also goes for all other parts of the Design Code), should be incorporated.

The Design Code has been reviewed and LAN.02 amended to provide further clarity, including on minimum height and bank profile.

Action Point 16

Noting that it remains unclear as to how the proposed WWTP would be fully funded, provide a view on whether a requirement necessitating the demonstration to the SoS of the securing of adequate funding prior to the exercising of compulsory acquisition (CA) / temporary possession (TP) powers might be appropriate.

The Applicant has submitted an updated Funding Statement [REP6-3.2] at Deadline 6 which confirms the significant progress that has been made by the Applicant, Homes England and Cambridge City Council in securing additional funds for the delivery of the proposed WWTP. The Applicant is, therefore, confident that all the funding for the costs of the Proposed Development will be available to enable the Proposed Development to proceed and that it will not be prevented due to difficulties in sourcing and securing the necessary funding.

It is not clear whether the question posed by Action Point 16 seeks a requirement for a further approval by the Secretary of State in relation to the securing of the funding for the delivery of the Proposed Development, or, seeks a requirement for the Applicant to provide

for security (such as a bond or guarantee) in relation to the compensation liability before the exercise of CA or TP powers.

If the latter, the Applicant provided a response to an equivalent question in ExQ1.8.32.

If the former, such a requirement would so far as the Applicant is aware be unprecedented. The Applicant does not consider that there is any need for a requirement necessitating the demonstration to the SoS of the securing adequate funding prior to the exercise of CA or TP powers as the tests in paragraphs 17 and 18 of the Compulsory Acquisition Guidance are met. The Applicant has:

- provided as much information as possible about the resource implications of both acquiring the land and implementing the Proposed Development including in respect of the WWTP, the Waterbeach Pipeline and the additional treatment capacity required at the proposed WWTP associated with increased incoming flows from population growth in the catchment, including from Waterbeach New Town;
- confirmed that there are not any anticipated shortfalls in funding;
- explained the degree to which public and private sector bodies have agreed to make financial contributions to the delivery of the Proposed Development, and the basis upon which those contributions are made; and
- confirmed that the funding to enable the compulsory acquisition, which will be met by the Applicant from its own resources and/or regulatory funding, is likely to be available within the statutory period following the dDCO being made, and that the resource implications of a possible acquisition resulting from a blight notice have been taken account of.

Action Point 18

Update paragraph numbering and any cross-referencing to paragraph numbers in Schedule 15 (protective provisions) (by the final deadline if not able to by Deadline 6) so that the paragraph numbering is consecutive as per the relevant guidance.

The paragraph numbering will be amended in the final dDCO to be submitted at Deadline 7.

Action Point 19

Check application documents to ensure that it is clear that the proposed new bridleway would be a public right of way (PRoW) rather than a permissive route (noting also the relevant action point in the community section).

The application documents have been checked and accurately and appropriately referred to the proposed bridleway. Other references in the documentation to permissive paths refer to the permissive paths in the LERMP area.

Action Point 20

Update the Consents and Other Permits Register [REP1-047] to reflect current positions.

The Applicant has updated the Consents and Other Permits Register for submission at Deadline 6.

Agricultural land and soils

Action Point 21

Clarify whether effects from temporary and permanent CA / TP rights sought in respect of G040 (Poplar Hall Farm) as reported in ES Chapter 6 paras 4.2.12, 4.2.49 and 4.2.62 [REP5-024] are accurately reflected in Table 5-1 and Table 5-2 of the ES chapter (or vice versa), and make any amendments as necessary.

Table 5-1 and Table 5-2 of ES Chapter 6 Agricultural Land and Soils (App Doc Ref 5.2.6) have been updated and provided at Deadline 6 to reflect that the significant effect on G040 will arise from temporary impacts.

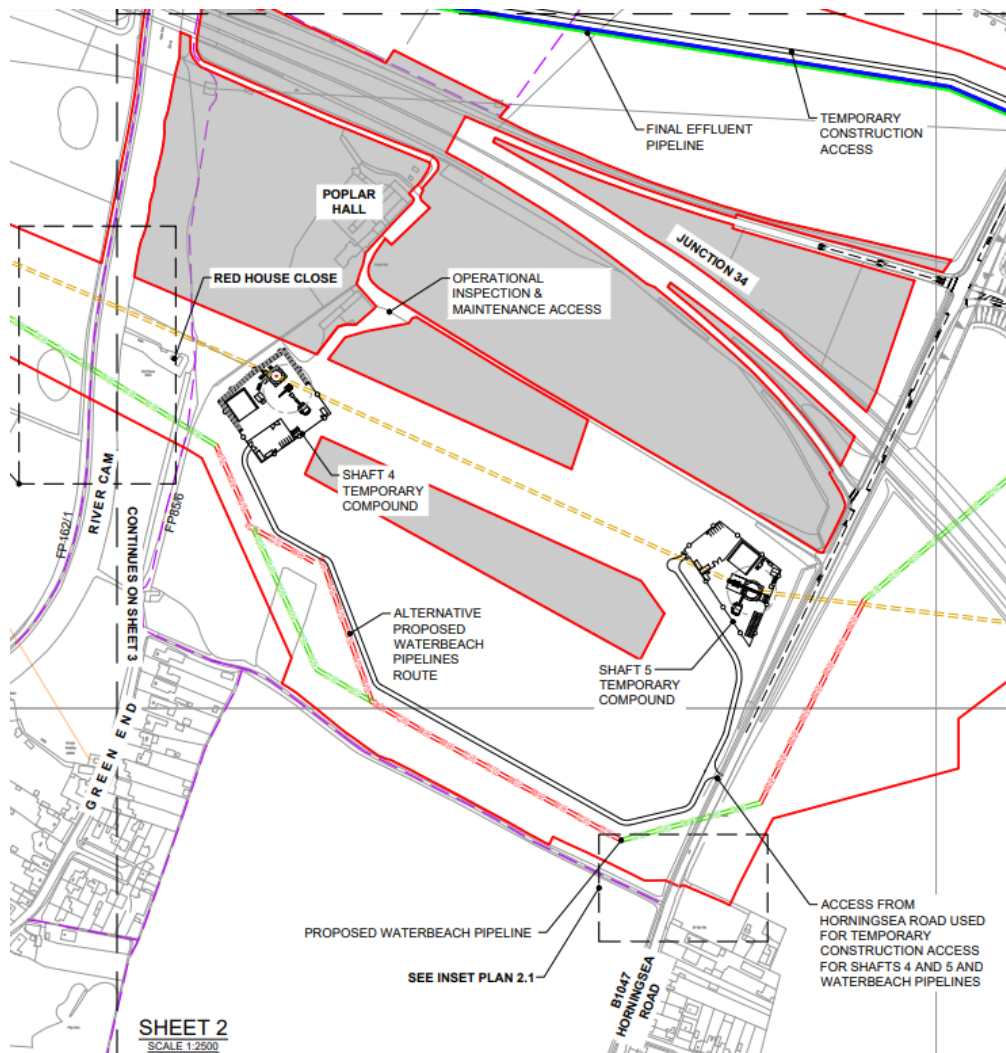
More specifically, as discussed during ISH4, although G040 does experience permanent effects, it is more appropriate to place this holding under the sub-heading of temporary effects as these have the greater impact on the holding.

Action Point 22

Provide clarification around matters relating to disturbance to G040 (Poplar Hall Farm) as requested by IPs Elizabeth Cotton and Gonville and Caius College at ISH4.

The occupants of Poplar Hall and Poplar Hall Farm access their properties from Horningsea Road via an existing access track which is shown partly in Parcels 021a and 022i and coloured brown on the Land Plans (App Doc Ref 4.4) [REP5-018] ("Existing Poplar Hall Access Track").

The first stage of construction activity in this area will involve the creation of a temporary access from the eastern end of Parcel 021d onto Horningsea Road at Parcel 022e and 028a (Temporary New Access). See the extract below from the General Arrangement Plans (App Doc Ref 4.2) [AS-149] showing the location of the Temporary New Access. This is part of Works No. 29 on the Works Plans (App Doc Ref 4.3) [REP5-017].



Source: Sheet 2 of the General Arrangement Plans (App Doc Ref 4.2) [AS-149] showing the location of the Temporary New Access off Horningsea Road.

The formation of the Temporary New Access will take around 12 weeks. During that time, the Applicant will liaise with the occupants of Poplar Hall and Poplar Hall Farm to ensure continued access to their properties via the Existing Poplar Hall Access Track, including for emergency purposes. The Applicant can confirm a Traffic Marshall will be positioned at the junction of Horningsea Road and the Existing Poplar Hall Access Track to facilitate safe and continued access.

Once the Temporary New Access directly off Horningsea Road into Parcel 021d has been formed, it will be used for the duration of the construction period for the Waste Water Transfer Tunnel and Waterbeach Pipeline South (Works Nos. 27 and 36 respectively, as shown on the Works Plans (App Doc Ref 4.3) [REP5-017]). Use of the Existing Poplar Hall Access Track will not be required by the Applicant during that period. The occupants of Poplar Hall and Poplar Hall Farm will be able to use the track as normal.

The Temporary New Access from Horningsea Road will be used for the purposes of constructing Shafts 4 and 5 of the Waste Water Transfer Tunnel and the installation of the Waterbeach Pipeline South. During that time, the majority of the Poplar Hall Farm land

within the Order Limits and south of the Existing Poplar Hall Access Track will be used for construction purposes and so will not be available for farming.

Once the Waste Water Treatment Tunnel and Waterbeach South Pipelines have been constructed, the Temporary New Access onto Horningsea Road will be removed. This will require temporary construction access to be taken again from the Existing Poplar Hall Access Track for a period of 6 to 10 weeks. During that time, the Applicant will liaise with the occupants of Poplar Hall and Poplar Hall Farm to ensure continued access to their properties via the Existing Poplar Hall Access Track, including for emergency purposes. The Applicant can confirm a Traffic Marshall will be positioned during that time at the junction of Horningsea Road and the Existing Poplar Hall Access Track to facilitate the safe and continued access.

In total, the construction activities on the land to the south of the Existing Poplar Hall Access Track will mean that land is unlikely to be unavailable for two growing seasons. The land will be re-instated to the condition found when the Applicant takes possession.

The remainder of Poplar Hall Farm, which is broadly that shown shaded grey on the Land and Works Plans ((App Doc Ref 4.4) [REP5-018] and (App Doc Ref 4.3) [REP5-017]), will still be available for farming throughout the construction period and will be unaffected by the Proposed Development.

After the construction of the Waste Water Transfer Tunnel and the Waterbeach Pipeline South, the land above them will be available for farming, subject to the restrictive covenants required to protect the underground infrastructure and subject to the arrangements to be put in place in relation to Shafts 4 and 5 (Parcels 021s and 021r respectively).

In relation to Parcel 021b, which is also part of Poplar Hall Farm but lies to the north of the A14, the Applicant explained the following in its comments on Deadline 3 submissions (App Doc Ref 8.19 [REP4-086] and in its CAH1 Post Hearing Submission (App Doc Ref 8.21) [REP4-088]).

Construction of the Proposed Development in Parcel 021b will involve several different activities happening at different times, but some at the same time, as listed below.

- Construction activities for the Outfall – Works No. 32 (App Doc Ref 4.3) [REP5-017]
- Construction compound for the Outfall – Works No. 32 (App Doc Ref 4.3) [REP5-017]
- Construction activities for the Final Effluent and Storm Pipelines – Works No. 31 (App Doc Ref 4.3) [REP5-017]
- Ecological Mitigation Area – Works No. 39 (App Doc Ref 4.3) [REP5-017]
- Diversion of Public Footpath 85/6 (Sheet 2 of the Rights of Way Plans (App Doc Ref 4.6) [REP1-018])

The exact route of the public footpath diversion will require space to ensure the safety of its users during the construction of the Proposed Development.

The location of the activities and different rights which may be required is not known at the moment. This is because results from further ground conditions surveys and a topographical survey are required. These details will not be known until closer to the start of construction.

The Applicant estimates that Parcel 021b will not be available for agricultural use for two growing seasons. Once the construction activities have finished, approximately 1.1 hectares of land at the northern end of Parcel 021b will be used permanently for ecological mitigation and BNG provision. The Outfall structure will also require the permanent acquisition of a small area of Parcel 021b, noting that part of the Outfall structure will be located in Parcel 019a. The remainder of Parcel 021b will be re-instated to the condition found when the Applicant takes possession.

After the construction of the Final Effluent and Storm Pipelines, the land above them will be available for farming, subject to the restrictive covenants. Public Footpath 85/6 will be reinstatement to approximately its existing route (see Rights of Way Plans (App Doc Ref 4.6) [REP1-018]).

Further details relating to the construction activities within the Poplar Hall and Poplar Hall Farm area are contained in the Construction Traffic Management Plan (App Doc Ref 5.4.19.7) [APP-148].

Paragraph 3.2.21 of ES Appendix 6.2 Agricultural Impact Assessment (App Doc Ref 5.4.6.2) has been updated and provided at Deadline 6 to give greater detail on the disruption to G040 caused by construction.

Action Point 23

Make provision for reinstating land at Shaft 5 to agricultural use as is the case for Shaft 4 in ES Chapter 6 Table 2-12 (pages 22 and 23).

Table 2-12 of ES Chapter 6 Agricultural Land and Soils (App Doc Ref 5.2.6) has been updated and provided at Deadline 6 to include reference to reinstatement of agricultural land following construction of shaft 5, as well as shaft 4. Reinstatement is anticipated to take one month per shaft.

Action Point 24

Update the outline Soil Management Plan [REP5-060] as per Natural England's recommendations [AS-188]

The Applicant has discussed with Natural England the points raised on the Outline Soil Management Plan. These matters are now agreed and an updated version of ES Appendix 6.3 Outline Soil Management Plan (App Doc Ref 5.4.6.3) has been provided at Deadline 6. This position is also reflected in the Statement of Common Ground with Natural England, a signed version of which will be submitted at Deadline 7.

Biodiversity

Action Point 25

Address whether 'significant' benefits referenced in para 5.1.11 of ES Chapter 8 [REP5-028] means 'significant' in EIA terms.

The Applicant confirms that where significant beneficial effects are reported within the ES Chapter 8 Biodiversity (App Doc Ref 5.2.8) [REP5-028], these are significant in EIA terms.

The text within paragraph 5.1.11 ES Chapter 8 Biodiversity (App Doc Ref 5.2.8) [REP5-028], however, has been updated and provided at Deadline 6, as it should not have been implied that there were significant benefits to reptile species or upon created habitats within Works No 39. The updated text reflects that there will be neutral (non-significant) residual effects upon reptile species through creation of habitat suitable for use including hibernacula and refuge areas within the landscape masterplan, and upon created habitats within Works No 39 to create new sections of wet ditch and replace reedbed. Paragraph 5.1.11 has therefore been updated as per the following:

“Significant beneficial effects to the following ecological receptors, as a result of Proposed Development, during operation, have been identified for habitats within the proposed WWTP through the landscape masterplan, which includes the creation of more diverse grassland, woodland, scrub and seasonal ponds along with additional ecological features such as bat and bird boxes and bee banks. This additional habitat provision will support the local Nature Recovery Network.”

The assessment within ES Chapter 8 Biodiversity (App Doc Ref 5.2.8) [REP5-028] with respect to this beneficial effect is provided within paragraphs 4.3.169 to 4.3.177, where the created and managed habitats are considered to have a moderate beneficial magnitude of impacts due to the implementation of the landscape masterplan (as provided within ES Appendix 8.14 Landscape, Ecological and Recreational Management Plan (LERMP) App Doc Ref 5.4.8.14) [REP5-062] improving connectivity across the local landscape supporting the Cambridge Nature Network; with a medium sensitivity due to the geographic scale of created habitats being of county importance; resulting in an overall moderate beneficial effect, which is significant.

Action Point 26

Update the outline outfall management and monitoring plan [REP4-060], Construction Environmental Management Plan [AS-057], LERMP [REP5-062], Code of Construction Practice (CoCP) Parts A and B [REP5-050 and REP5-052], and Lighting Design Strategy [REP5-054] as appropriate to ensure that they align and respond to the concerns raised by CCoC and South Cambridgeshire District Council (SCDC) regarding:

- **other neutral grassland;**
- **capturing relevant ecological receptors;**
- **management measures for protected species;**
- **scope of the LERMP;**
- **securing the reinstatement of habitats and arable flora;**
- **mitigation measures regarding invasive non-native species; and,**
- **bat mitigation measures.**

Update the Statements of Common Ground (SoCG) to reflect discussions which have taken place to resolve these matters and the updated agreed positions on all matters regarding biodiversity.

The Applicant has updated the Statements of Common Ground (SoCG) to record the final positions and agreement on these topics with CCoC [REP5-095] and SCDC [REP5-101]. Updated versions will be submitted a Deadline 6 setting out these updates and signed versions of the SoCGs will be submitted at Deadline 7.

The draft Construction Environment Management Plan did not require updating to address CCoC and SCDC concerns however it has been updated to include figure requirements to address Save Honey Hill Group and Fen Ditton Parish Council concerns and provided at Deadline 6.

The LERMP did not require updating as it was agreed with CCoC and SCDC that if the below mentioned plans were updated to add in the suggested wording, securing the management of habitats and bat boxes outside the scope of the LERMP, then the LERMP scope did not need to be amended.

The Lighting Design Strategy, Code of Construction Practice and outline Outfall Management and Monitoring Plan have all been updated to reflect the wording agreed with CCoC and SCDC and close out any outstanding concerns they had.

Action Point 27

Update and provide further details on the 'Advisory Group' referenced in the LERMP [REP5-062] (e.g. in respect of members, governance etc..).

A detailed management and maintenance plan based on the indicative principles set out in paragraph 4.1.2 of the LERMP will be agreed with key stakeholders. An Advisory Group will

be established prior to the landscape works commencing in order to advise on this detailed management and maintenance plan.

Membership of this group will include the local planning authority, County Council, Natural England, the Wildlife Trust for Bedfordshire, Cambridgeshire & Northamptonshire, Horningsea and Fen Ditton Parish Councils and the National Trust

Action Point 28

Provide other examples similar to R25(2)(b) used in other made DCOs regarding offsite BNG and the use of a requirement to secure offsite mitigation.

The wording of R25(2)(b) is as follows:

(b) details of measures to deliver and secure twenty percent biodiversity net gain comprising river units within or outside of the Order limits;

Although the sub-paragraph references river units, the Applicant considers the pertinent issue is the reference to 'within or outside of the Order limits' and therefore has not answered this question specifically with regards to river units. The mechanism for delivery of units within or outside of the Order limits is the same, regardless of whether they are river units or other BNG units.

The Applicant considers the Medworth DCO and Keadby 3 DCO as referred to in Action Point 14 to be relevant here. As set out in the response above to that Action Point, both of these Requirements contain wording which requires the submission of a document (a plan or strategy), for approval, which contains details of offsite measures to provide BNG. The Requirements then secure the compliance with that document, see R6(3) of the Medworth DCO and R6(8) of the Keadby 3 DCO.

Carbon

Action Point 30

Provide a technical note on carbon in agreement with SCDC on compliance with Policy CC/3.

The South Cambridgeshire Local Plan (adopted 2018) includes Policy CC/3: Renewable and Low Carbon Energy in New Developments. This policy requires new developments to reduce carbon emissions by a minimum of 10% (to be calculated by reference to a baseline for the anticipated carbon emissions for the property as defined by Building Regulations) through the use of on-site renewable energy and low carbon technologies.

The Applicant's proposals for the Proposed Development are fully aligned with this policy requirement and indeed the renewable energy provisions greatly exceed the 10% target, as illustrated below.

Table 4.5 of ES Chapter 10 Carbon (App Doc Ref 5.2.10) presents the potential annual emissions from operation of the Proposed Development in year 1. The table below reproduces data from Table 4.5 and adds an estimate of the percentage of the Proposed Development's carbon emissions that are reduced by renewable energy. The implementation of solar energy is still under consideration by the Applicant and the potential impact of solar power generation is not included in the table below.

Table 1: Potential annual emissions from operation in year 1

Process	Baseline (existing WWTP operation) Tonnes CO ₂ e/y	Alternative Option CHP model Tonnes CO ₂ e/y	Biomethane production (DCO preferred option) Tonnes CO ₂ e/y
Grid Electricity ³	620*	2,040*	1,740
Chemicals	220	20	50
Fossil fuel consumption (propane)	100	-	860
Transport - biosolids recycling to land	70	70	70
Total gross emissions	1,010	2,130	2,730
CHP energy use	-370	-1,030	
Biomethane export ⁴	-	-	-6,210
Total net emissions	640	1,110	-3,490
Percentage of annual emissions	36.6%	47.9%	228%

³ Grid electricity emissions have been based on forecast 2028 (expected year of operation start) grid carbon intensity from BEIS green book supplementary guidance, data tables 1-19, Table 1 commercial/public sector.

⁴ A constant emissions factor has been used for calculating avoided emissions through biomethane export. There are no UK Government projections for gas grid decarbonisation by unit of gas. It has been assumed that from 2050 onwards, the gas grid will be net zero and therefore no avoided emissions have been included from this point.

Process	Baseline (existing WWTP operation) Tonnes CO ₂ e/y	Alternative Option CHP model Tonnes CO ₂ e/y	Biomethane production (DCO preferred option) Tonnes CO ₂ e/y
reduced by renewable energy			

tCO₂e rounded to nearest 10 tonnes, totals may not sum due to rounding

**Grid electricity emissions account for power generated from CHP engine*

It can be seen from the table that under both the preferred option and the alternative option, carbon emissions reduction due to renewable energy (from either biomethane export or CHP generation) greatly exceed the 10% target stated in Policy CC/3. In both cases, additional solar power generation would not be needed to achieve the 10% target. The 10% target is exceeded even if we consider future decarbonisation of the power grid, which reduces the impact of both power use and (for the alternative CHP option) power generation by the Proposed Development. For the preferred option the 10% target would still be exceeded even if we assume that the gas grid is partially decarbonised as a result of future inject of biomethane from other anaerobic digestion plants across the country (there are no reliable forecasts for future biomethane production, however, we consider that an optimistic range for biomethane content in the gas grid might be 25% - 50% by 2050).

The optimal mix of technologies (biomethane export, solar, battery storage, CHP) will be determined at the detailed design phase in accordance with the DCO Requirements. However, under all options the Proposed Development will exceed the 10% carbon emissions reduction target stated in Policy CC/3.

Action Point 31

Share information regarding carbon offsetting with CCoC and provide an update.

The Applicant has discussed Carbon Offsetting further with CoCC and has updated the Statement of Common Ground to reflect the final position of both parties. The Applicant relies on securing offsets to reach carbon neutrality (only relevant if the CHP option was selected). It is noted that CHP is not the Applicant’s preferred option. It is agreed there is not a very mature market in credible offsets. The Applicant has, however, discussed with CoCC that the government’s advisor on climate change, the Climate Change Committee, recognises that *“High-integrity carbon credits purchased by businesses can play a small but important role in supporting the transition to Net Zero”*. A global market exists for voluntary credits, with a number of active schemes providing methodologies for assessing and auditing carbon offset quality, including initiatives such as the Oxford principles, the Science Based Targets initiative and the Voluntary Carbon Markets Integrity Initiative.

Action Point 32

Provide clarification that the net zero operation of the Proposed Development as a whole through the outline Carbon Management Plan [REP4-064] does not just solely focus on plant equipment (as suggested in your response to ExQ2.6.13 [REP5-111]).

As stated in the Applicant's response to ExQ2.6.13 [REP5-111], the Applicant considers that ES Appendix 10.2 Outline Carbon Management Plan (App Doc Ref 5.4.10.2) [REP4-064] should not cover sludge deliveries, but will cover all plant that is permanently located within the site boundary of the Planned Development. This is because its commitment is to an operationally net zero plant, not the associated traffic movements.

Notwithstanding the above, the Applicant notes that it has wider corporate commitments to achieve net zero for its operations and that these corporate level activities would include reducing the carbon emissions associated with its transport activities. However, these wider corporate decarbonisation activities are not part of the CMP for Proposed Development.

Furthermore, as noted previously, no additional tanker movements will arise by virtue of the Proposed Development (these are merely displaced from the existing operations at Milton).

Action Point 33

Update ES Chapter 10 [REP5-032] to provide consistency between Table 4.11 and Table 5-1 regarding the Combined Heat and Power option and residual effects.

Table 5-1 of ES Chapter 10 Carbon (App Doc Ref 5.2.10) has been updated and provided at Deadline 6 to confirm that the residual effect of the Combined Heat and Power option has been rated as significant.

Action Point 34

Amend references within the Design Code [REP5-109] from 'should' to 'shall' to provide greater certainty.

The Applicant has amended the Design Code to change 'should' to 'will' with the exception of one 'should' which is not related to a commitment.

Action Point 35

Check consistency between the LERMP [REP5-062], the outline Carbon Management Plan [REP4-064] and ES Chapter 10 [REP5-032] references to '30 years' and 'lifetime'.

These documents cover different topics and hence use these terms in slightly different ways though the uses are correct in their context.

ES Chapter 10 Carbon (App Doc Ref 5.2.10) [REP5-032] refers to 'lifetime' in terms of the whole life carbon *assessment lifetime* (up to 2090) or design lifetime (also up to 2090).

ES Appendix 8.14 Landscape, Ecological and Recreational Management Plan (LERMP) (App Doc Ref 5.4.8.14) [REP5-062] uses *lifetime* to refer to the duration of the LERMP monitoring plan, which includes actions that will occur for a minimum period of 30 years.

The Outline Carbon Management Plan (App Doc Ref 5.4.10.2) [REP4-064] included references to 'lifetime'. These have now been removed in order to remove any confusion and provided at Deadline 6. Although a number of tables refer to quantities being over a '30 year operation period', this is only used to indicate the scale of carbon emissions to be managed over that period and is not the design life of the Proposed Development.

Action Point 36

Respond to Save Honey Hill Group's (SHHG) on representations regarding the Design Code [REP5-109] and carbon matters.

The Applicant has provided responses to SHH's comments on carbon matters in the Applicant's Comments on Deadline 5 Submissions (App Doc Ref 8.24) provided at Deadline 6.

The Applicant does not agree with SHH's comments on the Design Code. All typographical amendments have now been made within the document including the ExA's request to replace where appropriate the word 'should' with 'shall' or 'will' to further secure those codes.

The Applicant has included elements of the LERMP within the Design Code following a number of requests made through the Issue Specific Hearings and from the Local Planning Authorities. This secures specific design items that appear in both documents. These documents now complement each other and perform separate but related duties.

Further responses to SHH points on the Design Code are as follows:

3.1 Site Layout - The Applicant is satisfied that the limits of deviation are clear within the dDCO and fully explained in the Project Description and the Works Plans provided. No further alterations are planned to further define or refine the limits of deviation of the proposed development.

3.2 Use of Colour - Final colour selection will be presented in the discharge of requirements applications consistent with dDCO Requirement 7 'Detailed Design'. The Applicant has engaged with local architects and landscape architects who understand the local environment and the local vernacular. Their guidance as well as that received from the Design Council and local authorities will inform the use of colour in achieving the most suitable colour scheme for the proposed WWTP.

3.3 Materials – The Applicant will work with its chosen Architects to finalise the material choices for all structures and present these to the discharging authority for approval as required in dDCO Requirement 7.

3.4 Building Performance – The Applicant has amended the design codes to make specific reference to BREEAM and water usage requirements as set out in local policy.

3.5 Gateway Building Design – The Applicant has no further comments to make on the points raised by SHH. Detailed design of the Gateway Building will be developed in

accordance with the design codes and the Design and Access Statement and will be subject to a discharge application as required by dDCO Requirement 7.

3.6 Workshop Building Design - The Applicant has no further comments to make on the points raised by SHH. Detailed design of the Workshop Building will be developed in accordance with the design codes and the Design and Access Statement and will be subject to a discharge application as required by dDCO Requirement 7.

3.7 Carbon – The Applicant has amended the design codes relating to carbon working closely with the local authorities' carbon specialists. It is agreed between the Applicant and the local authorities that the design codes relating to carbon will ensure that the Proposed Development will achieve the ambitious carbon performance targets as committed to by the Applicant.

3.8 Landscape and Ecology – Where reasonably practicable, trees and hedgerows are to be retained. The final details for the LERMP and landscape design (including species mix) are still to be finalised but will align with the draft LERMP and the codes set out in the Design Code. These matters have been the subject of numerous consultations with local authority officers, and between the Design Council and our local landscape architects.

The Applicant has now replaced the reference to 'visitors centre' with 'Gateway Building' in LAN.08

3.9 Lighting – The Design code makes specific reference to the control of lighting primarily in design but also during construction. 3.10 Associated Infrastructure – The Applicant has no comments on this point.

3.11 Outfall – The Design Code will work as a complimentary and supportive document to all the other documents submitted by the Applicant and therefore there will be an element of overlap between them. The Applicant has amended 'should' to 'will'.

3.12 Ventilation Shaft – The Applicant has discussed the vent stack that will remain at the existing WWTP location with the follow-on developer and in depth with Cambridge City Council. Specific reference to this is included in the Design Code [REP6 7.17] VSS.01 and VSS.02.

3.13 Flare Stack Shield – The Applicant believes this design code already responds sufficiently to the requirements it is intended for and is not proposing to amend it further.

Water resources

Action Point 38

Respond to National Trust concerns regarding the outline water quality monitoring plan [REP5-083] and report back. Add National Trust to Table 5.1 as a consultee.

The Applicant has discussed the concerns raised by the National Trust on the Outline Water Quality Monitoring Plan [REP5-083] in a meeting on 19th March 2024. The Trust is pleased that it will be added to the list of recipients in Table 5.1.

The Trust remains of the opinion that loggers are more accurate and more likely to pick up subtle changes and variations throughout the year. The Trust also considers that the boreholes should be protected during construction but note that the Environment Agency will approve any changes. The Trust defers to the advice of the statutory advisors on these matters and notes that the Environment Agency and Natural England have advised that they are satisfied with the Outline Water Quality Monitoring Plan. This final position is recorded in the Statement of Common Ground (App Doc Ref 7.14.16).

Action Point 39

Clarify how the maximum number of credits for WAT 01 of BREEAM regarding water efficiency would be secured.

The Applicant has added to the Design Code [REP6 7.17] PER.03 The Greater Cambridge Sustainable Design & Construction SPD 2020 requires all non-residential buildings to achieve all 5 water credits under WAT.01. The Gateway Building will achieve the same level of credits and align with the Greater Cambridge Sustainable Design & Construction SPD 2020. This code will secure the water credits for the Gateway Building as proposed.

Action Point 41

Update the CoCP Part B [REP5-052] to include Red House Close in relation to mitigation measures regarding septic tanks.

The Code of Construction Practice Part B has been updated at Section 3.2 to include reference to Red House Close.

Noise and vibration

Action Point 42

Update SoCG with CCoC to reflect the agreed position on emergency generators being scoped out of the noise assessment.

A briefing note explaining why emergency generators were scoped out of ES Chapter 17 Noise and Vibration (App Doc Ref 5.2.17) [REP5-042] has been shared with CCoC. While CCoC is satisfied with the briefing note provided and the explanation of why emergency generators were scoped out, they have requested that the assessment is still updated to include this. The Applicant has therefore updated ES Chapter 17 Noise and Vibration (App Doc Ref 5.2.17) to incorporate an assessment of emergency generators and provided at Deadline 6.

Action Point 43

Update SoCG with CoCC and SCDC to reflect the agreed position on noise and vibration effects from temporary odour controls / scrubbers.

The Applicant has discussed this further with the Environmental Health officers for both SCDC and CoCC in a meeting on 19 March 2024. The Applicant is satisfied there is no impact to human health in the cleaning process provided it follows the recognised industry standard processes and Health and Safety Executive guidance for completing the process. The Applicant has shared with CCoC its procedures and policies for monitoring the Odour control units "OCUs" at the existing Cambridge facility both for maintenance and operational tasks/routines.

CCoC has viewed the procedures but would have preferred this to have been assessed within chapter 12 of the ES specific to the decommissioning.

Detailed information will be sought during the discharge of requirement stages (Decommissioning Plan). This position is updated in the Statement of Common Ground with CoCC.

Transport

Action Point 44

To review documents (ES Chapter 19 [REP5-046], Transport Assessment (TA) and supporting information such as traffic flow information), correct mistakes and ensure consistency. Note all points raised in ISH4 and thoroughly check documents for any other issues.

The Applicant reviewed ES Chapter 19 Traffic and Transport (App Doc Ref 5.2.19), ES Appendix 19.3 Transport Assessment (App Doc Ref 5.4.19.3) and other supporting information to correct mistakes and ensure consistency. The updated documents were submitted to the ExA as an Additional Submission on the 26th March 2024. Following this submission, the Applicant completed further reviews of these documents and some have been resubmitted at Deadline 6. Any resubmissions were to address minor formatting, grammatical or consistency errors identified and do not change the conclusions of any documents submitted on the 26th March 2024.

Action Point 45

Amend the Construction Traffic Management Plan (CTMP) [REP5-077] for Station Road and Clayhithe Road to limit hours to between 0900 and 1500 for construction vehicles over 3.5 tonnes.

Table 6-1 has been added to the Construction Traffic Management Plan (App Doc Ref 5.4.19.7) to set out restrictions to delivery windows for construction vehicles over 3.5 tonnes.

Action Point 46

Applicant, CCoC SoCG to be updated to reflect agreed position on mitigation documents / add updated schedule.

The Applicant has agreed with CoCC the inclusion of the updated schedule as an Appendix to the updated Statement of Common Ground with CoCC (App Doc Ref . 7.14.4)

Action Point 48

Provide updated response regarding road damage payments (this could be included in the SoCG with CCoC).

The Applicant has discussed with CoCC the position as currently set out in the Construction Environment Management Plan (CEMP) (App Doc Ref 5.4.2.7) regarding construction traffic and post construction surveys. New wording has been added to the CTMP at paragraph 6.8.1 to provide for remediation.

Action Point 49

Provide an explanation as to why network technicians, and associated facilities provided for them, need to be based at the proposed WWTP. Why must they use facilities at the Proposed WWTP as opposed to elsewhere, and why are they essential to the operation of the proposed WWTP?

The Applicant operates as a fully integrated business with multiple teams working together to deliver water recycling operations for our customers across our region including Cambridge. Across our region it is very typical to have our regional network teams based at our combined WWTP/STC plants. This allows for all the relevant teams that are fundamental in the wastewater treatment process to work closely together and communicate efficiently and at times of severe weather events we can combine both treatment and networks to resolve issues at the point of most effect which are normally at our larger works. Our network teams don't only operate, maintain, and manage our sewers but also manage our pumping stations that deliver the wastewater from our regional areas to the combined WWTP/STC. Making sure our pumping stations and WWTP's work in harmony is vital to maintain compliance and avoid preventable storm spills.

As well as this vital communication between these operational teams, having a base capable of supporting materials stores, team briefings, training and a hub of operations for the teams also means Anglian Water can operate as efficiently as it can for its customers. All of our operational teams regularly meet with each other in a planned and ad hoc manner at Cambridge WWTP including, treatment, sludge, maintenance, bioresources, networks, scientific and process support, optimisation as well as other technical and managerial support. If our Network team were not able to relocate with the rest of their team, it would require a new depot being created in the region for them to be based from that will require an office for management, IT facilities, equipment store, information management and specialist vans such as camera equipment. Moving would also reduce our efficiency as a business as we don't want our teams working in silos and not work as an integrated team.

Action Point 50

Provide a note relating to the shoulder peaks during the operational phase and respond to Action Point 25 from ISH3 [EV-007v]. Please provide all supporting information / data and provide clear cross-references to the data. Please ensure that this is consistent with the updated TA / ES Chapter 19.

A technical note relating to shoulder peaks has been prepared and was submitted to the ExA as an Additional Submission on the 26th March 2024.

Action Point 51

SoCG with National Highways and CCoC to be updated following their review of any revisions to transport documents.

Applicant's Response to ISH4 Actions

The Applicant is discussing the revised transport documents with National Highways on 3 April 2024. To allow for signature of the SOCG the Applicant has agreed with National Highways that the SoCG will be agreed in final form at Deadline 6 for signature at Deadline 7 and any additional comments that National Highways may have on the revised transport documents will be made in separate submissions.

Major accidents and disasters

Action Point 52

Update Abnormal Indivisible Loads (AIL) routing drawing [REP5-077] (and any others which show AIL routing) to show distinction between AIL routes based on weight only and those based on weight and the size of the vehicle.

The AIL figures in the Construction Traffic Management Plan (App Doc Ref 5.4.19.7) and sheet 7 of Design Plans – REF to show the distinction between the AIL routes.

Action Point 53

Update timing restrictions of AIL in the CTMP to restrict AIL movements at weekends between the hours of 1100 and 1500.

Table 6-1 has been added to the CTMP (App Doc Ref 5.4.19.7) to set out the restrictions of AIL movements at weekends.

Action Point 54

Update SoCG with the Emergency Services to provide an audit trail on agreed matters and confirm whether Waterbeach routes have been reviewed in response to the concern raised by Waterbeach Parish Council.

The Applicant has updated the SoCG with the Emergency services and updated the audit trail and points raised regarding Abnormal Loads. This has been signed by EEAST and Cambridgeshire Fire and Rescue. The updated SoCG [REP 098] will be submitted at Deadline 6

Action Point 55

Ensure that (and update if necessary) the CTMP sufficiently provides for the management of Poplar Hall Farm access for residents, including where there are issues on the strategic road network and consequential tailbacks.

The Applicant has amended 3.3.1 in the Construction Traffic Management Plan [RP6-5.4.19.7] to include the use of Traffic Marshalls to control the vehicles on private roads in any instance.

Community

Action Point 57

Provide a drawing which identifies which routes would be PRow, permissive routes or which would have no status. Also include the recently-confirmed equestrian crossing across the A14 overbridge.

The Applicant has updated the LERMP (App Doc Ref 5.4.8.12) at Deadline 6. Text has been provided at section 3.5 to provide clarification on the status of the permissive paths within the LERMP area and figures 3.12, 3.13 and 3.14 have been revised to remove potential ambiguities.

Action Point 58

Consider whether the drawings in the LERMP and other documents which illustrate recreational routes ought to be updated to remove the potential for confusion as to their use (e.g. where it refers to cyclist only use but pedestrians would also use those routes).

Figures 3.12 and 3.13 have been amended to clarify. These have been included in the LERMP (App Doc Ref 5.4.8.12) at Deadline 6.

Action Point 59

Update Table 5-1 to confirm that the LERMP [REP5-062] manages permissive paths for a minimum period of 30 years and add clarification to the LERMP that the Water Industry Act Code of Practice could apply to permissive paths beyond the 30 year period.

Tables 4-1 and 5-1 of the LERMP have been updated to reflect the 30 year maintenance period. Text on the Code of Practice has been included at paragraph 3.5.17.

Action Point 60

In respect of PRow 85/8 and 85/6 provide a brief explanation as to why the effects have been quantified differently in the Community and Transport chapters of the ES and how these should be weighed in the balance to avoid double-counting of effects.

With regard to PRow 85/8 and 85/6, ES Chapter 19 Traffic and Transport (App Doc Ref 5.2.19) assesses the effects on the PRow in terms of changes in Pedestrian Delay. This assessment considers the time delay arising from the additional distance that users (pedestrians) would need to travel as a result of diversions or closures of PRow during construction or operation of the Proposed Development. ES Chapter 19 Traffic and Transport (App Doc Ref 5.2.19) considers users as those who are undertaking a specific point to point journey via the affected route (the PRow). ES Chapter 11 Community (App Doc Ref 5.2.11) assesses the effects on the PRow in terms of changes to the availability of a local recreational resource.

Both assessments consider the total distance travelled without and with the diversion, with the difference between these two values representing the increase in journey distance that users would need to travel as a result of diversions or closures of PRow during construction or operation of the Proposed Development. Allowance is also made for time delays

associated with mitigation measures, such as access gates. ES Chapter 19 Traffic and Transport (App Doc Ref 5.2.19) reports significant effects on Pedestrian Delay based on the increase in journey distance (which is a proxy for journey time), the duration and the availability of alternative routes. ES Chapter 11 Community (App Doc Ref 5.2.11) considers the increase in journey distance, but focuses on the duration and level of reduction in the PRoW's function as a place for outdoor recreation.

The significant effects identified in the respective ES chapters are therefore considered to be different effects as, although they consider the same PRoW, the PRoW serves different functions (a route and a recreational resource) and the effects would be experienced by user groups with predominantly different priorities.

Both the effect on pedestrian delay and the effect on PROW function as a place for outdoor recreation due to the disruption caused by construction works affecting PRoW 85/8 and 85/6 are temporary and reversible. The impact of each of these effects is considered as part of the overall effects of the Proposed Development on both Community (ES Chapter 11) and on Traffic and Transport (ES Chapter 19). In the case of Community, the overall effect after mitigation in relation to recreation is considered to be slight beneficial, as a result of the new recreational opportunities created by the provision of the new bridleway, permissive paths, new accessible space for recreation and education opportunity. In terms of Traffic and Transport, the in-combination impacts to amenity on pedestrian, equestrian and cyclists and impacts on ability to access community resources and social infrastructure is scoped out (see Table 2-13) on the basis that these matters are assessed in detail as part of Chapter 11: Community. Table 2-14: Primary and tertiary mitigation measures of the Traffic and Transport Chapter lists measures incorporated into the design, some of which enhance overall accessibility and connectivity of walking and cycling.

Health

Action Point 61

Ensure consistency of naming of mitigation plans / documents within all submitted documents (e.g. some mitigation plans in ES Chapter 12: Health [REP5-034] do not appear to accord with the names of submitted documents).

The Applicant has updated the naming of management plans within ES Chapter 12 Health (App Doc Ref 5.2.12) to accord with submitted documents and provided at Deadline 6.

Other matters

Action Point 62

Review the outline decommissioning plan [REP4-044] for reference to the decommissioning of the Waterbeach pipeline south and update as necessary.

The outline Decommissioning Plan (App Doc Ref 5.4.2.3) has been updated to include reference to the decommissioning of the Waterbeach Pipeline South.

Appendix A Medworth and Keadby 3 DCOs

2022 No. ****

INFRASTRUCTURE PLANNING

The Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022

Made - - - - *7th December 2022*

Coming into force - - *29th December 2022*

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An application has been made to the Secretary of State under section 37 of the Planning Act 2008(a) (“the 2008 Act”) in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(b) for an order granting development consent.

The application has been examined by the Examining Authority appointed by the Secretary of State pursuant to Chapter 3 of Part 6 of the 2008 Act. The examination was carried out in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(c). The Examining Authority has submitted a report and recommendation to the Secretary of State under section 83 of the 2008 Act.

The Secretary of State has considered the report and recommendations of the Examining Authority, has considered the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(d) and has had regard to the documents and matters referred to in section 104(2)(e) of the 2008 Act.

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- (a) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20). Part 7 was amended by S.I. 2017/16.
 - (b) S.I. 2009/2264, as amended by S.I. 2012/635 and S.I. 2013/522. There are other amendments to the Regulations which are not relevant to this Order.
 - (c) S.I. 2010/103 amended by S.I. 2012/635.
 - (d) S.I. 2017/572 amended by S.I. 2018/695, S.I. 2018/942.
 - (e) Section 104 was amended by section 58(5) of the Marine and Coastal Access Act 2009 (c. 23) and by section 128(2) and Schedule 13, paragraphs 1 and 49(1) to (6) of the Localism Act 2011 (c. 20).

The Secretary of State, having decided the application, has determined to make an order giving effect to the proposals comprised in the application on terms that in the opinion of the Secretary of State are not materially different from those proposed in the application.

Accordingly, the Secretary of State, in exercise of the powers conferred by sections 114, 115, 120 and 149A of the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022 and comes into force on 29th December 2022.

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 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(d);

“the 1990 Act” means the Town and Country Planning Act 1990(e);

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

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

“the 2009 Act” means the Marine and Coastal Access Act 2009(h);

“access and rights of way plans” means the plans of that name identified in Schedule 12 (documents and plans to be certified) and which are certified by the Secretary of State as the access and rights of way plans for the purposes of this Order;

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

“AOD” means above ordnance datum;

“AGL” means above ground level;

“apparatus” has the same meaning as in Part 3 of the 1991 Act except that it further includes pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks, electricity cables, telecommunications equipment and electricity cabinets;

“application guide” means the document of that name identified in the Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the application guide for the purposes of this Order;

“authorised development” means the development and associated development described in Schedule 1 (authorised development) which is development within the meaning of section 32 of the 2008 Act;

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- (a) 1961 c. 33.
(b) 1965 c. 56.
(c) 1980 c. 66.
(d) 1981 c. 66.
(e) 1990 c. 8.
(f) 1991 c. 22.
(g) 2008 c. 29.
(h) 2009 c. 23.

“book of reference” means the document of that name identified in the table in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the book of reference for the purposes of this Order;

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

“canal” means the Stainforth and Keadby Canal;

“Canal and River Trust” means the body of that name which is a company limited by guarantee (company no. 07807276) and a registered charity (charity commission No 146792) whose registered office is at First Floor, North Station House, 550 Elder Gate, Milton Keynes, MK9 1BB;

“carbon capture and compression plant” means the building and associated works comprised in Work No. 1C and Work No. 7 in Schedule 1 shown on the works plans and which are designed to capture, compress and export to the National Grid Carbon Gathering Network, a minimum rate of 90% of the carbon dioxide emissions of the generating station operating at full load;

“carriageway” has the same meaning as in the 1980 Act;

“combined heat and power assessment” means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the combined heat and power assessment for the purposes of this Order;

“commence” means carry out a material operation, as defined in section 155 of the 2008 Act (which explains when development begins) comprised in or for the purposes of the authorised development other than the permitted preliminary works (except where stated to the contrary) and “commencement”, “commenced” and cognate expressions are to be construed accordingly;

“commercial use” means the export of electricity, and of captured compressed carbon dioxide emissions, from the authorised development on a commercial basis, following the completion of commissioning of the authorised development and the first occupation of the authorised development by the undertaker;

“commissioning” means the process of testing all systems and components of the authorised development (including the carbon capture and compression plant and systems and components which are not yet installed but the installation of which is near to completion) in order to verify that they function in accordance with the design objectives, specifications and operational requirements of the undertaker and “commission” and other cognate expressions, in relation to the authorised development are to be construed accordingly;

“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;

“construction working site” means a construction site associated with the works including hard standings, lay down and storage areas for materials, equipment, areas for spoil, areas for vehicle parking, areas for welfare facilities including offices, canteen and washroom facilities, workshop facilities temporary fencing or other means of enclosure and areas for other facilities required for construction purposes;

“deemed marine licence” means a licence as set out in Schedule 13 and deemed by article 39 to have been granted under Part 4 of the 2009 Act by virtue of section 149A of the 2008 Act;

“design principles” means the document of that name (being Appendix 1 of the design and access statement) identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the design principles for the purposes of this Order;

“Electricity Act” means the Electricity Act 1989(a);

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means but while in electronic form;

(a) 1989 c. 29.

“environmental statement” means the document of that name identified in Schedule 12 and which is certified by the Secretary of State as the environmental statement for the purposes of this Order;

“flood risk assessment” means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the flood risk assessment for the purposes of this Order;

“framework construction environmental management plan” means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the framework construction environmental management plan for the purposes of this Order;

“framework construction traffic management plan” means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the framework construction framework management plan for the purposes of this Order;

“framework construction workers travel plan” means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the framework construction workers travel plan for the purposes of this Order;

“footpath” and “footway” have the same meaning as in the 1980 Act;

“group company” means in relation to the undertaker company, that company and any company which is from time to time a holding company of that company or a subsidiary or subsidiary undertaking of that company or of such holding company;

“haul road plans” means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the haul road plans for the purposes of this Order;

“haul road” means the temporary haul road constructed pursuant to the haul road planning permission (together with such alterations pursuant to Work No. 10a);

“haul road planning permission” means the conditional planning permission with North Lincolnshire Council reference PA/2019/1595, dated 15 November 2019 as varied by planning permission referenced PA/2021/188 dated 1 April 2021, and any other variations thereto (which shall include for the avoidance of doubt any variations pursuant to Section 73 of the 1990 Act);

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“indicative landscape and biodiversity plan” means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the indicative landscaping and biodiversity plan for the purposes of this Order;

“indicative landscaping and biodiversity management and enhancement plan” means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the indicative landscaping and biodiversity management and enhancement plan for the purposes of this Order;

“indicative lighting strategy” means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the indicative lighting strategy for the purposes of this Order;

“indicative surface water drainage plan” means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the indicative surface water drainage plan for the purposes of this Order;

“land plans” means the plans of that name identified in the table in Schedule 12 (documents and plans to be certified) and which are certified by the Secretary of State as the land plans for the purposes of this Order;

“licence conditions” means the conditions set out in respect of the deemed marine licence in Schedule 13;

“limits of deviation” means the limits of deviation for each of the works as comprised in the works plans;

“main river” means a watercourse shown as such on the main river map for England and includes any structure or appliance for controlling or regulating the flow of water into or out of the channel which (a) is a structure or appliance situated in the channel or in any part of the bank of the channel; and (b) is not a structure or appliance vested in or controlled by an internal drainage board and “river” shall be construed accordingly;

“maintain” includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part of, but not remove, reconstruct or replace the whole of, the authorised development provided that any such activities do not give rise to any materially new or materially different environmental effects than those assessed in the environmental statement and “maintenance” and “maintaining” are to be construed accordingly;

“MMO” means the Marine Management Organisation;

“NGC” means National Grid Carbon Limited (Company Registration Number 03932833) whose registered office is at 1 to 3 Strand, London, WC2N 5EH;

“National Grid Carbon Gathering Network” means the proposed network of high pressure carbon dioxide pipelines to be developed by NGC to transport carbon dioxide from power and industrial carbon dioxide emitters to compression facilities for onwards geological storage;

“NGET” means National Grid Electricity Transmission plc (Company Registration Number 02366977) whose registered office is at 1 to 3 Strand, London, WC2N 5EH;

“NGG” means National Grid Gas plc (Company Registration Number 02366977) whose registered office is at 1 to 3 Strand, London WC2N 5EH;

“Northern Powergrid (Yorkshire) plc” means the company of the same name (Company Registration Number 04112320) whose registered office is at Lloyds Court, 78 Grey Street, Newcastle Upon Tyne, NE1 6AF;

“Order land” means the land delineated and marked as such on the land plans;

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

“outline written scheme of investigation” means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the outline written scheme of investigation for the purposes of this Order;

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

“permitted preliminary works” means all or any of—

- (a) environmental surveys, geotechnical surveys, intrusive archaeological surveys and other investigations for the purpose of assessing ground conditions, and removal of plant, structures and machinery;
- (b) above ground site preparation for temporary facilities for the use of contractors;
- (c) the provision of temporary means of enclosure and site security for construction;
- (d) the temporary display of site notices or advertisements;
- (e) site clearance (including vegetation removal);

“Pilfrey laydown plans” means the document of that name identified in the Schedule 12 (documents and plans to be certified) approved as part of the Pilfrey laydown planning permission and which is certified by the Secretary of State as the Pilfrey laydown plans for the purposes of this Order;

“Pilfrey laydown planning permission” means the conditional planning permission with North Lincolnshire Council reference PA/2018/1950, dated 23 November 2018, and any other variations thereto (which shall include for the avoidance of doubt any variations pursuant to Section 73 of the 1990 Act);

(a) 1981 c. 67. Section 7 was amended by the Planning and Compulsory Purchase Act 1991 (c. 34).

“Planning Acts” means the Town and Country Planning Act 1947(a), the Town and Country Planning Act 1962(b), the Town and Country Planning Act 1971(c), and the 1990 Act;

“plot(s)” means each of the plots listed in the book of reference and shown on the land plans;

“relevant planning authority” means the district planning authority for the area in which the land to which the provisions of this Order apply is situated;

“Requirements” means those matters set out in Schedule 2 (Requirements) and “Requirement” means any one of the Requirements;

“statutory undertaker” means any person falling within section 127(8) of the 2008 Act;

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes any footpath and any part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“street works” means the works listed in article 9(1);

“Upper Tribunal” means the Lands Chamber of the Upper Tribunal;

“undertaker” means Keadby Generation Limited, company number 02729513, whose registered address is Keadby Power Station Trentside, Keadby, Scunthorpe DN17 3EF;

“watercourse” includes every river, stream, creek, ditch, drain, canal, cut, culvert, dyke, sluice, sewer and passage through which water flows except a public sewer or drain;

“works plans” means the plans (which show limits of deviation for each numbered work) of that name identified in Schedule 12 and which are certified by the Secretary of State as the works plans 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 and to any trusts or incidents (including restrictive covenants) to which the land is subject and references to the creation or acquisition of new rights include the imposition of restrictive covenants which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or over which rights are created and acquired under this Order or is otherwise comprised in this Order.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between lines and/or points on a numbered work comprised in the authorised development and shown on the works plans and access rights of way plans are to be taken to be measured along that work.

(4) Where any definitions in paragraph (1) are duplicated or similar to definitions within the interpretation sections of Schedule 13 (deemed marine licence under Part 4 (Marine Licensing) of the Marine and Coastal Access Act 2009/Deemed MMO provisions) then (unless expressly stated otherwise in Schedule 13) defined terms in this article 2 shall not apply to Schedule 13.

(5) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 and shown on the works plans and a reference in this Order to a work designated by a number, or by a combination of letters and numbers (for example, “Work No. 1A” or “numbered work 1A”), is a reference to the work so designated in that Schedule and a reference to “Work No. 1” or “numbered work 1” means numbered works 1A to 1E inclusive and the same principle applies to such numbered works that contain letters.

(6) In this Order, the expression “includes” is to be construed without limitation.

(7) In this Order, references to any statutory body include that body’s successor bodies.

(8) All areas described in square metres in the book of reference are approximate.

(a) 1947 c. 51. This Act was repealed by the Planning (Consequential Provision) Act 1990 (c. 11).

(b) 1962 c. 38. This Act was repealed by the Planning (Consequential Provision) Act 1990.

(c) 1971 c. 78. This Act was repealed by the Planning (Consequential Provision) Act 1990.

(9) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the access and rights of way plans.

PART 2 PRINCIPAL POWERS

Development consent etc. granted by the Order

3.—(1) Subject to the provisions of this Order and to the Requirements the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Each numbered work may be situated only within the corresponding numbered area shown on the works plans.

Maintenance of authorised development

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

Operation of authorised development

5.—(1) The undertaker is authorised to use and operate the generating station comprised in the authorised development.

(2) This article does not relieve the undertaker of any other requirement to obtain any permit or licence or any obligation under any legislation that may be required to authorise the operation of a generating station.

Benefit of the Order

6. Subject to article 7 (consent to transfer the benefit of the Order), the provisions of this Order have effect solely for the benefit of the undertaker save for:

- (a) Work No. 2A in relation to which the provisions of this Order have effect for the benefit of the undertaker or NGG;
- (b) Work No. 3A in relation to which the provisions of this Order have effect for the benefit of the undertaker or NGET;
- (c) Work No 3B in relation to which the provisions of this Order have effect for the benefit of the undertaker or Northern Powergrid (Yorkshire) Plc; and
- (d) Work No. 7B (and any associated works described in Work No. 7(c)) in relation to which the provisions of this Order have effect for the benefit of the undertaker or NGC.

Consent to transfer benefit of the Order

7.—(1) The undertaker may—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order (excluding the deemed marine licence referred to in paragraph (3) below) which resides for the time being in the undertaker (including any of the numbered works) and such related statutory rights as may be agreed in writing 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 which resides for the time being in the undertaker (including any of the numbered works) and such related statutory rights as may be so agreed in writing between the undertaker and the lessee.

(2) Where a transfer or grant has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (4), include references to the transferee or the lessee.

(3) Subject to paragraph (5), the undertaker may with the written consent of the Secretary of State—

- (a) where an agreement has been made in accordance with paragraph (1)(a), transfer to the transferee the whole of the deemed marine licence and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) where an agreement has been made in accordance with paragraph (1)(b), grant to the lessee, for the duration of the period mentioned in paragraph (1)(b), the whole of any of the deemed marine licence and such related statutory rights as may be so agreed;

except where paragraph (6) applies, in which case no consent of the Secretary of State is required.

(4) 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.

(5) The Secretary of State must consult the MMO before giving consent to the transfer or grant to a transferee or lessee of the whole of the provisions of the deemed marine licence and such release of statutory rights as may be so agreed.

(6) The consent of the Secretary of State is required for the exercise of the powers of paragraph (1) except where—

- (a) the transferee or lessee is—
 - (i) the holder of a licence under section 6 of the Electricity Act(a);
 - (ii) a gas transporter within the meaning of Part 1 of the Gas Act 1986(b); or
 - (iii) in relation to a transfer or lease of any works within a highway, a highway authority responsible for the highways within the Order land.
- (b) the time limits for all claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
 - (i) no such claims have been made;
 - (ii) any such claims that have been made have all been compromised or withdrawn;
 - (iii) compensation has been paid in final settlement of all such claims;
 - (iv) payment of compensation into court in lieu of settlement of all such claims has taken place; or
 - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of all such claims that no compensation is payable.

(7) Where the consent of the Secretary of State is not required under paragraph (6), the undertaker must notify the Secretary of State in writing before transferring or granting a benefit referred to in paragraph (1).

(8) The notification referred to in paragraph (7) must state—

- (a) the name and contact details of the person to whom the benefit of the powers will be transferred or granted;
- (b) subject to paragraph (9), the date on which the transfer will take effect;
- (c) the powers to be transferred or granted;
- (d) pursuant to paragraph (4), the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted; and
- (e) where relevant, a plan showing the works or areas to which the transfer or grant relates.

(a) 1989 c. 29. Section 6 was amended by section 30 of the Utilities Act 2000 (c. 27), sections 89, 136, 145 of, and Schedules 19 and 23 to, the Energy Act 2004 (c. 29), paragraph 2 of Schedule 8 to the Climate Change Act 2008 (c. 27), regulation 19 of S.I. 2011/2704 and articles 6 and 21 of S.I. 2012/2400.

(b) 1986 c. 44 (as amended).

(9) The date specified under paragraph (8)(b) must not be earlier than the expiry of fourteen working days from the date of the receipt of the notice.

(10) The notice given under paragraph (8) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.

Application and modification of statutory provisions

8.—(1) The provisions of the Neighbourhood Planning Act 2017^(a) insofar as they relate to temporary possession of land under articles 27 (temporary use of land for carrying out the authorised development) and 28 (temporary use of land for maintaining the authorised development) do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction, operation or maintenance of any part of the authorised development.

(2) As from the date on which the authorised development (including the permitted preliminary works) is commenced any approval, grant, permission, authorisation or agreement made under the Planning Acts or Electricity Act prior to that date will cease to have effect but only insofar as such approval, grant, permission, authorisation or agreement is inconsistent with the authorised development or anything approved under the Requirements to be carried out within the Order limits.

PART 3 STREETS

Street works

9.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 3 (streets subject to street works) as is within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) drill, tunnel or bore under the street;
- (c) place and keep apparatus in the street;
- (d) maintain apparatus in the street, change its position or remove it;
- (e) construct a bridge over the street; and
- (f) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c), (d) and (e).

(2) The authority given by paragraph (1) is a statutory right or licence for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) Where the undertaker is not the street authority, sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

Power to alter layout, etc., of streets

10.—(1) The undertaker may for the purposes of the authorised development alter the layout of or carry out any works in the street in the case of permanent works as specified in column (2) of Schedule 4 (streets subject to permanent alteration of layout) in the manner specified in relation to that street in column (3).

(2) Without prejudice to the specific powers conferred by paragraph (1) but subject to paragraph (4), the undertaker may, for the purposes of constructing, operating or maintaining the authorised

(a) 2017 c. 20.

development, alter the layout of any street and, without limitation on the scope of this paragraph, the undertaker may—

- (a) alter the level or increase the width of any kerb, footway, cycle track or verge; and
- (b) make and maintain passing places.

(3) The powers conferred by paragraph (2) may not be exercised without the consent of the street authority.

(4) Paragraphs (2) and (3) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

(5) If within 28 days of receiving an application for approval under paragraph (3) a highway authority fails to notify the undertaker of its decision or refuses approval without giving any grounds for its refusal that highway authority is deemed to have granted approval.

Construction and maintenance of new or altered means of access

11.—(1) Those parts of each means of access specified in Schedule 5 (those parts of the access to be maintained at the public expense) to be constructed under this Order must be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed by the highway authority, must be maintained by and at the expense of the undertaker for a period of 12 months from their completion and from the expiry of that period (and following an inspection by the highway authority and it being satisfied with the standard of the highway works including for the avoidance of doubt any remedial works carried out by the undertaker) by and at the expense of the highway authority.

(2) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(3) For the purposes of a defence under paragraph (2), a court must in particular have regard to the following matters—

- (a) the character of the street including the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant that the undertaker had arranged for a competent person to carry out or supervise the maintenance of that part of the street to which the action relates unless it is also proved that the undertaker had given that person proper instructions with regard to the maintenance of the street and that those instructions had been carried out.

(4) Nothing in this article—

- (a) prejudices the operation of section 87 of the 1991 Act (prospectively maintainable highways) and the undertaker is not by reason of any duty under that section to maintain a street or to be taken to be a street authority in relation to that street for the purposes of Part 3 of that Act; or
- (b) has effect in relation to street works with regard to which Part 3 of the 1991 Act apply.

Access to works

12.—(1) The undertaker may, for the purposes of the authorised development—

- (a) form and lay out the permanent means of access, or improve existing means of access, in the locations specified in Schedule 4 (streets subject to permanent alteration of layout);
- (b) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) If a highway authority fails to notify the undertaker of its decision within 28 days of receiving an application under paragraph (1) or refuses approval without giving any grounds for its refusal that highway authority is deemed to have granted approval.

Agreements with street authorities

13.—(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) the construction of any new street including any structure carrying the street over or under any part of the authorised development;
- (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (c) the maintenance of the structure of any bridge or tunnel carrying a street;
- (d) any stopping up, prohibition, restriction, alteration or diversion of a street authorised by this Order;
- (e) the undertaking in the street of any of the works referred to in article 11(1) (construction and maintenance of new or altered means of access); or
- (f) the adoption by a street authority which is the highway authority of works—
 - (i) undertaken on a street which is existing publicly maintainable highway; or
 - (ii) which the undertaker and highway authority agree are to be adopted as publicly maintainable highway.

(2) If such an agreement provides that the street authority must undertake works on behalf of the undertaker the agreement may, without prejudice to the generality of paragraph (1)—

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) specify a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

14.—(1) Subject to paragraphs (3) and (4) and Part 2 of Schedule 10 to this Order (For The Protection Of Canal And River Trust), 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 must not 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 approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) 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.

(6) 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 other than in accordance with a consent granted by the Environment Agency.

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1) of the Environmental Permitting (England and Wales) Regulations 2016(b).

(8) If a person who receives an application for consent under paragraph (3) or approval under paragraph (4)(a) fails to notify the undertaker of a decision within 28 days of receiving an application, that person is deemed to have granted consent or given approval as the case may be.

(9) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Homes England and Regulator of Social Housing, the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964(c) (interpretation), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(d) have the same meaning as in that Act.

Authority to survey and investigate the land

15.—(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 or upon which entry is required in order to carry out monitoring or surveys in respect of the authorised development and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial 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.

(a) 1991 c. 56. This Section was amended by sections 35 and 43(2) of, and paragraph 1 of Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43), sections 36 and 99 of the Water Act 2003 (c. 37) and paragraph 16 of Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

(b) S.I. 2016/1154.

(c) 1964 c. 40.

(d) 1991 c. 57.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least fourteen days' notice has been served on every owner and occupier of the land.

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

- (a) must, if so required 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.

(4) No trial holes are to 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.

(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) 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.

Temporary interference with canal and public rights of navigation

16.—(1) The undertaker may in connection with the construction of the authorised development (and subject to Part 2 of Schedule 10 (protective provisions))—

- (a) temporarily interfere with the waterway, by constructing or maintaining temporary works at any point within the Order limits as it considers necessary or expedient;
- (b) temporarily moor or anchor barges or other vessels or craft in the River Trent or the canal;
- (c) temporarily close any part of the canal within the Order limits to navigation; and
- (d) load or unload into and from such barges, other vessels or craft equipment, machinery, soil and any other materials within the Order limits in connection with the construction of the authorised development.

(2) The power conferred by paragraph (1)(c) must be exercised in a way which secures—

- (a) that no more of the canal is closed to navigation at any time than is necessary in the circumstances; and
- (b) that if complete closure of a part of the canal to navigation becomes necessary, all reasonable steps are taken to secure that the minimum obstruction, delay or interference is caused to vessels or craft which may be using or intending to use it.

(3) Any person who, as a result of the exercise of powers conferred by this article, suffers loss by reason of the interference with any private right of navigation is entitled to compensation to be paid by the undertaker to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Use of private roads for construction

17.—(1) The undertaker may use any private road within the Order limits for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with the construction of the authorised works.

(2) The undertaker must compensate the person liable for the repair of a road to which paragraph (1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph (1).

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of such compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

18.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate it, or is incidental to it, and may use any land so acquired for the purposes authorised by this Order or for any other purposes in connection with or ancillary to the authorised development.

(2) As from the date on which a compulsory acquisition notice is served or the date on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, that land or that part of it which is vested (as the case may be) is discharged from all rights, trusts and incidents to which it was previously subject.

(3) This article is subject to article 21 (compulsory acquisition of rights etc.), article 24 (acquisition of subsoil or airspace only), article 27 (temporary use of land for carrying out the authorised development), article 28 (temporary use of land for maintaining the authorised development) and article 32 (Crown rights).

(4) This article does not apply in relation to any right of apparatus to which section 138 of the 2008 Act (extinguishment of right, and removal, of apparatus of statutory undertakers etc.) or article 29 (statutory undertakers) applies.

Statutory authority to override easements and other rights

19.—(1) The carrying out or use of the authorised development and the doing of anything else authorised by this Order is authorised for the purpose specified in section 158(2) of the 2008 Act (nuisance: statutory authority), notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to use of land arising by virtue of contract.

(2) The undertaker must pay compensation to any person whose land is injuriously affected by—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to use of land arising by virtue of contract,

authorised by virtue of this Order and the operation of section 158 of the 2008 Act.

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and any restrictions as to the use of land arising by virtue of a contract.

(4) Section 10(2) of the 1965 Act applies to paragraph (2) by virtue of section 152(5) of the 2008 Act (compensation in case where no right to claim in nuisance).

(5) Any rule or principle applied to the construction of section 10 of the 1965 Act must be applied to the construction of paragraph (2) (with any necessary modifications).

Time limit for exercise of authority to acquire land compulsorily

20.—(1) After the end of the period of five years beginning on the day on which this Order is made—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act; and

- (b) no declaration is to be executed under section 4 of the 1981 Act (execution of declaration) as applied by article 23 (application of the Compulsory Purchase (Vesting Declarations) Act 1981 and Part 1 of the Land Compensation Act 1961).

(2) The authority conferred by article 27 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph is to prevent the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights etc.

21.—(1) Subject to paragraphs (2) to (4), the undertaker may acquire compulsorily such rights over the Order land as may be required for any purpose for which that land may be acquired under article 18 (compulsory acquisition of land) by creating new rights as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of the table in Schedule 6 (land in which only new rights etc. may be acquired) the undertaker's powers under paragraph (1) are limited to acquire compulsorily the existing rights over land and create and acquire compulsorily the new rights as are specified in column (2) of that Schedule.

(3) In the case of Order land required for Work No. 4A and 4B, the undertaker's powers under paragraph (1) are limited to either plots falling within Work No. 4A or plots falling within Work No. 4B and following approval by the relevant planning authority of the details for Work No. 4 pursuant to Requirement 5(4) the undertaker shall:

- (a) if Work No. 4A is to be developed, serve written notice on those plots (being plots falling within Work No. 4B) confirming that the undertaker no longer intends to implement any powers of compulsory acquisition in relation to such plots; or
- (b) if Works No. 4B is to be developed, serve written notice on those plots (being plots falling within Work No. 4A) confirming that the undertaker no longer intends to implement any powers of compulsory acquisition in relation to such plots.

(4) Following approval by the relevant planning authority of the details for Work No. 3B pursuant to Requirement 5(3) the undertaker shall serve written notice on those with interests in plots falling within Work No. 3B which are not required for the approved Work No. 3B confirming the undertaker no longer intends to implement any powers of compulsory acquisition in relation to such plots and the undertaker's powers in paragraph (1) shall not apply to such plots.

(5) Subject to section 8 of the 1965 Act (other provisions as to divided land), Schedule 2A to the 1965 Act (counter-notice requiring purchase of land not in notice to treat) as substituted by paragraph 5(8) of Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights), and section 12 of the 1981 Act (divided land), where the undertaker creates or acquires a right over land under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(6) Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right.

(7) In any case where the acquisition of new rights under paragraph (1) or (2) is required for the purposes of diverting, replacing or protecting the apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to create and acquire such rights to the statutory undertaker in question.

(8) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (7) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(9) This article is subject to article 32 (Crown Rights).

Private rights

22.—(1) Subject to the provisions of this article, all private rights and restrictions over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition of the land, or of the right, or of the benefit of the restrictive covenant by the undertaker, whether compulsorily or by agreement;
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry); or
- (c) on commencement of any activity authorised by the Order which interferes with or breaches those rights,

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights and restrictions over land subject to the compulsory acquisition of rights under this Order are suspended and unenforceable or, where so notified by the undertaker, extinguished in so far as in either case their continuance would be inconsistent with the exercise of the right—

- (a) as from the date of acquisition of the right by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry) in pursuance of the right,

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights and restrictions over land owned by the undertaker within the Order land are extinguished on commencement of any activity authorised by this Order which interferes with or breaches such rights.

(4) Subject to the provisions of this article, all private rights or restrictions over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land and so far as their continuance would be inconsistent with the exercise of the temporary possession of that land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right or restriction under this Order is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right or apparatus to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 29 (statutory undertakers) applies.

(7) Paragraphs (1) to (4) have effect subject to—

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land, the acquisition of rights over the land or the creation of rights over the land;
 - (ii) the undertaker's appropriation of it;
 - (iii) the undertaker's entry onto it; or
 - (iv) the undertaker's taking temporary possession of it;that any or all of those paragraphs do not apply to any right specified in the notice; or
- (b) any agreement made at any time between the undertaker and the person in or to whom the right or restriction in question is vested or belongs.

(8) If any such agreement as is referred to in paragraph (7)(b)—

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

Application of the 1981 Act and Part 1 of the 1961 Act

- 23.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.
- (2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.
- (3) In section 1 (application of act) for subsection (2) substitute—
- “(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”
- (4) In section 5(2) (earliest date for execution of declaration), omit the words from “, and this subsection” to the end.
- (5) Omit section 5A (time limit for general vesting declaration).
- (6) In section 5B (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute—
- “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 20 (time limit for exercise of authority to acquire land compulsorily) of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022.”
- (7) In section 6 (notices after execution of declaration) for subsection (1)(b) substitute—
- “(b) on every other person who has given information to the acquiring authority with respect to any of that land further to the invitation published and served under section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008.”
- (8) In section 7 (constructive notice to treat) in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.
- (9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—
- “(2) But see article 24(3) (acquisition of subsoil or airspace only) of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022 which excludes the acquisition of subsoil or airspace only from this Schedule.”
- (10) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act and as modified by article 25 (modification of Part 1 of the Compulsory Purchase Act 1965).
- (11) Part 1 of the 1961 Act shall apply where pursuant to this Order there arises a dispute as to compensation which is payable pursuant to this Order notwithstanding that such dispute may not relate to compensation for the acquisition of land authorised by this Order.

Acquisition of subsoil or airspace only

- 24.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil or airspace of the land referred to in paragraph (1) of article 18 (compulsory acquisition of land) and paragraph (1) of article 21 (compulsory acquisition of rights etc.) as may be required for any purpose for which that land or rights over land may be created or acquired under those provisions instead of acquiring the whole of the land.
- (2) Where the undertaker acquires any part of, or rights in, the subsoil of or airspace over land under paragraph (1), the undertaker is not to be required to acquire an interest in any other part of the land.
- (3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil or airspace only—
- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and

(c) section 153(4A) (reference of objection to Upper Tribunal: general) of the 1990 Act.

(4) Paragraphs (2) and (3) do not apply where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Modification of Part 1 of the 1965 Act

25.—(1) Part 1 of the 1965 Act (compulsory purchase under Acquisition of Land Act 1946), as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1)(a) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 20 (time limit for exercise of authority to acquire land compulsorily) of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022”.

(3) In section 11A(b) (powers of entry: further notices of entry)—

- (a) in subsection (1)(a) after “land” insert “under that provision”; and
- (b) in subsection (2) after “land” insert “under that provision”.

(4) In section 22(2) (interests omitted from purchase), for “section 4 of this Act” substitute “article 20 (time limit for exercise of authority to acquire land compulsorily) of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022”.

Rights under or over streets

26.—(1) The undertaker may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person’s interest in the land, and who suffers loss by the exercise of that power, is to be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised development

27.—(1) The undertaker may, in connection with the carrying out of the authorised development—

(a) Inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).
(b) Inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).

- (a) enter on and take temporary possession of—
 - (i) so much of the land specified in column (1) of the table in Schedule 8 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that table; and
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (powers of entry) and no declaration has been made under section 4 of the 1981 Act (execution of declaration);
 - (b) remove any buildings, fences, debris and vegetation from that land;
 - (c) construct temporary works (including the provision of means of access) and buildings on that land; and
 - (d) construct any works specified in relation to that land in column (2) of the table in Schedule 8 (land of which temporary possession may be taken), or any mitigation works.
- (2) Paragraph (1) does not authorise the undertaker to take temporary possession of—
- (a) any house or garden belonging to a house; or
 - (b) any building (other than a house) if it is for the time being occupied.
- (3) Not less than twenty-eight days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.
- (4) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—
- (a) in the case of land specified in paragraph (1)(a)(i) after the end of the period of one year beginning with the date of completion of the works for which temporary possession of the land was taken; or
 - (b) in the case of land referred to in paragraph (1)(a)(ii) after the end of the period of one year beginning with the date of completion of the works for which temporary possession of the land was taken unless the undertaker has, before the end of that period, served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to the land or has otherwise acquired the land subject to temporary possession.
- (5) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to the land or has otherwise acquired the land subject to temporary possession, the undertaker must, before giving up possession of land of which temporary possession has been taken under this article, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to replace a building or debris removed under this article.
- (6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of any power conferred by this article.
- (7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.
- (8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).
- (9) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i).
- (10) Nothing in this article precludes the undertaker from—
- (a) creating and acquiring new rights over any part of the Order land identified in Schedule 6 (new rights) under article 21 (compulsory acquisition of rights etc.); or

- (b) acquiring any right in the subsoil of or airspace over any part of the Order land under article 24 (acquisition of subsoil or airspace only) or article 26 (rights under or over streets).

(11) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire the land or any interest in it.

(12) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(13) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 8 (land of which temporary possession may be taken).

Temporary use of land for maintaining the authorised development

28.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order land if such possession is reasonably required for the purpose of maintaining the authorised development;
- (b) enter on any land within the Order land for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than twenty-eight days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) In this article “the maintenance period” means the period of five years beginning with the date which that part of the authorised development is first operational except in respect of any part of the authorised development which is comprised of landscaping where “the maintenance period” means such period as set out in the landscape and biodiversity strategy which is approved by the relevant planning authority pursuant to Requirement 6 of Schedule 2 beginning with the date on which that part of the landscaping is completed.

Statutory undertakers

29. Subject to Schedule 10 (protective provisions), the undertaker may—

- (a) acquire compulsorily the land belonging to statutory undertakers within the Order land;
- (b) extinguish or suspend the rights of or restrictions for the benefit of, and remove or reposition the apparatus belonging to, statutory undertakers on, under or within the Order land; and
- (c) create and acquire compulsorily the new rights over land belonging to statutory undertakers within the Order land.

Apparatus and rights of statutory undertakers in streets

30. Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 9 (street works), article 10 (power to alter layout, etc., of streets), article 11 (construction and maintenance of new or altered means of access) or article 12 (access to works) any statutory undertaker whose apparatus is under, in, on, along or across the street is to have the same powers and rights in respect of that apparatus, subject to Schedule 10 (protective provisions), as if this Order had not been made.

Recovery of costs of new connections

31.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 29 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 29 (statutory undertakers), any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 30 (apparatus and rights of statutory undertakers in streets) or Part 3 of the 1991 Act applies.

(4) In this article—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(a); and

“public utility undertaker” has the same meaning as in the 1980 Act.

(a) 2003 c. 21.

PART 6 OPERATIONS

Crown Rights

32.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular, nothing in this Order authorises the undertaker or any lessee or licensee to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) belonging to His Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to His Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) belonging to a government department or held in trust for His Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Nothing in this Order authorises the undertaker or any lessee or licensee to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown land (as defined in section 227 of the 2008 Act) that is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined that section).

(3) A consent under paragraph (1) or paragraph (2) may be given unconditionally or subject to terms and conditions, and is deemed to have been given in writing where it is sent electronically.

Felling or lopping of trees and removal of hedgerows

33.—(1) The undertaker may fell or lop any tree or shrub adjoining the authorised development or cut back its roots, if it reasonably believes it to be necessary to do so, to prevent the tree or shrub from obstructing or interfering with the passage of abnormal indivisible load vehicles to the extent necessary for the purposes of construction of 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, is to be determined under Part 1 of the 1961 Act.

(4) The undertaker may, for the purposes of the authorised development subject to paragraph (2) remove any hedgerows within the Order limits that may be required for the purposes of carrying out the authorised development.

(5) The undertaker may not pursuant to paragraph (1) or (4) fell or lop a tree or remove hedgerows within the extent of the publicly maintainable highway without the prior consent of the highway authority.

(6) In this article “hedgerow” has the same meaning as in the Hedgerows Regulations 1997(a).

Protective works to buildings

34.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

(a) S.I. 1997/1160.

- (a) at any time before or during the carrying out of the construction of the authorised development in the vicinity of the building of any part of the authorised development; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of five years beginning with the day on which that part of the authorised development is first brought into operational use.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than fourteen days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5) the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of ten days beginning with the day on which the notice was served, require the question of whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 44 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of five years beginning with the date of completion of the part of the authorised development carried out in the vicinity of the building it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152 of the 2008 Act (Compensation in case where no right to claim in nuisance).

(10) Any compensation payable under paragraph (7) or (8) must be determined, in case of dispute, under Part 1 of the 1961 Act.

(11) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

PART 7
MISCELLANEOUS AND GENERAL

Protective provision

35. Schedule 10 (protective provisions) has effect.

Restoration works

36.—(1) If the authorised works have not been commenced within the period specified in Requirement 2 the undertaker will within 6 months from the expiry of such period—

- (a) submit to the relevant planning authority for its written approval a scheme for the removal of the haul road, including its road bridges and associated infrastructure and restoration of the land, including the incorporation of biodiversity enhancements and a timetable for implementation; and
- (b) submit to the relevant planning authority for its written approval a scheme for the restoration of the land described in the Palfrey laydown plans to its former condition.

(2) Both schemes shall be implemented by the undertaker as approved and thereafter retained unless agreed otherwise with the relevant planning authority.

Application of landlord and tenant law

37.—(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 prejudices the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law applies 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.

Operational land for purposes of the 1990 Act

38. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3) of the 1990 Act (cases in which land is to be treated as not being operational land).

Deemed marine licence under the Marine and Coast Access Act 2009

39. The undertaker is deemed to have been granted the licence under Part 4 of the 2009 Act contained in Schedule 13 to this Order, to carry out the works and make deposits described in that

licence, and subject to the licence conditions which are deemed to have been attached to the licence by the Secretary of State under Part 4 of the 2009 Act.

Defence to proceedings in respect of statutory nuisance

40.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by persons aggrieved by statutory nuisances) in relation to a nuisance falling within paragraph (b), (c), (d), (e), (fb), (g) or (h) of section 79(1) of that Act (statutory nuisances and inspections therefor) no order may be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

- (a) 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 sites), or a consent given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974(b); or
- (b) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (c) 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 does not apply where the 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.

41.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of all documents and plans listed in the table in Schedule 12 (documents and plans to be certified) for certification that they are true copies of the documents referred to in this Order.

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

Service of notices

42.—(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 (6) to (8), by electronic transmission.

(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.

(a) 1990 c. 43. This section was amended by section 103 of the Clean Neighbourhoods and Environment Act 2005 (c. 16).

(b) 1974 c. 40. Words in this section were repealed by section 133(2) of, and Schedule 7 to, the Building Act 1984 (c. 55) and by section 120(3) of, and paragraph 1 of Schedule 24 to, the Environment Act 1995 (c. 25) and inserted by section 162(1) of, and paragraph 15(3) of Schedule 15 to, that Act.

(3) For the purposes of section 7 of the Interpretation Act 1978^(a) (references to service by post) 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 that 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 an 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 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 the 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 is to 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 seven days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of an electronic transmission 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 is final and takes effect on a date specified by the person in the notice but that date must not be less than seven days after the date on which the notice is given.

(9) This article does not 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.

Procedure in relation to certain approvals etc.

43.—(1) Where an application is made to or request is made of any authority or body named in any of the provisions of this Order for any consent, agreement or approval required or contemplated by any of the provisions of the Order, such consent, agreement or approval to be validly given, must be given in writing and must not be unreasonably withheld or delayed.

(a) 1978 c. 30.

(2) Schedule 9 (procedure for discharge of requirements) has effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to any provision of this Order.

Arbitration

44.—(1) Any difference under any provision of this Order, unless otherwise provided for, is to be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State or a person appointed by the Secretary of State.

(2) Any matter for which the consent or approval of the Secretary of State or the MMO is required under the provisions of this Order shall not be subject to arbitration pursuant to this article 44 (arbitration).

Guarantees in respect of payment of compensation

45.—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any land unless it has first put in place either—

- (a) a guarantee, the form and amount of which has been approved by the Secretary of State (or a person appointed by the Secretary of State) in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2); or
- (b) an alternative form of security, the form and amount of which has been approved by the Secretary of State (or a person appointed by the Secretary of State) in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph.

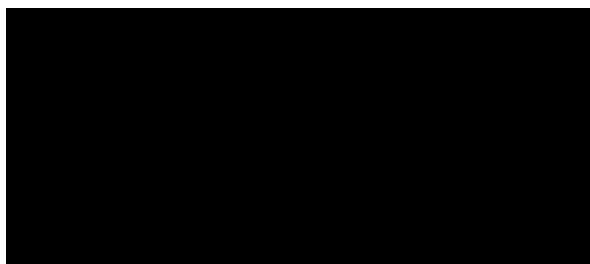
(2) The provisions are—

- (a) article 18 (compulsory acquisition of land);
- (b) article 21 (compulsory acquisition of rights etc.);
- (c) article 22 (private rights);
- (d) article 26 (rights under or over streets);
- (e) article 27 (temporary use of land for carrying out the authorised development);
- (f) article 28 (temporary use of land for maintaining the authorised development); and
- (g) article 29 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under this Order is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

Signed by authority of the Secretary of State for Business, Energy and Industrial Strategy



7th December 2022

David Wagstaff OBE, Deputy Director Energy Infrastructure Planning
Department for Business, Energy and Industrial Strategy

SCHEDULE 1

Article 2

AUTHORISED DEVELOPMENT

In the Borough of North Lincolnshire, a nationally significant infrastructure project as defined in sections 14(1)(a) and 15 of the 2008 Act and associated development, comprising—

Work No. 1 – a carbon capture enabled electricity generating station located on land at the Keadby Power Station site, west of Scunthorpe, gas fuelled, and with a gross output capacity of up to 910 megawatts (MWe) at ISO standard reference conditions comprising—

- (a) **Work No. 1A** – a combined cycle gas turbine plant, comprising—
 - (i) a combined cycle gas turbine;
 - (ii) a steam turbine;
 - (iii) gas turbine hall and steam turbine hall;
 - (iv) heat recovery steam generator;
 - (v) gas turbine air intake filters;
 - (vi) emissions stack;
 - (vii) transformers;
 - (viii) deaerator and feed water pump house buildings;
 - (ix) nitrogen oxide emissions control equipment and chemical storage;
 - (x) chemical sampling / dosing plants; and
 - (xi) continuous emissions monitoring system.
- (b) **Work No. 1B** – combined cycle gas turbine plant cooling infrastructure, comprising—
 - (i) hybrid cooling towers;
 - (ii) cooling water pumps, plant and buildings; and
 - (iii) cooling water dosing and sampling plant and buildings
- (c) **Work No. 1C** – carbon dioxide capture plant, comprising—
 - (i) flue gas pre-treatment plant, including cooling and scrubbing plant and flue gas blower;
 - (ii) carbon dioxide absorber unit(s) and associated stack(s);
 - (iii) carbon dioxide stripper and solvent regenerator;
 - (iv) ammonia emissions monitoring and control equipment and associated chemical storage;
 - (v) carbon dioxide conditioning and compression plant; and
 - (vi) ancillary equipment, including air compressors, pumps, heat exchangers, water treatment plant and pipework.
- (d) **Work No. 1D** – natural gas reception facility, comprising—
 - (i) above and below ground valves, flanges and pipework;
 - (ii) gas supply pipeline connection works;
 - (iii) gas receiving area;
 - (iv) gas de-compression equipment and maintenance building and pipeline internal gauge launcher;
 - (v) an above or below ground isolation valve;
 - (vi) gas vents;
 - (vii) gas metering, dehydration and pressure reduction equipment;

- (viii) instrumentation and electrical kiosk(s);
 - (ix) telemetry equipment kiosk(s); and
 - (x) standby generator sockets.
- (e) **Work No. 1E** - generating station supporting uses, comprising—
- (i) administration and control buildings;
 - (ii) raw water storage tank(s);
 - (iii) demineralised water treatment plant, including storage tanks; and
 - (iv) permanent plant laydown area(s) for operation and maintenance activities
- (f) In connection with and in addition to Work Nos. 1A, 1B, 1C, 1D and 1E—
- (i) administration and control buildings;
 - (ii) auxiliary plant, buildings, enclosures and structures;
 - (iii) auxiliary boiler;
 - (iv) emergency diesel generators and bunded diesel storage tank(s);
 - (v) chemical storage facilities;
 - (vi) demineralised water treatment plant, including storage tank;
 - (vii) firefighting equipment and building;
 - (viii) fire storage tank(s);
 - (ix) fire water retention basin;
 - (x) gatehouses;
 - (xi) mechanical, electrical, gas, telecommunications and water networks, pipework, pipe runs, cables, racks, infrastructure, instrumentation and utilities including connections between Work Nos 2, 3, 4, 5, 6, 7 and 8, and parts of Work Nos. 1A, 1B, 1C, 1D and 1E;
 - (xii) permanent plant laydown area(s) for operation and maintenance activities;
 - (xiii) waste water treatment facilities; and
 - (xiv) workshop and stores building.

and associated development within the meaning of section 115(2) of the 2008 Act in connection with the nationally significant infrastructure project referred to in Work No. 1, comprising—

Work No. 2 – a high pressure gas supply pipeline for the transport of natural gas to Work No. 1, comprising a high pressure steel pipeline of up to 800 millimetres (nominal bore) in diameter and approximately 0.3km in length, including cathodic protection posts and marker posts, running within the Keadby Power Station site between Work No. 1D and Work No. 2B, and above ground installation comprising—

- (a) **Work No. 2A** – a compound for National Grid Gas’s apparatus, comprising—
 - (i) an offtake connection from the National Transmission System;
 - (ii) above and below ground valves, flanges and pipework;
 - (iii) an above or below ground remotely operated valve;
 - (iv) an above or below ground remotely operated valve bypass;
 - (v) an above or below ground pressurisation bridle;
 - (vi) instrumentation and electrical kiosks;
 - (vii) pipeline inspection gauge receiving facility; and
 - (viii) telemetry equipment kiosks and communications equipment,
- (b) **Work No. 2B** – a compound for the undertaker’s apparatus, comprising—
 - (i) above and below ground valves, flanges and pipework;
 - (ii) an above or below ground isolation valve;

- (iii) an above or below ground pipeline inline gauge launching facility;
 - (iv) instrumentation and electrical kiosks; and
 - (v) telemetry equipment kiosks and communications equipment,
- (c) in connection with Work Nos. 2A and 2B, access works, vehicle parking, electrical and telecommunications connections, surface water drainage, security fencing and gates, and closed circuit television cameras and columns.

Work No. 3 – electrical connection works for the export and import of electricity to and from national electricity transmission networks and the import of electricity from district electricity transmission networks, comprising—

- (a) **Work No. 3A** – up to 400 kilovolt overground and/or underground electrical cables and control systems cables running from Work No. 1A to the existing National Grid Electricity Transmission substation located west of Chapel Lane, including works within the substation; and
- (b) **Work No. 3B** – up to 132 kilovolt underground electrical cables running from Work No. 1A to the existing Northern Powergrid 132kV substation located at Chapel Lane, including above ground infrastructure works within the substation.

Work No. 4 – water supply connection works to provide cooling and make-up water to Work No. 1, comprising either—

- (a) **Work No. 4A** – underground and/or overground water supply pipeline running between Work No. 1E and the canal including, as necessary, a temporary cofferdam structure, new, upgraded or replacement pipeline, plant, buildings, enclosures, intake structures screens and other structures, cable, temporary moorings, temporary repositioning of existing moorings, access works, vehicle parking, screening, lighting, and signage; or
- (b) **Work No. 4B** – works to the existing cooling water supply pipelines running between Works No. 1E and the existing intake structures within the River Trent, including, as necessary, a temporary cofferdam structure, new, upgraded or replacement pipelines, plant, enclosures, intake structures, cable placement of material, temporary moorings, installation and repositioning of existing hazard dolphins, access works, screening, lighting, and signage.

Work No. 5 – works to discharge used cooling water and treated wastewater comprising works to the existing cooling water discharge pipeline(s) running from Work No. 1B to the existing outfall structures within the River Trent including, as necessary new, upgraded or replacement pipelines, plant, enclosures, outfall structures and other structures and cable.

Work No. 6 – towns water connection to supply towns water to Work No.1 from the supply point east of Chapel Lane including works to the existing towns water pipelines, replacement and new pipelines, plant, enclosures and structures.

Work No. 7 – a high pressure carbon dioxide pipeline for the export of carbon dioxide from Work No. 1C to the National Grid Carbon Gathering Network and above ground carbon dioxide compression and export infrastructure on land at Keadby Power Station, comprising—

- (a) **Work No. 7A** – compressor station comprising deoxygenation, dehydration, and staged compression facilities, and outlet metering and electrical connection; and
- (b) **Work No. 7B** – National Grid above ground infrastructure compound, comprising export connection to the National Grid Carbon Gathering Network, above and below ground valves, flanges and pipework, above or below ground remotely operated valve, above or below ground remotely operated valve bypass, compression facilities, instrumentation and electrical kiosks, electrical connection, inlet metering and telemetry equipment kiosks and communications equipment;
- (c) in connection with Work Nos. 7A and 7B, access works, vehicle parking, electrical and telecommunications connections, surface water drainage, security fencing and gates, and closed circuit television cameras and columns.

Work No. 8 – new permanent accesses to Work Nos. 1, 2 and 7 comprising—

- (a) **Work No. 8A** – access route comprising the maintenance and improvement of an existing private track running between Work Nos. 1 and 2 including private bridge and the existing junction with the A18 nearby to the west of Pilfrey Farm, comprising surfacing works and signage, and creation of on and off-slips;
- (b) **Work No. 8B** – installation of laybys and gatehouse building nearby to the north of the junction with the A18, barriers, enclosures, drainage and lighting;
- (c) **Work No. 8C** - emergency access route comprising the installation of a bridge crossing of an existing drainage channel, the maintenance and improvement of an existing private track running between Work No. 1 and Chapel Lane, Keadby, surfacing and strengthening works, drainage, enclosures and lighting.

Work No. 9 – temporary construction and laydown areas and temporary and permanent accesses, comprising—

- (a) **Work No. 9A** – temporary construction and laydown areas comprising hard standing, earthworks and levelling, laydown and open storage areas, contractor compounds and construction staff welfare facilities, surface water drainage and gatehouse and weighbridge.
- (b) **Work No. 9B** – the maintenance and improvement of the existing private tracks connecting the existing junctions with the A18 to the west of Pilfrey Farm with Work No. 9A via two existing private bridge crossings of the Hatfield Waste Drain, including the replacement, widening, improvement and maintenance of the westernmost existing private bridge crossing, surfacing, drainage and strengthening works, barriers and enclosures.
- (c) **Work No. 9C** - temporary construction and laydown area in association with the replacement of the private bridge in Work No. 9B, comprising laydown and open storage areas, hard standing, and the placement of mobile cranes.

Work No. 10 – temporary haulage route and waterborne transport offloading facilities on land east of the Keadby Power Station site and at the River Trent comprising—

- (a) **Work No. 10A** – the maintenance and improvement of the existing temporary paved haulage route and ditch crossings and their subsequent removal;
- (b) **Work No. 10B** – the inspection and repair of the existing jetty, and temporary placement of mobile cranes including the temporary oversailing of crane arms above the River Trent; and
- (c) **Work No. 10C** – use of river bed of the River Trent for the mooring of vessels and craft at the waterborne transport offloading area at lower tide.

Work No. 11 – landscaping and planting and boundary treatment comprising—

- (a) **Works 11A** -soft landscaping including planting and biodiversity enhancement measures; and
- (b) **Works 11B** - security fencing, gates, boundary treatment and other means of enclosure;

In connection with and in addition to Works Nos. 1 to 11, further associated development including—

- (a) surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage systems;
- (b) electrical, gas, potable water supply, foul water drainage and telecommunications infrastructure connections and works, and works to alter the position of such services and utilities connections;
- (c) hard standings and hard landscaping;
- (d) soft landscaping, including bunds, embankments and planting;

- (e) biodiversity enhancement measures;
- (f) fencing, gates, boundary treatment and means of enclosure;
- (g) external lighting, including lighting columns;
- (h) gatehouses and weighbridges;
- (i) closed circuit television cameras and columns and other security measures;
- (j) site establishment and preparation works, including site clearance (including vegetation removal, demolition of existing buildings and structures); earthworks (including soil stripping and storage and site levelling and formation of embankments) and excavations; the creation of temporary construction access points; the alteration of the position of services and utilities; and works for the protection of buildings and land;
- (k) temporary construction laydown areas and contractor facilities, including materials and plant storage and laydown areas; generators; concrete batching facilities; vehicle and cycle parking facilities; pedestrian and cycle routes and facilities; offices and staff welfare facilities; security fencing and gates; external lighting; roadways and haul routes; wheel wash facilities; and signage;
- (l) vehicle parking and cycle storage facilities;
- (m) accesses, roads and pedestrian and cycle routes;
- (n) tunnelling, boring and drilling works;
- (o) demolition;
- (p) temporary works associated with the maintenance of the authorised development including laydown for outages, contractor facilities, offices and staff welfare facilities; security fencing and gates; external lighting; wheel wash facilities; and signage;
- (q) and, to the extent that it does not form part of such works, further associated development comprising such other works (i) as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and (ii) which fall within the scope of the works assessed in the environmental statement.

SCHEDULE 2 REQUIREMENTS

Article 2

Interpretation

1. In this schedule—

“bank holiday” means Easter Monday, the first and last Monday in May, 26 December if it is not a Sunday and 27 December or 28 December in a year in which 25 or 26 December is a Sunday;

“Development Consent” means a consent granted pursuant to Sections 114, 115 and 120 of the 2008 Act (as may be amended or replaced from time to time);

“Carbon Dioxide Storage Licence” means any carbon dioxide storage licence required by S17 of the Energy Act 2008 or such other licence, authorisation or consent as may replace it;

“Environment Agency” means the non-departmental public body of that name created by section 1 of the Environment Act 1995;

“Environmental Permit” means a permit granted pursuant to the Environmental Permitting (England and Wales) Regulations 2016 (or any such licence, authorisation or consent as may replace it);

“lead local flood authority” means the body designated as such, for the area in which the authorised development is located, pursuant to section 6(7) of the Flood and Water Management Act 2010;

“means of enclosure” means fencing, walls or other means of boundary treatment and enclosure;

“a part” of the authorised development means any part of Works Nos. 1-11;

“relevant internal drainage board” means the Isle of Axholme and North Nottinghamshire Water Level Management Board of Wellington House, Manby Park, Manby, Louth, Lincolnshire;

“shut-down period” means a period after construction works have finished during which activities including changing out of work wear, the departure of workers, post works briefings and closing and securing the site take place;

“start-up period” means a period prior to physical construction works starting for the day during which activities including the opening up of the site, the arrival of workers, changing in to work wear and pre-works briefings take place.

Commencement of the authorised development

2.—(1) The authorised development must not be commenced after the expiration of 7 (seven) years from the date this Order comes into force.

(2) The authorised development must not commence unless the undertaker has given the relevant planning authority fourteen days’ notice of its intention to commence the authorised development.

Notice of commencement and completion of commissioning

3.—(1) Notice of the intended start of commissioning of Work No. 1 must be given to the relevant planning authority where practicable prior to such start and in any event within fourteen days from the date that commissioning is started.

(2) Notice of the intended completion of commissioning of the authorised development must be given to the relevant planning authority where practicable prior to such completion and in any event within seven days from the date that commissioning is completed.

Notice of commencement of commercial use

4. Notice of the intended start of commercial use of the authorised development must be given to the relevant planning authority where practicable prior to such start and in any event within fourteen days from the date that commercial use is started.

Detailed design

5.—(1) In relation to any part of the authorised development comprised in Work No. 1 no part may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority—

- (a) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings and structures;
- (b) finished floor levels;
- (c) the height of any stack above ordnance datum which must be at a level at which the environmental effects will be no worse than those identified in chapter 8 of the environmental statement;
- (d) hard standings; and
- (e) the internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities, cycle parking and routes, and pedestrian facilities and routes.

(2) No part of the authorised development comprised in Work No. 2 (gas supply pipeline and above ground installation works) may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority—

- (a) temporary construction laydown and open storage areas, including contractor compounds;
- (b) temporary construction accesses;
- (c) the route and method of installation of the high-pressure gas supply pipeline and any electrical supply, telemetry and other apparatus;
- (d) the method of connecting the gas supply pipeline to the National Transmission System No. 7 Feeder Eastoft/Keadby Power Station pipeline;
- (e) the approximate number and location of cathodic protection posts and marker posts;
- (f) surface water drainage;
- (g) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings, structures and above ground apparatus;
- (h) hard standings; and
- (i) the internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities.

(3) No part of the authorised development comprised in Work No. 3 (electricity grid connection works) may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority—

- (a) the route and method of installation of the 400-kilovolt overground and/or underground electrical cables and control system cables running from Work No. 1A to the existing National Grid substation located adjacent to Keadby Power Station;
- (b) the route and method of installation of the underground electrical cables and control system cables running from Work No. 1A to the existing Northern Powergrid substation located at Chapel Lane;
- (c) the connections within the existing National Grid substation, including the overground and/or underground electrical cables, connections to the existing busbars and new, upgraded or replacement equipment; and
- (d) the connections and above ground infrastructure within the existing Northern Powergrid substation, including the underground electrical cables, connections to the existing

busbars, step up transformer if required and new, upgraded or replacement equipment or alternatively a statement confirming that the works within the existing Northern Powergrid substation are not to be developed.

(4) No part of the authorised development comprised in Work No. 4 (cooling and make-up water supply connection works) may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority (and the Canal and River Trust shall be consulted in relation to any details submitted to the relevant planning authority in relation to Works No.4A)—

- (a) written confirmation of whether Work 4A (works to connect to Stainforth and Keadby Canal) or Work 4B (works to connect to River Trent) is to be developed;
- (b) the route and method of construction of the work confirmed pursuant to sub-paragraph (a);
- (c) the method of construction, siting, layout, scale and external appearance of any new, upgraded or replacement intake structures within the waterway, including the screens to be installed to those structures in accordance with the Eel (England and Wales) Regulations 2009^(a) and any ancillary plant, buildings, enclosures or structures, angle of flow; and
- (d) the method and timing of installation and removal of any cofferdams at the intake and outfall points, their phasing, and the extent to which each extends into the waterway and shall be consulted in relation to any such works which take place in the Stainforth and Keadby Canal.

(5) No part of the authorised development comprised in Work No. 5 (works to discharge used cooling water and treated wastewater) may commence, save for permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority—

- (a) the route and method of construction; and
- (b) the method of construction, siting, layout, scale and external appearance of any new, upgraded or replacement intake structures within the waterway, including the screens to be installed to those structures in accordance with the Eel (England and Wales) Regulations 2009 and any ancillary plant, buildings, enclosures or structures.

(6) No part of the authorised development comprised in Work No. 6 (towns water connection works) may commence, save for permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority—

- (a) the route and method of installation of the new and replacement towns water connections; and
- (b) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings, enclosures and structures.

(7) No part of the authorised development comprised in Work No. 7 (above ground carbon dioxide compression and export infrastructure) may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, after consultation with National Grid Carbon Limited, approved by the relevant planning authority—

- (a) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings, structures and above ground apparatus;
- (b) the route and method of installation of the high-pressure carbon dioxide export pipeline and any electrical supply, telemetry and other apparatus;
- (c) the method of connecting the carbon dioxide export pipeline to the National Grid Carbon Gathering Network pipeline;
- (d) hard standings;

(a) S.I. 2009/3344.

- (e) the internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities;
- (f) external lighting; and
- (g) surface water drainage.

(8) No part of the authorised development comprised in Work No. 8 (new permanent access works to Work No. 1) may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, after consultation with the highway authority, approved by the relevant planning authority—

- (a) visibility splays and construction specification of the improvement to the A18 junction including strengthening, surfacing, existing and proposed levels, culverts and crossings;
- (b) on- and off- slips, and new and modified highways signage, markings, verges, islands and barriers at the A18;
- (c) details of surfacing and signage works to the private track;
- (d) construction specification, vertical and horizontal levels, and deck, parapet and foundation design of the proposed emergency access bridge crossing of the existing drainage channel;
- (e) surface water drainage;
- (f) means of enclosure, vehicle control barriers, and security; and
- (g) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings and structures;
- (h) finished floor levels;
- (i) vehicle loading and unloading, vehicle parking and turning facilities, cycle parking and routes, and pedestrian facilities and routes.

(9) No part of the authorised development comprised in Work No. 9 (temporary construction and laydown area works and temporary and permanent accesses) may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority—

- (a) hard standings, laydown and open storage areas;
- (b) contractor compounds and construction staff welfare facilities;
- (c) details of surfacing, existing and proposed levels, culverts and crossings, barriers and enclosures for the improvements to the private track;
- (d) construction specification, vertical and horizontal levels, and deck, parapet and foundation design of any replacement or improvement of the existing private bridges over the Hatfield Waste Drain;
- (e) gatehouse and weighbridge;
- (f) lighting;
- (g) means of enclosure and security; and
- (h) the internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities, cycle parking and routes, and pedestrian facilities and routes.

(10) No part of the authorised development comprised in Work No. 10 (temporary haulage route and waterborne transport offloading facility works) may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority—

- (a) construction specification of any maintenance, resurfacing, and improvement works to the temporary haulage route;
- (b) laydown and open storage areas;
- (c) means of enclosure, vehicle control barriers, and security;
- (d) the siting, maximum vertical and horizontal dimensions, working radius, and maximum oversailing of river bed of the River Trent, of mobile crane(s) to be placed temporarily,

and the specifications of inspections and repairs to the jetty that may be carried out in connection with the placing of the cranes; and

- (e) the internal vehicular access and circulation roads, loading and unloading, and vehicle parking and turning facilities.

(11) Work Nos. 1 and 8B must be carried out in accordance with the design parameters in Schedule 11 and the design parameters are the “relevant parameters” for the purposes of this Requirement.

(12) Work Nos 1 and 8B must be carried out in accordance with the design principles statement.

(13) Work Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 must be carried out and thereafter maintained in accordance with the approved details unless otherwise agreed with the relevant planning authority.

Landscaping and biodiversity protection management and enhancement

6.—(1) No part of the authorised development may commence until a landscaping and biodiversity protection plan for that part has been submitted to and approved by the relevant planning authority (and the Canal and River Trust shall be consulted in relation to any details submitted to the relevant planning authority in relation to coir rolls pursuant to sub-paragraph 2(c)).

(2) The plan submitted and approved pursuant to sub-paragraph (1) must include details of and a timetable for implementation of—

- (a) further survey work carried out to establish whether any protected species are present on any of the land affected, or likely to be affected, by that part, and, where a protected species is shown to be present, a scheme of protection and mitigation measures;
- (b) measures to protect existing shrub and tree planting that is to be retained; and
- (c) biodiversity and habitat mitigation and impact avoidance including the location and species composition of any coir rolls habitat.

(3) The plan submitted and approved pursuant to sub-paragraph (1) must be implemented as approved throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

(4) No part of the authorised development may be commissioned until a landscaping and biodiversity management and enhancement plan that includes a landscape and biodiversity strategy, which specifies maintenance periods, for that part has been submitted to and approved by the relevant planning authority.

(5) The plan submitted and approved pursuant to sub-paragraph (4) must include details of—

- (a) implementation and management of all new shrub and tree planting;
- (b) measures to enhance and maintain existing shrub and tree planting that is to be retained;
- (c) measures to enhance biodiversity and habitats within Order Land or land within the Borough of North Lincolnshire that is under the control of the undertaker or other land within the Borough of North Lincolnshire provided it is accompanied by detailed implementation proposals incorporating an implementation timetable;
- (d) an implementation timetable and responsibilities for implementation by third parties where appropriate; and
- (e) annual landscaping and biodiversity management and maintenance.

(6) Any shrub or tree planted within Works Nos. 1-11 as part of the approved plan that, within a period of five 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 at least of the size as that originally planted unless otherwise agreed with the relevant planning authority.

(7) The plan submitted and approved pursuant to sub-paragraph (4) must be in accordance with the principles of the indicative landscaping and biodiversity management and enhancement plan and must be accompanied by a statement explaining how any planting proposed adjoining the

Order limits has been subject to consultation with Keadby with Althorpe Parish Council along with the regard had to feedback received subject to the principles of the indicative landscaping and biodiversity management and enhancement plan.

(8) The plan must be implemented and maintained as approved during the operation of the authorised development unless otherwise agreed with the relevant planning authority.

External lighting

7.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a scheme for all external lighting to be installed during construction for that part (with the exception of the aviation warning lighting required by virtue of Requirement 34) has been submitted to and approved by the relevant planning authority and shall thereafter be implemented upon commencement of development and maintained during construction and commissioning.

(2) No part of the authorised development may be commissioned until a scheme for all permanent external lighting to be installed (with the exception of the aviation warning lighting required by virtue of Requirement 34) has been submitted to and approved by the relevant planning authority.

(3) The schemes submitted and approved pursuant to sub-paragraphs (1) and (2) of this Requirement must be in accordance with the indicative lighting strategy and include measures to minimise and otherwise mitigate any artificial light emissions during the construction, commissioning and operation of the authorised development.

(4) The scheme approved pursuant to paragraph (2) must be implemented prior to commercial use and thereafter maintained as approved unless otherwise agreed with the relevant planning authority.

Highway accesses

8.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until details of the siting, design and layout (including visibility splays, culverts and crossings, and construction specification) of any new or modified temporary means of access between any part of the Order limits and the public highway to be used by vehicular traffic during construction, and the means of reinstating any such means of access after construction has, for that part, been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(2) The highway accesses approved pursuant to sub-paragraph (1) must be constructed in accordance with the approved details prior to the start of construction of the relevant part of the authorised development (other than the accesses), and reinstated prior to the authorised development being brought into commercial use, unless otherwise agreed with the relevant planning authority.

Means of enclosure

9.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until details of a programme for the removal of all temporary means of enclosure for any construction areas or sites associated with the authorised development have, for that part, been submitted to and approved by the relevant planning authority.

(2) Any construction areas or sites associated with the authorised development must remain securely fenced at all times during construction and commissioning of the authorised development and such temporary means of enclosure must thereafter be removed in accordance with the details approved pursuant to sub-paragraph (1).

(3) No part of the authorised development may be brought into commercial use until details of any proposed permanent means of enclosure, have, for that part, been submitted to and approved by the relevant planning authority.

(4) No part of the authorised development may be brought into commercial use until the permanent means of enclosure approved pursuant to sub-paragraph (3) have been implemented in full.

(5) The permanent means of enclosure approved pursuant to sub-paragraph (3) must be maintained unless otherwise agreed with the relevant planning authority.

Site security

10.—(1) No part of the authorised development may be brought into use until a written scheme detailing security measures to minimise the risk of crime has, for that part, been submitted to and approved by the relevant planning authority.

(2) The approved scheme must be implemented and maintained throughout the operation of authorised development.

Fire prevention

11.—(1) No part of Work Nos. 1 or 8 may commence until details of the specification and location of accesses for the use of all fire appliances in all of the major building structures and storage areas within the authorised development has, for that part, been submitted to and approved by the relevant planning authority.

(2) The authorised development must be implemented in accordance with the approved details and all relevant accesses must be maintained to the reasonable satisfaction of the relevant planning authority at all times throughout the operation of the authorised development.

Surface water drainage

12.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until details of the temporary surface water drainage systems, including means of pollution control in accordance with the framework construction environmental management plan and a management and maintenance plan to ensure that the systems remain fully operational throughout the construction of the relevant part of the authorised development have, for that part, been submitted to, and approved by the relevant planning authority.

(2) The scheme approved pursuant to sub-paragraph (1) must be implemented as approved and maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

(3) Details of the permanent surface water drainage systems, including a timetable for their implementation, must be submitted to, and after consultation with the lead local flood authority and relevant internal drainage board, approved by the relevant planning authority prior to the start of construction of any part of those systems.

(4) The details submitted and approved pursuant to sub-paragraph (3) of this Requirement must be in accordance with the indicative surface water drainage plan.

(5) The scheme approved pursuant to sub-paragraph (3) must be implemented as approved and maintained throughout the operation of the authorised development unless otherwise agreed with the relevant planning authority.

Foul water drainage

13.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until details of the temporary foul water drainage systems, including means of pollution control in accordance with the framework construction environmental management plan and a management and maintenance plan to ensure that the systems remain fully operational throughout the construction of the relevant part of the authorised development have, for that part, been submitted to, and after consultation with Severn Trent Water, approved by the relevant planning authority.

(2) The scheme approved pursuant to sub-paragraph (1) must be implemented as approved and maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

(3) Details of the permanent foul water drainage systems, including a programme for their implementation, must be submitted to, and after consultation with the Environment Agency and Severn Trent Water, approved by the relevant planning authority prior to the start of construction of any part of those systems.

(4) The scheme approved pursuant to sub-paragraph (3) must be implemented as approved and maintained throughout the operation of the authorised development unless otherwise agreed with the relevant planning authority.

Flood risk mitigation

14.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a scheme for the mitigation of flood risk during construction and the creation of a suitable development platform for the generating station, has been submitted to, and after consultation with the lead local flood authority and approved by the relevant planning authority.

(2) The scheme submitted and approved pursuant to sub-paragraph (1) must provide a minimum finished ground level for Works Nos. 1A and 1C of 2.8m AOD and must be implemented as approved and maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

(3) No part of the authorised development may be commissioned until a scheme for the mitigation of flood risk during operation has, for that part, been submitted to and, after consultation with the Environment Agency, Canal and River Trust, lead local flood authority, and the relevant internal drainage board, approved by the relevant planning authority.

(4) The schemes submitted and approved pursuant to paragraphs (1) and (3) of this Requirement must be in accordance with the flood risk assessment.

(5) The scheme submitted and approved under sub-paragraph (3) must provide for all critical operational infrastructure assets as defined in the flood risk assessment to be elevated to a minimum of 3.60m AOD, and must further provide for the same critical operational infrastructure assets to be elevated to 4.40m AOD where reasonably practicable to do so.

(6) The scheme approved pursuant to sub-paragraph (3) must be implemented as approved and maintained throughout the operation of the authorised development unless otherwise agreed with the relevant planning authority.

(7) The authorised development must not be commissioned until the flood risk mitigation has been implemented and a flood emergency response and contingency plan has been submitted to, and after consultation with the lead local flood authority, approved by the relevant planning authority.

(8) The plan approved pursuant to sub-paragraph (7) must be implemented throughout the commissioning and operation of the authorised development unless otherwise agreed with the relevant planning authority.

Contaminated land and groundwater

15.—(1) No part of the authorised development may commence, save for geotechnical surveys and other investigations for the purpose of assessing ground conditions, until a scheme to deal with the contamination of land, including groundwater, which is likely to cause significant harm to persons or pollution of controlled waters or the environment, has, for that part, been submitted to and, after consultation with the Environment Agency, approved by the relevant planning authority.

(2) The scheme submitted and approved must be in accordance with the environmental statement and must be included in the construction environmental management plan submitted pursuant to Requirement 17.

(3) The scheme must include a risk assessment, supported by site investigation data, to identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose which sets out long-term measures with respect to any contaminants remaining on the site.

(4) The authorised development, including any remediation, must be implemented and maintained in accordance with the approved scheme unless otherwise agreed with the relevant planning authority.

Archaeology

16.—(1) No part of the authorised development may commence until a written scheme of investigation for that part has been submitted to and, after consultation with the County archaeologist, approved by the relevant planning authority.

(2) The scheme submitted and approved must be in accordance with the outline written scheme of investigation.

(3) The scheme must identify any areas where further archaeological investigations are required and the nature and extent of the investigation required in order to preserve by knowledge or in-situ any archaeological features that are identified.

(4) The scheme must provide details of the measures to be taken to protect record or preserve any significant archaeological features that may be found.

(5) Any archaeological investigations implemented and measures taken to protect record or preserve any identified significant archaeological features that may be found must be carried out—

- (a) in accordance with the approved scheme; and
- (b) by a suitably qualified person or organisation approved by the relevant planning authority.

Construction environmental management plan

17.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a construction environmental management plan for that part has been submitted to and, after consultation with Natural England and the Environment Agency, approved by the relevant planning authority.

(2) The plan submitted and approved for that part must be in accordance with the framework construction environment management plan and incorporate—

- (a) a code of construction practice, specifying measures designed to minimise the impacts of construction works;
- (b) a scheme for the control of any emissions to air;
- (c) a soil management plan;
- (d) a site waste management plan;
- (e) a sediment control plan;
- (f) a scheme for environmental monitoring and reporting during the construction of the authorised development, including measures for undertaking any corrective actions;
- (g) a scheme for the notification of any significant construction impacts on local residents and for handling any complaints received from local residents relating to such impacts during the construction of the authorised development;
- (h) the contaminated land scheme for that part containing the matters under Requirement 15; and
- (i) a fish management plan.

(3) All construction works associated with the authorised development must be carried out in accordance with the approved construction environmental management plan unless otherwise agreed with the relevant planning authority.

Protection of highway surfaces

18.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until details for undertaking condition surveys of the relevant highways which are maintainable at the public expense and which are to be used during construction have been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(2) The condition surveys must be undertaken in accordance with the approved details and a schedule of repairs, including a programme for undertaking any such repairs and their inspection, must, following the completion of the post-construction condition surveys, be submitted to, and after consultation with the highway authority, approved by the relevant planning authority.

(3) The schedule of repairs must be carried out as approved unless otherwise agreed with the relevant planning authority.

Temporary haul road (traffic management and protection)

19.—(1) The authorised development comprised in Work No. 10A shall be retained and maintained in accordance with the haul road plans.

(2) No part of the authorised development comprised in Work No. 10A shall be brought into use for the purposes of transporting abnormal loads until:

- (a) appropriate traffic management measures have been put in place to allow vehicles to safely access the existing jetty comprised in Work No. 10B and cross Trent Side; and
- (b) appropriate protection measures have been put in place to the Trent Side access points adjacent to the road crossing.

(3) The traffic management and protection measures in (2) shall be in place at times when loads are utilising the haul road, unless otherwise agreed with the relevant planning authority.

Temporary haul road (biodiversity protection)

20.—(1) The authorised development comprised in Work No. 10A shall be carried out in accordance with the biodiversity measures contained in appendices C and D of the framework construction environmental management plan, unless otherwise agreed with the relevant planning authority.

(2) Prior to the completion of the authorised development comprised in Work No. 10A, a report must be submitted to the relevant planning authority by a suitably qualified ecologist confirming conformity with (1).

Temporary haul road (removal and restoration)

21.—(1) No later than 28 days following the completion of commissioning the authorised development comprised in Work No. 10A shall be excavated, dismantled and removed.

(2) No later than three months following the completion of the works authorised in (1) the site shall be restored in accordance with the restoration scheme approved under Requirement 22.

Temporary haul road (prior approval of restoration scheme)

22.—(1) No later than 36 months following commencement of the construction of Work No. 1, a scheme for the removal of the temporary haul road, road bridges and associated infrastructure and restoration of Work No. 10A including the incorporation of biodiversity enhancements and a timetable for implementation, shall be submitted to and approved in writing by the relevant planning authority.

(2) The scheme authorised under (1) must be implemented in full unless otherwise agreed with the relevant planning authority.

Pilfrey laydown (design)

23. The authorised development comprised in Work No. 9A and located within the area described in the Pilfrey laydown plans shall be retained and maintained in accordance with the Pilfrey laydown plans unless otherwise agreed with the relevant planning authority.

Pilfrey laydown (removal and restoration)

24.—(1) The authorised development comprised in Work No. 9A and located within the area described in the Pilfrey laydown plans shall be removed and the land restored to its former condition no later than 3 months following the completion of commissioning in accordance with a scheme of work submitted to and approved by the relevant planning authority.

(2) The scheme authorised under (1) must be implemented in full unless otherwise agreed with the relevant planning authority.

Construction traffic management plan

25.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a construction traffic management plan has been submitted to and, after consultation with National Highways, the highway authority (and in relation to paragraph (3)(c) below the Canal and River Trust), approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with the framework construction traffic management plan.

(3) The plan submitted and approved must include—

- (a) details of the routes to be used for the delivery of construction materials and any temporary signage to identify routes and promote their safe use, including details of the access points to the construction site to be used by light goods vehicles and heavy goods vehicles;
- (b) details of the routing strategy and procedures for the notification and conveyance of abnormal indivisible loads, including measures to be taken to use water transport where feasible, agreed routes, and anticipated numbers of abnormal loads to be delivered on each route;
- (c) a wharf management plan. This shall include processes for agreeing in advance the general principles around scheduling of abnormal load deliveries that would temporarily obstruct the entrance to Keadby Lock and notifying the Canal and River Trust as to the timing of such deliveries, and measures that seek to avoid such deliveries occurring outside of the notified timings;
- (d) the construction programme; and
- (e) any necessary measures for the temporary protection of carriageway surfaces, the protection of statutory undertakers' plant and equipment, and any temporary removal of street furniture.

(4) Notices must be erected and maintained throughout the period of construction at every entrance to and exit from the construction site, indicating to drivers the approved routes for traffic entering and leaving the construction site.

(5) The approved plan must be implemented within 3 months of commencement of the authorised development and must be maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

Construction worker travel plan

26.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a construction workers travel plan has been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with the framework construction workers travel plan.

(3) The plan submitted and approved must include—

- (a) measures to promote the use of sustainable transport modes to and from the authorised development by construction staff;
- (b) provision as to the responsibility for, and timescales of, the implementation of those measures;
- (c) details of parking for construction personnel within the construction sites; and
- (d) a monitoring and review regime.

(4) The approved plan must be implemented within three months of commencement of the authorised development and must be maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

Construction hours

27.—(1) Construction work relating to the authorised development must not take place on bank holidays nor otherwise outside the hours of—

- (a) 0700 to 1900 hours on Monday to Friday; and
- (b) 0800 to 1300 hours on a Saturday.

(2) Delivery or removal of materials, plant and machinery must not take place on bank holidays nor otherwise outside the hours of—

- (a) 0800 to 1800 hours on Monday to Friday; and
- (b) 0800 to 1300 hours on a Saturday.

(3) The restrictions in sub-paragraphs (1) and (2) do not apply to construction work or the delivery or removal of materials, plant and machinery, where these—

- (a) do not exceed a noise limit measured at the Order limits and which must be first agreed with the relevant planning authority in accordance with Requirement 28(1);
- (b) are carried out with the prior approval of the relevant planning authority; or
- (c) are associated with an emergency.

(4) The restrictions in sub-paragraph (2) do not apply to the delivery of abnormal indivisible loads, where this is—

- (a) associated with an emergency; or
- (b) carried out with the prior approval of the relevant planning authority.

(5) Sub-paragraph (1) does not preclude—

- (a) a start-up period from 0630 to 0700 and a shut-down period from 1900 to 1930 Monday to Friday and a start-up period from 0630 to 0700 and a shut-down period from 1300 to 1330 on a Saturday; or
- (b) maintenance at any time of plant and machinery engaged in the construction of the authorised development.

(6) In this Requirement “emergency” means a situation where, if the relevant action is not taken, there will be adverse health, safety, security or environmental consequences that in the reasonable opinion of the undertaker would outweigh the adverse effects to the public (whether individuals, classes or generally as the case may be) of taking that action.

Control of noise and vibration - construction

28.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a scheme for the monitoring and control of noise and vibration during the construction of that part of the authorised development has been submitted to and approved by the relevant planning authority.

- (2) The scheme submitted and approved must specify—
- (a) each location from which noise is to be monitored;
 - (b) the method of noise measurement;
 - (c) the maximum permitted levels of noise at each monitoring location to be determined with reference to the ABC Assessment Method for the different working time periods, as set out in BS 5228-1:2009+A1:2014, unless otherwise agreed in writing with the relevant planning authority for specific construction activities;
 - (d) provision as to the circumstances in which construction activities must cease as a result of a failure to comply with a maximum permitted level of noise; and
 - (e) the noise control measures to be employed.
- (3) The scheme must be implemented and maintained during the construction of that part of the authorised development as approved unless otherwise agreed with the relevant planning authority.

Control of noise - operation

29.—(1) No part of the authorised development may be brought into commercial use until a scheme for management and monitoring of noise during operation of the authorised development has been submitted to and approved by the relevant planning authority.

(2) The scheme submitted pursuant to sub-paragraph (1) must include the results of daytime and night time baseline noise monitoring that has been carried out by the undertaker for the purposes of this requirement as agreed with the relevant planning authority.

(3) Noise (in terms of the BS4142:2014+A1:2019 rating level) from the operation of the authorised development must be no greater than +3dB higher than the defined representative background sound level during each of the daytime and the night time adjacent to the nearest residential properties at such locations as agreed with the relevant planning authority.

(4) The scheme must be implemented and maintained as approved unless in an emergency or otherwise agreed with the relevant planning authority.

(5) Any complaint to the undertaker in relation to operational noise must include contact details for the complainant and the date, time and nature of the noise and must then be:

- (a) acknowledged by the undertaker within 3 working days of receipt of complaint;
- (b) investigated within 7 working days of the date of acknowledgement referred to in sub-paragraph (a); and
- (c) a response provided within 7 working days of the date of completion of period for the investigations referred to in sub-paragraph (b) by reference to the threshold in paragraph (3) above.

(6) In this Requirement—

- (a) “daytime” means the period from 0700 to 2300 and “night time” means the period from 2300 to 0700; and
- (b) “defined representative background sound level” means the sound level measured during the monitoring secured by sub-paragraph (2).

Piling and penetrative foundation design

30.—(1) No part of the authorised development comprised within Works Nos. 1, 2, 4A, 4B, 7, 8B or 9B may commence, save for the permitted preliminary works, until a written piling and penetrative foundation design method statement, informed by a risk assessment, for that part, has been submitted to and, after consultation with the Environment Agency, approved by the relevant planning authority.

(2) All piling and penetrative foundation works must be carried out in accordance with the approved method statement unless otherwise agreed with the relevant planning authority.

Restoration of land used temporarily for construction

31.—(1) The authorised development must not be brought into commercial use until a scheme for the restoration of any land within the Order limits which has been used temporarily for construction has been submitted to and approved by the relevant planning authority.

(2) The land must be restored within three years of the authorised development being brought into commercial use (or such other period as the relevant planning authority may approve), in accordance with—

- (a) the restoration scheme approved in accordance with sub-paragraph (1); and
- (b) the landscaping and biodiversity management and enhancement plan approved in accordance with Requirement 6(1).

Combined heat and power

32.—(1) The authorised development must not be brought into commercial use until the relevant planning authority has given notice that it is satisfied that the undertaker has allowed for space and routes within the design of the authorised development for the later provision of heat pass-outs for off-site users of process or space heating and its later connection to such systems, should they be identified and commercially viable.

(2) The undertaker must maintain such space and routes during the operation of the authorised development unless otherwise agreed with the relevant planning authority.

(3) On the date that is 12 months after the authorised development is first brought into commercial use, the undertaker must submit to the relevant planning authority for its approval a report ('the CHP review') updating the CHP assessment.

(4) The CHP review submitted and approved must—

- (a) consider the opportunities that reasonably exist for the export of heat from the authorised development at the time of submission; and
- (b) include a list of actions (if any) that the undertaker is reasonably able to take to increase the potential for the export of heat from the authorised development.

(5) The undertaker must take such actions as are included, within the timescales specified, in the approved CHP review unless otherwise agreed with the relevant planning authority.

(6) On each date during the operation of the authorised development that is five years after the date on which it last submitted the CHP review or a revised CHP review to the relevant planning authority, the undertaker must submit to the relevant planning authority for its approval a revised CHP review.

(7) Sub-paragraphs (4) and (5) apply in relation to a revised CHP review submitted under sub-paragraph (6) in the same way as they apply in relation to the CHP review submitted under sub-paragraph (3).

Carbon capture and compression plant

33.—(1) No part of the authorised development may commence, save for the permitted preliminary works and Work No.9B and Work No.9C, until details of the following have been submitted to and approved by the relevant planning authority—

- (a) evidence that Development Consent is in place for the construction of the National Grid Carbon Gathering Network;
- (b) evidence that a Carbon Dioxide Storage Licence for the intended storage site for the National Grid Carbon Gathering Network is in place;
- (c) evidence that an Environmental Permit is in place for Work No. 1; and
- (d) evidence of any pipeline works authorisation required by section 14 of the Petroleum Act 1998 for offshore pipeline works.

(2) Prior to the start of commissioning of the authorised development, the undertaker must not without the consent of the Secretary of State—

- (a) dispose of any interest in the land required for Work No. 1C or Work No. 7; or
- (b) do anything, or allow anything to be done or to occur, which may reasonably be expected to diminish the undertaker's ability, within two years of such action or occurrence, to prepare Work No. 1C and Work No. 7 for construction.

(3) Work No. 1A may not be brought into commercial use without Work No. 1C and Work No. 7A also being brought into commercial use.

Aviation warning lighting

34.—(1) No part of the authorised development comprised within Work No. 1 or Work No. 10B may commence, save for the permitted preliminary works, until details of the timetable for construction and retention of tall structures or the placement and retention of mobile cranes and the specification and installation timetable for aviation warning lighting for that part during construction and operation have been submitted to and, after consultation with the Civil Aviation Authority and Ministry of Defence Safeguarding, approved by the relevant planning authority.

(2) The aviation warning lighting approved pursuant to paragraph (1) must be installed, maintained and operated in accordance with the approved details.

Air safety

35.—(1) No part of the authorised development comprised within Work No. 1 or Work No. 10B may commence, save for the permitted preliminary works, until details of the heights of structures and temporary cranes and other information that is required by Civil Aviation Authority Airspace Regulation and the Defence Geographic Centre of the Ministry of Defence to chart the site for aviation purposes for that part have been submitted to and approved by the relevant planning authority.

(2) The details approved pursuant to paragraph (1) must thereafter be implemented, operated and maintained in accordance with the approved details.

Local liaison committee

36.—(1) No part of the authorised development may commence, save for the permitted preliminary works and Works Nos. 9B and 9C, until the undertaker has established a committee to liaise with local residents and organisations to keep them informed on matters relating to the construction and commissioning of the authorised development (a 'local liaison committee').

(2) The undertaker must invite the relevant planning authority, all parish councils within close proximity to the authorised development, and other relevant interest groups, as may be agreed with the relevant planning authority, to nominate representatives to join the local liaison committee.

(3) The undertaker must provide a full secretariat service and supply an appropriate venue (which may include online conferencing with telephone dial in) for the local liaison committee meetings to take place.

(4) The local liaison committee must—

- (a) include representatives of the undertaker;
- (b) meet every other month, starting in the month prior to commencement of the authorised development, until the completion of construction, testing and commissioning works unless otherwise agreed by the majority of the members of the local liaison committee; and
- (c) during the operation of the authorised development meet once a year unless otherwise agreed by the majority of the members of the local liaison committee.

Employment, skills and training plan

37.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a plan detailing arrangements to promote and monitor employment, skills and training development opportunities for residents of the borough of North Lincolnshire during construction and employment opportunities during operation of the authorised development has been submitted to and approved by the relevant planning authority.

(2) The approved plan must be implemented and maintained during the construction and operation of the authorised development unless otherwise agreed by the relevant planning authority.

Decommissioning

38.—(1) Within 12 months of the date that the undertaker decides to decommission the authorised development, the undertaker must submit to the relevant planning authority for its approval a decommissioning environmental management plan.

(2) No decommissioning works must be carried out until the relevant planning authority has approved the plan.

(3) The plan submitted and approved must include measures to address any significant environmental effects.

(4) The plan submitted and approved must include details of—

- (a) the buildings to be demolished;
- (b) the means of removal of the materials resulting from the decommissioning works;
- (c) the phasing of the demolition and removal works;
- (d) any restoration works to restore the land to a condition agreed with the relevant planning authority;
- (e) the phasing of any restoration works; and
- (f) a timetable for the implementation of the plan.

(5) The plan must be implemented and maintained for the duration of the decommissioning of the authorised development as approved unless otherwise agreed with the relevant planning authority.

Requirement for written approval

39. Where under any of the above Requirements the approval or agreement of the relevant planning authority or another person is required, that approval or agreement must be provided in writing.

Approved details and amendments to them

40.—(1) All details submitted for the approval of the relevant planning authority under these Requirements must be in accordance with the parameters of the environmental statement and reflect the principles set out in the documents certified under article 41 (certification of plans etc.).

(2) With respect to any Requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority, the approved details are to be taken to include any amendments that may subsequently be approved by the relevant planning authority.

Amendments agreed by the relevant planning authority

41.—(1) Where the words “unless otherwise agreed by the relevant planning authority” appear in the above Requirements, any such approval or agreement may only be given in relation to non-material amendments and where it has been demonstrated to the satisfaction of that authority that

the subject matter of the approval or agreement sought will not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

(2) In cases where the Requirement or the relevant sub-paragraph requires consultation with specified persons, any such approval or agreement must not be given without the relevant planning authority having first consulted with those persons.

SCHEDULE 3

Article 9

STREETS SUBJECT TO STREET WORKS

Table 1

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Area</i>	<i>Streets subject to street works</i>	<i>Description of the street works</i>
In the Borough of North Lincolnshire	A18	Widening and improvement works to two accesses on the A18 marked at reference points A and C on the access and rights of way plan and re-grading and re-surfacing of carriageway between the points marked E and F on sheet 1 on the access and rights of way plan
	Chapel Lane	Works for installation and maintenance of Works No. 3B, 4A, 4B and 5 in those areas marked G, H, I, J, K, L and M on sheet 3 of the access and rights of way plans

SCHEDULE 4

Articles 10 and 12

STREETS SUBJECT TO PERMANENT ALTERATIONS OF LAYOUT

Table 2

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Streets subject to alternation of layout</i>	<i>(3)</i> <i>Description of alteration</i>
	A18	Widening and improvement works to two accesses on the A18 marked at reference points A and C on the access and rights of way plan and re-grading, re-surfacing and layout alterations of carriageway between the points marked E and F on sheet 1 on the access and rights of way plan

SCHEDULE 5

Article 11

ACCESS - THOSE PARTS OF THE ACCESS TO BE MAINTAINED
AT THE PUBLIC EXPENSE

Table 3

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of relevant part of access</i>
In the Borough of North Lincolnshire	A18	That part of each of the two accesses hatched blue and referenced at points marked A and C on sheet 1 of the access and rights of way plan

SCHEDULE 6 NEW RIGHTS

Article 21

Interpretation

1. In this Schedule—

“Work Nos. 3A and 3B infrastructure” means any work or development comprised within Work Nos. 3A and 3B in Schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work Nos. 3A and 3B on the works plans.

“Work Nos. 4A and 4B infrastructure” means any work or development comprised within Work Nos. 4A and 4B in Schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work Nos. 4A and 4B on the works plans.

“Work No. 5 infrastructure” means any work or development comprised within Work No. 5 in Schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 5 on the works plans.

“Work No. 6 infrastructure” means any work or development comprised within Work No. 6 in Schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 6 on the works plans.

“Work No. 8C infrastructure” means any work or development comprised within Work No. 8C in Schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 8C on the works plans.”

“Work Nos. 8A and 8B infrastructure” means any work or development comprised within Work No. 8A and 8B in Schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work Nos. 8A and 8B on the works plans.

“Work No. 9B infrastructure” means any work or development comprised within Work No. 9B in Schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 9B on the works plans.

“Work No. 11A infrastructure planting” means any work or development comprised within Work No. 11A in Schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 11A on the works plans.

Table 4

<i>(1)</i> <i>Number of plot shown on the land plans</i>	<i>(2)</i> <i>Rights etc. which may be acquired</i>
34a, 35, 40a, 41, 42, 43, 44, 45, 55a, 55b, 56, 56a, 59, 60, 64, 65, 66, 69, 70, 73, 86, 88, 94, 106, 107, 108, 109, 110, 166, 167, 168	For and in connection with the Work Nos. 3A and 3B infrastructure the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery for all purposes in connection with and the laying, installation, use and maintenance of Work Nos. 3A and 3B infrastructure, and a right of support for it and the right to the free flow of water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work Nos. 3A and 3B infrastructure, or interfere with or

16, 34a, 35, 36, 52, 69, 70, 71, 72, 73, 74, 75, 76, 77, 79, 80, 81, 82, 83, 84, 85, 89, 90, 91, 92, 93, 95, 96, 97, 98, 99, 100, 101, 103, 105, 113, 114, 115, 116, 117, 118, 122, 123, 126, 137, 138, 139, 148, 150, 151, 159, 160, 164, 165, 166, 168, 169

34a, 35, 69, 70, 73, 82, 83, 84, 85, 87, 89, 90, 99, 102, 103, 105, 111, 112, 113, 114, 115, 120, 121, 122, 123, 124, 125, 127, 128, 129, 130, 132, 133, 134, 140, 141, 142, 143, 147, 152, 153, 158, 161, 162, 163, 166, 168, 169, 171

34a, 35, 36, 64, 69, 70, 73, 74, 82, 99, 102, 103, 105, 113, 166, 168, 169, 171

obstruct access from and to the Work Nos. 3A and 3B infrastructure, including the right to prevent or remove the whole of any fixed or movable structure, tree, shrub, plant or other things and the right to prevent or remove any works or uses which alter the surface level, ground cover, or composition of the land.

For and in connection with the Work Nos. 4A and 4B infrastructure the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery for all purposes in connection with and the laying, installation, use and maintenance of Work Nos. 4A and 4B infrastructure, and a right of support for it and the right to the free flow of water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work Nos. 4A and 4B infrastructure, or interfere with or obstruct access from and to the Work Nos. 4A and 4B infrastructure, including the right to prevent or remove the whole of any fixed or movable structure, tree, shrub, plant or other things and the right to prevent or remove any works or uses which alter the surface level, ground cover, or composition of the land.

For and in connection with the Work No. 5 infrastructure the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery for all purposes in connection with and the laying, installation, use and maintenance of Work No. 5 infrastructure, and a right of support for it and the right to the free flow of water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work Nos. 5 infrastructure, or interfere with or obstruct access from and to the Work No. 5 infrastructure, including the right to prevent or remove the whole of any fixed or movable structure, tree, shrub, plant or other things and the right to prevent or remove any works or uses which alter the surface level, ground cover, or composition of the land.

For and in connection with the Work No. 6 infrastructure the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery for all purposes in connection with and the laying, installation, use and maintenance of Work No. 6 infrastructure, and a right of support for it and the right to the free flow of water, along with the right to prevent any works on or uses of the land which may interfere with or damage the

40, 40a, 41, 44, 45, 55a, 55b, 56, 56a, 57, 60	<p>Work No. 6 infrastructure, or interfere with or obstruct access from and to the Work No. 6 infrastructure, including the right to prevent or remove the whole of any fixed or movable structure, tree, shrub, plant or other things and the right to prevent or remove any works or uses which alter the surface level, ground cover, or composition of the land.</p>
3, 12, 18, 19, 20, 22, 24, 27, 28, 29, 30, 33, 37, 38, 39	<p>For and in connection with the Work No. 8C infrastructure the right to improve access roads and for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery for all purposes in connection with and the laying, installation, use and maintenance of Work No. 8C infrastructure, and a right of support for it and the right to the free flow of water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 8C infrastructure, or interfere with or obstruct access from and to the Work No. 8C infrastructure, including the right to prevent or remove the whole of any fixed or movable structure, tree, shrub, plant or other things and the right to prevent or remove any works or uses which alter the surface level, ground cover, or composition of the land.</p> <p>For and in connection with the Work Nos. 8A and 8B the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery for all purposes in connection with and the laying, installation, use and maintenance of Work Nos. 8A and 8B infrastructure, and a right of support for it and the right to the free flow of water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work Nos. 8A and 8B infrastructure, or interfere with or obstruct access from and to the Work Nos.8A and 8B infrastructure, including the right to prevent or remove the whole of any fixed or movable structure, tree, shrub, plant or other things and the right to prevent or remove any works or uses which alter the surface level, ground cover, or composition of the land.</p> <p>For and in connection with Work No. 8B planting, a right for the undertaker and all persons authorised on its behalf to enter, pass, and repass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with and improvement, reinstatement, installation, implementation, retention, removal, relocation and maintenance of the Work No. 8B planting together with the</p>

3, 19	right to protect, retain, maintain, inspect and replant Work No. 8B, along with the right to prevent any works on or uses of the land which may interfere with or obstruct access from and to the Work No. 8B planting or existing planting.
18, 20, 21	<p>For and in connection with the Work No 9B infrastructure the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery for all purposes in connection with and the laying, installation, use and maintenance of Work No. 9B infrastructure, and a right of support for it and the right to the free flow of water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 9B infrastructure, or interfere with or obstruct access from and to the Work No. 9B infrastructure, including the right to prevent or remove the whole of any fixed or movable structure, tree, shrub, plant or other things and the right to prevent or remove any works or uses which alter the surface level, ground cover, or composition of the land.</p> <p>For and in connection with Work No. 11A infrastructure planting, a right for the undertaker and all persons authorised on its behalf to enter, pass, and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with and improvement, reinstatement, installation, implementation, retention, removal, relocation and maintenance of the Work No. 11A infrastructure planting together with the right to protect, retain, maintain, inspect and replant Work No. 11A along with the right to prevent any works on or uses of the land which may interfere with or obstruct access from and to the Work No. 11A infrastructure planting or existing planting.</p>

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5—

- (a) for “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable”.

3.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) In section 5A(5A) (relevant valuation date), omit the words after “if—” and substitute—

- “(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 7 to the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022;
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 7 to the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.”.

Application of Part 1 of the 1965 Act

4. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act to the acquisition of land under article 18 (compulsory acquisition of land) and as modified by article 23 (modification of Part 1 of the 1965 Act), applies to the compulsory acquisition of a right by the creation of a new right under article 21 (compulsory acquisition of rights)—

- (a) with the modifications specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4(a) are as follows—

(a) 1973 c. 26.

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or the restriction imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restriction is to be enforceable.

(3) For section 7 of the 1965 Act (measure of compensation in case of severance) substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

(5) Section 11 of the 1965 Act (powers of entry) is modified to secure that, where the acquiring authority has served notice to treat in respect of any right or restriction, as well as the notice of entry required by subsection (1) of that section (as it applied to compulsory acquisition under article 8), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A(a) (powers of entry: further notices of entry), 11B(b) (counter-notice requiring possession to be taken on specified date), 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

(6) Section 20 of the 1965 Act (protection for interests of tenants at will, etc.) applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

(7) Section 22 of the 1965 Act (interests omitted from purchase) as modified by article 23(3) is also modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, or enforce the restriction imposed, subject to compliance with that section as respects compensation.

(8) For Schedule 2A to the 1965 Act substitute—

(a) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).
(b) Section 11B was inserted by section 187(2) of the above Act.

“SCHEDULE 2A COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1.—(1) This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 23 (application of the Compulsory Purchase (Vesting Declarations) Act 1981) of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022.

(2) But see article 24 (acquisition of subsoil or airspace only) of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022 which excludes the acquisition of subsoil or airspace only from this Schedule.

2. In this Schedule, “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of twenty-eight days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat;
- (b) accept the counter-notice; or
- (c) refer the counter-notice to the Upper Tribunal.

6. The authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

Determination by Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory; or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account-

- (a) the effect of the acquisition of the right or the imposition of the covenant;
- (b) the use to be made of the right or covenant proposed to be acquired or imposed;
and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

13. If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”.

SCHEDULE 8

Article 27

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

Table 5

<i>(1)</i> <i>Number of plots shown on the land plans</i>	<i>(2)</i> <i>Purpose for which temporary possession may be take</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
47	Access and construction worksite	Work No. 2A
40b, 43, 56, 58, 59	Access and construction worksite.	Work No. 3B
32a	Access and construction worksite	Work No. 6
1, 2, 4, 5, 6, 7, 8, 9, 10, 26	Access and construction worksite.	Work No. 8A
40b, 55, 56, 58, 59, 67	Access and construction worksite.	Work No. 8C
1, 2, 3, 4, 10, 11, 12, 16a, 17, 17a, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 32, 32a, 33, 34, 37, 38, 39, 49, 50a, 50, 51, 61, 62, 63, 72a	Access and construction worksite, use of the land for temporary laydown areas including any ancillary works necessary to facilitate the use of that land, storage, placing of temporary cranes and works associated with the re-instatement of the land. Works compound and welfare facilities, storage, laydown areas, and re-instatement of laydown areas.	Work Nos. 9A, 9B and 9C
13, 14, 16, 16a, 17a, 17b, 31, 32a, 46, 47, 48, 49a, 50, 50a, 51, 53, 54, 62, 63, 72, 72a, 73, 74, 78, 79, 93, 95, 101, 119, 131, 135, 136, 144, 145, 165, 165a 170	Access and construction worksite, including temporary haul road and any ancillary works necessary to facilitate the use of that land as a temporary haul road and re-instatement of the land.	Work No. 10A
136, 146, 149, 155	Access, inspection and repair, construction worksite and placing of temporary cranes.	Work No. 10B
68	Access and construction worksite.	Work No. 11A

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

1. In this Schedule—

“business day” means a day other than a Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971(a);

“requirement consultee” means any body named in a Requirement as a body to be consulted by the relevant planning authority in discharging that Requirement; and

“start date” means the date of the notification given by the Secretary of State under paragraph 5(2)(b).

Applications made under Requirements

2.—(1) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a Requirement the relevant planning authority must give notice to the undertaker of its decision on the application within a period of eight weeks beginning with the later of—

- (a) the day immediately following that on which the application is received by the authority; or
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 3,

or such longer period as may be agreed in writing by the undertaker and the relevant planning authority.

(2) Subject to paragraph 5 and the exception set out in sub-paragraph 4 below, in the event that the relevant planning authority does not determine an application within the period set out in sub-paragraph (1), the relevant planning authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Any application made to the relevant planning authority pursuant to sub-paragraph (1) must include a statement to confirm whether it is likely that the subject matter of the application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement and if it will then it must be accompanied by information setting out what those effects are.

(4) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a Requirement included in this Order and the relevant planning authority does not determine the application within the period set out in sub-paragraph (1)—

- (a) An application is accompanied by a report pursuant to sub-paragraph (3) which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects compared to those in the environmental statement; or
- (b) The relevant planning authority considers that the subject matter of such application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement and has notified the undertaker of this in writing within 21 business days from receipt of such report,

then the application is deemed to have been refused by the relevant planning authority at the end of that period.

(a) 1971 c. 80.

Further information and consultation

3.—(1) In relation to any application to which this Schedule applies, the relevant planning authority may request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) In the event that the relevant planning authority considers such further information to be necessary and the provision governing or requiring the application does not specify that consultation with a requirement consultee is required, the relevant planning authority must, within 21 business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant planning authority must issue the consultation to the requirement consultee within ten business days of receipt of the application, and must notify the undertaker in writing specifying any further information requested by the requirement consultee within five business days of receipt of such a request and in any event within 21 days of receipt of the application (or such other period as is agreed in writing between the undertaker and the relevant planning authority).

(4) In the event that the relevant planning authority does not give notification as specified in sub-paragraph (2) or (3) it is deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

Fees

4.—(1) Where an application is made to the relevant planning authority for written consent, agreement or approval in respect of a requirement, the fee prescribed under regulation 16(1)(b) of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012^(a) (as may be amended or replaced from time to time) is to apply and must be paid to the relevant planning authority for each application.

(2) Any fee paid under this Schedule must be refunded to the undertaker within four weeks of—

- (a) the application being rejected as invalidly made; or
- (b) the relevant planning authority failing to determine the application within nine weeks from the relevant date in paragraph 1 unless—
 - (i) within that period the undertaker agrees, in writing, that the fee is to be retained by the relevant planning authority and credited in respect of a future application; or
 - (ii) a longer period of time for determining the application has been agreed pursuant to paragraph 2 of this Schedule.

Appeals

5.—(1) The undertaker may appeal in the event that—

- (a) the relevant planning authority refuses an application for any consent, agreement or approval required by a requirement included in this Order or grants it subject to conditions;
- (b) the relevant planning authority is deemed to have refused an application pursuant to paragraph 2(4);
- (c) on receipt of a request for further information pursuant to paragraph 3 the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or
- (d) on receipt of any further information requested, the relevant planning authority notifies the undertaker that the information provided is inadequate and requests additional

(a) S.I. 2012/2920.

information which the undertaker considers is not necessary for consideration of the application.

(2) The steps to be followed in the appeal process are as follows—

- (a) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant planning authority and the requirement consultee;
- (b) the Secretary of State must appoint a person to determine the appeal as soon as reasonably practicable after receiving the appeal documentation and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person's attention should be sent;
- (c) the relevant planning authority and the requirement consultee (if applicable) must submit written representations to the appointed person in respect of the appeal within ten business days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (d) the appeal parties must make any counter-submissions to the appointed person within ten business days of receipt of written representations pursuant to paragraph (c);
- (e) the appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within 30 business days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (d); and
- (f) the appointment of the person pursuant to paragraph (b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(3) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal the appointed person must, within five business days of the appointed person's appointment, notify the appeal parties in writing specifying the further information required.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the undertaker to the appointed person, the relevant planning authority and the requirement consultee on the date specified by the appointed person (the "specified date"), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within ten business days of the specified date, but otherwise the process and time limits set out in paragraphs (c) to (e) of sub-paragraph (2) apply.

(5) The appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the relevant planning authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to him in the first instance.

(6) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits.

(7) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears that there is sufficient material to enable a decision to be made on the merits of the case.

(8) The decision of the appointed person on an appeal is to be final and binding on the parties, unless proceedings are brought by a claim for judicial review.

(9) If an approval is given by the appointed person pursuant to this Schedule, it is deemed to be an approval for the purpose of Schedule 2 (requirements) as if it had been given by the relevant planning authority. The relevant planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) does not affect or invalidate the effect of the appointed person's determination.

(10) Save where a direction is given pursuant to sub-paragraph (11) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be met by the undertaker.

(11) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the advice on planning appeals and award costs published on 20 December 2016 by what was then the Department for Communities and Local Government or any circular or guidance which may from time to time replace it.

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY AND GAS UNDERTAKER

Application

1.—(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 the 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

2. In this Part of this Schedule—

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

“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) National Grid Electricity Transmission Plc and National Grid Gas Plc as a Co-Insured;
- (b) a cross liabilities clause; and
- (c) 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 Electricity Transmission Plc and National Grid Gas Plc to cover the undertaker’s liability to National

(a) 1991 c. 22.

Grid Electricity Transmission Plc and 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 Electricity Transmission Plc and National Grid Gas Plc to cover the undertaker's liability to National Grid Electricity Transmission Plc and 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:

- (a) any electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid;
- (b) 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 this 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;

“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 this 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;

“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:

- (a) National Grid Electricity Transmission Plc (Company Number 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989; and
- (b) 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;

“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 7(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 7(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 and/or activity that is referred to in development near overhead lines EN43-8 and HSE’s guidance note 6 “Avoidance of Danger from Overhead Lines”).

On Street Apparatus

3. Except for paragraphs 4 (*Apparatus of National Grid in stopped up streets*), 8 (*retained apparatus: protection*) and 9 (*retained apparatus: protection*), 10 (*expenses*) and 11 (*indemnity*) of this Schedule which will apply in respect of the exercise of all or any powers under this 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.

Apparatus of National Grid in stopped up streets

4.—(1) Where any street is permanently stopped up under this Order, if National Grid has any apparatus in the street or accessed via that street National Grid has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Grid, or procure the granting to National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the undertaker or National Grid to require the removal of that apparatus under paragraph 7 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 9.

(2) Notwithstanding the temporary stopping up or diversion of any highway pursuant to Article 13 (*Agreement with street authorities*), National Grid is at liberty at all times to take all necessary access across any such stopped up highway and to execute all such works and things in, upon, or under any such highway as may be reasonable necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

5.—(1) The undertaker, in the case of the powers conferred by article 34 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid and, if by reason of the exercise of

those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of National Grid or any interruption in the supply of electricity by National Grid is caused, the undertaker must bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

- (a) pay compensation to National Grid for any loss sustained by it; and
- (b) indemnify National Grid against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by that undertaker, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of National Grid or its contractors or workmen; and National Grid will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made by National Grid, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

Acquisition of land

6.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to this Order, the undertaker may not (a) appropriate or acquire any 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 or the undertaker unless otherwise agreed by National Grid and/or the undertaker (as applicable), 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 8 or 9 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

7.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily 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 authorised 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 8(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

8.—(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 Grid 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 16 (*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 electricity undertaker

9.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

(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;
- (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;
- (f) any intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing:-

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;
- (f) written details of the operations and maintenance regime for any cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers; and
- (h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of at least 26 tonnes in weight.

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

(5) Any approval of National Grid required under sub-paragraphs (4)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and,
- (b) must not be unreasonably withheld or delayed.

(6) In relation to any work to which sub-paragraphs (2) or (3) 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.

(7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), 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 (6) or (8) 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.

(8) Where under sub-paragraph (6) 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 Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and National Grid shall 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).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) 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, 2 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(10) 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 authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) 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 (12) at all times.

(12) At all times when carrying out any works authorised under this Order, the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Retained apparatus: protection of gas undertaker

10.—(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) 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 (6); 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 Grid's 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 (4) or (6) 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, 2 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(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 (5), (6) and (7) 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 this 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 11.

Expenses

11.—(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;
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 7(3); or
 - (ii) exercising any compulsory purchase powers in this Order transferred to or benefitting National Grid;

- (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 and;
- (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 16 (arbitration) of this Part of this Schedule 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

12.—(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, 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, 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 2008 Act or article 7 (consent to transfer benefit of the 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(b) will be subject to the full terms of this Part of this Schedule including this paragraph 12.

(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) National Grid must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Grid’s reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid’s control and if reasonably requested to do so by the undertaker National Grid must provide an explanation of how the claim has been minimised, where relevant.

(7) The undertaker must not commence construction (and not 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; or
- (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 from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with paragraph 11(7) 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

13. 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

14.—(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 7(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 9 or 10, the undertaker shall use its reasonable 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

15. If in consequence of the agreement reached in accordance with paragraph 6(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

16. Save for difference or dispute arising under paragraph 7(2), 7(4), 8(1), 9 and 10 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 44 (arbitration).

Notices

17. Notwithstanding article 42 (service of notices), any plans submitted to National Grid by the undertaker pursuant to this Part of this Schedule must be sent to National Grid Plant Protection at plantprotection@nationalgrid.com or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 2

FOR THE PROTECTION OF CANAL AND RIVER TRUST

Interpretation

18.—(1) For the protection of the Canal and River Trust the following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and the Canal and River Trust.

(2) In this Part of this Schedule—

“Code of Practice” means the Code of Practice for Works Affecting the Canal and River Trust (April 2022) or any updates or amendments thereto;

“construction”, in relation to any specified work or protective work, includes—

- (a) the execution and placing of that work; and
- (b) any relaying, renewal, or maintenance of that work as may be carried out during the period of 24 months from the completion of that work; and “construct” and “constructed” have corresponding meanings;

“Canal and River Trust’s network” means the Canal and River Trust’s network of waterways;

“detriment” means any damage to the waterway or any other property of the Canal and River Trust caused by the presence of the authorised development and, without prejudice to the generality of that meaning, includes—

- (a) any obstruction of, or interference with, or hindrance or danger to, navigation or to any use of the waterway (including towing paths);
- (b) the erosion of the bed or banks of the waterway, or the impairment of the stability of any works, lands or premises forming part of the waterway;
- (c) the deposit of materials or the siltation of the waterway so as to damage the waterway;
- (d) the pollution of the waterway;
- (e) any significant alteration in the water level of the waterway, or significant interference with the supply of water thereto, or drainage of water therefrom;
- (f) any harm to the ecology of the waterway (including any adverse impact on any site of special scientific interest comprised in the Canal and River Trust’s network); and
- (g) any interference with the exercise by any person of rights over Canal and River Trust’s network;

“the engineer” means an engineer appointed by the Canal and River Trust for the purpose in question;

“plans” includes sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction) and programmes;

“practical completion” means practical completion of all of the specified work notwithstanding that items which would ordinarily be considered snagging items remain outstanding, and the expression “practically complete” and “practically completed” is to be construed accordingly;

“protective work” means a work constructed under paragraph 22(3)(a);

“specified work” means so much of Work Nos. 4A, 8A, 9A, 9B, 10B and 11A as is situated upon, across, under, over or within 15 metres of, or may in any way affect the waterway;

“the waterway” means each and every part of the Stainforth and Keadby Canal within the order limits, and any works, lands or premises belonging to the Canal and River Trust, or under its management or control, and held or used by the Canal and River Trust in connection with that canal in connection with its statutory functions.

(3) Where the Code of Practice applies to any works or matter that are part of the authorised development or that form part of the protective works and there is an inconsistency between these

protective provisions and the Code of Practice, the part of the Code of Practice that is inconsistent with these protective provisions will not apply and these protective provisions will apply. The undertaker will identify and agree with the Canal and River Trust those parts of the Code of Practice which are not applicable to the construction of the specified works and for the avoidance of doubt the undertaker will not be required to comply with those agreed parts of the Code of Practice.

Powers requiring the Canal and River Trust's consent

19.—(1) The undertaker must not in the exercise of the powers conferred by this Order obstruct or interfere with pedestrian or vehicular access to the waterway unless such obstruction or interference with such access is with the consent of the Canal and River Trust.

(2) The undertaker must not exercise any power conferred by this Order to discharge water into the waterway under article 14 (discharge of water) or in any way interfere with the supply of water to or the drainage of water from the waterway unless such exercise is with the consent of the Canal and River Trust, save as to surface water discharge which will not require the consent of the Canal and River Trust.

(3) The undertaker must not exercise the powers conferred by article 15 (authority to survey and investigate the land) or section 11(3) of the 1965 Act, in relation to the waterway unless such exercise is with the consent of the Canal and River Trust.

(4) The undertaker must not exercise the powers conferred by this Order to temporarily interfere with the waterway under article 16 (temporary interference with canal and public rights of navigation) so as to divert any right of access to or any right of navigation along the waterway but such right of access may be diverted with the consent of the Canal and River Trust.

(5) The consent of the Canal and River Trust pursuant to sub-paragraphs (1) to (4) must not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions.

Fencing

20. Where so required by the engineer the undertaker must to the reasonable satisfaction of the engineer fence off a specified work or a protective work or take such other steps as the engineer may require to be taken for the purpose of separating a specified work or a protective work from the waterway, whether on a temporary or permanent basis or both.

Survey of waterway

21.—(1) Before the commencement of the initial construction of any part of the specified works and again following practical completion of the specified works the undertaker must bear the reasonable and proper cost of the carrying out by a qualified engineer (the “surveyor”), to be approved by the Canal and River Trust and the undertaker, of a survey including a dip-survey to measure the depth of the waterway (“the survey”) of so much of the waterway and of any land and existing works of the undertaker which may provide support for the waterway as will or may be affected by the specified works.

(2) For the purposes of the survey the undertaker must—

- (a) on being given reasonable notice (save in case of emergency, when immediate access must be afforded) afford reasonable facilities to the surveyor for access to the site of the specified works and to any land and existing works of the undertaker which may provide support for the waterway as will or may be affected by the specified works; and
- (b) supply the surveyor as soon as reasonably practicable with all such information as he may reasonably require and which the undertaker holds with regard to such existing works of the undertaker and to the specified works or the method of their construction.

(3) The reasonable costs of the survey must include the costs of any dewatering or reduction of the water level of any part of the waterway (where reasonably required) which may be effected to facilitate the carrying out of the survey and the provisions of this Part will apply with all necessary

modifications to any such dewatering or reduction in the water level as though the same were specified works.

(4) Copies of the survey must be provided to both the Canal and River Trust and the undertaker at no cost to the Canal and River Trust.

Approval of plans, protective works etc.

22.—(1) The undertaker must before commencing construction of any specified work including any temporary works supply to the Canal and River Trust proper and sufficient plans of that work, on the Canal and River Trust forms, having regard to the Canal and River Trust's Code of Practice and such further particulars available to it as the Canal and River Trust may within 14 days of the submission of the plans reasonably require for the approval of the engineer and must not commence such construction of a specified work until plans of that work have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld or delayed, and if within 35 days after such plans (including any other particulars reasonably required under sub-paragraph (1)) have been received by the Canal and River Trust the engineer has not intimated his disapproval of those plans and the grounds of his disapproval he is deemed to have approved the plans as submitted.

(3) When signifying approval of the plans the engineer may specify on land held or controlled by the Canal and River Trust or the undertaker and subject to such works being authorised by this Order or being development permitted by an Act of Parliament or general development order made under the 1990 Act—

- (a) any protective work (whether temporary or permanent) which in the reasonable opinion of the engineer should be carried out before the commencement of a specified work to prevent detriment; and
- (b) such other requirements as may be reasonably necessary to prevent detriment; and such protective works must be constructed by the undertaker or by the Canal and River Trust at the undertaker's request with all reasonable dispatch and the undertaker must not commence the construction of a specified work until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction such consent not to be unreasonably withheld or delayed.

(4) The undertaker must pay to the Canal and River Trust a capitalised sum representing the reasonably increased or additional cost of maintaining and, when necessary, renewing any works, including any permanent protective works provided under sub-paragraph (3) above, and of carrying out any additional dredging of the waterway reasonably necessitated by the exercise of any of the powers under this Order but if the cost of maintaining the waterway, or of works of renewal of the waterway, is reduced in consequence of any such works, a capitalised sum representing such reasonable saving is to be set off against any sum payable by the undertaker to the Canal and River Trust under this paragraph.

(5) In the event that the undertaker fails to complete the construction of, or part of, the specified works the Canal and River Trust may, if it is reasonably required in order to avoid detriment, serve on the undertaker a notice in writing requesting that construction be completed. Any notice served under this sub-paragraph must state the works that are to be completed by the undertaker and lay out a reasonable timetable for the works' completion. If the undertaker fails to comply with this notice within 35 days, the Canal and River Trust may construct any of the specified works, or part of such works, (together with any adjoining works) in order to complete the construction of, or part of, the specified works or make such works and the undertaker must reimburse the Canal and River Trust all costs, fees, charges and expenses it has reasonably incurred in carrying out such works.

Design of works

23. Without prejudice to its obligations under the foregoing provisions of this Part of this Schedule the undertaker must consult, collaborate and respond constructively to any reasonable approach, suggestion, proposal or initiative made by the Canal and River Trust on—

- (a) the design and appearance of the specified works, including the materials to be used for their construction; and
- (b) the environmental effects of those works; and must have regard to such views as may be expressed by the Canal and River Trust to the extent that these accord with the requirements of the local planning authority in response to such consultation pursuant in particular to the requirements imposed on the Canal and River Trust by section 22 (general environmental and recreational duties) of the British Waterways Act 1995^(a) and to the interest of the Canal and River Trust in preserving and enhancing the environment of its waterways.

Notice of works

24. The undertaker must give to the engineer 30 days' notice of its intention to commence the construction of any of the specified works or protective works, or, in the case of repair carried out in an emergency, such notice as may be reasonably practicable so that, in particular, the Canal and River Trust may where appropriate arrange for the publication of notices bringing those works to the attention of users of the Canal and River Trust's network

Lighting

25. The undertaker must provide and maintain at its own expense in the vicinity of the specified or protective works such temporary lighting and such signal lights for the control of navigation as the engineer may reasonably require during the construction or failure of the specified or protective works.

Construction of specified works

26.—(1) Any specified works or protective works must, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid and with any specifications made under paragraph 22 and paragraph 23 of this Part;
- (b) under the supervision (if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little detriment as is reasonably practicable;
- (d) in such manner as to cause as little inconvenience as is reasonably practicable to the Canal and River Trust, its officers and agents and all other persons lawfully using the waterways, except to the extent that temporary obstruction has otherwise been agreed by the Canal and River Trust;
- (e) in such a manner as to ensure that no materials are discharged or deposited into the waterway otherwise than in accordance with article 14 (Discharge of water); and
- (f) in compliance with the Code of Practice (where appropriate and where consistent with the exercise of powers pursuant to this Order and for the timely, safe, economic and efficient delivery of the authorised works)

(2) Nothing in this Order authorises the undertaker to make or maintain any permanent works in or over the waterway so as to impede or prevent (whether by reducing the width of the waterway or otherwise) the passage of any vessel which is of a kind (as to its dimensions) for which the

(a) 1995 c. i.

Canal and River Trust is required by section 105(1)(b) and (2) of the Transport Act 1968(a) to maintain the waterway.

(3) Following the completion of the construction of the specified works the undertaker must restore the waterway to a condition no less satisfactory than its condition immediately prior to the commencement of those works unless otherwise agreed between the undertaker and the Canal and River Trust.

(4) In assessing whether the condition of the waterway is no less satisfactory than immediately prior to the works pursuant to sub-paragraph (3), the Canal and River Trust and the undertaker must take account of any survey issued pursuant to paragraph 21 and any other information agreed between them pursuant to this Part.

Prevention of pollution

27. The undertaker must not in the course of constructing a specified work or a protective work or otherwise in connection therewith do or permit anything which may result in the pollution of the waterway or the deposit of materials therein and must take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph.

Access to work – provision of information

28.—(1) The undertaker on being given reasonable notice must—

- (a) at all reasonable times allow reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

(2) The Canal and River Trust on being given reasonable notice must—

- (a) at all reasonable times afford reasonable facilities to the undertaker and its agents for access to any works carried out by the Canal and River Trust under this Part during their construction; and
- (b) supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them and the undertaker must reimburse the Canal and River Trust's reasonable costs in relation to the supply of such information.

Alterations to the waterway

29.—(1) If during the construction of a specified work or a protective work or during a period of twenty four (24) months after the completion of those works any alterations or additions, either permanent or temporary, to the waterway are reasonably necessary in consequence of the construction of the specified work or the protective work in order to avoid detriment, and the Canal and River Trust gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to the Canal and River Trust the reasonable costs of those alterations or additions including, in respect of any such alterations or additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by the Canal and River Trust in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If the cost of maintaining, working or renewing the waterway is reduced in consequence of any such alterations or additions a capitalised sum representing such saving is to be set off against any sum payable by the undertaker to the Canal and River Trust under this paragraph.

(a) 1968 c. 73. Sections 105(1) and (2) were amended by paragraph 39 of Schedule 2 to S.I. 2012/1659.

Maintenance of works

30. If at any time after the completion of a specified work or a protective work, not being a work vested in the Canal and River Trust, the Canal and River Trust gives notice to the undertaker informing it that it reasonably considers that the state of maintenance of the work appears to be such that the work is causing or likely to cause detriment, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put the work in such state of maintenance as not to cause such detriment.

Repayment of the Canal and River Trust's fees, etc.

31.—(1) The undertaker must repay to the Canal and River Trust in accordance with the Code of Practice all fees, costs, charges and expenses reasonably incurred by the Canal and River Trust—

- (a) in constructing any protective works under the provisions of paragraph 22(3)(a);
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction or repair of a specified work and any protective works;
- (c) in respect of the employment during the construction of the specified works or any protective works of any inspectors, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, watching and lighting any waterway and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works or any protective works;
- (d) in bringing the specified works or any protective works to the notice of users of the Canal and River Trust's network; and
- (e) in constructing and/or carrying out any measures related to any specified works or protective works which are reasonably required by the Canal and River Trust to ensure the safe navigation of the waterway save that nothing is to require the Canal and River Trust to construct and/or carry out any measures.

(2) If the Canal and River Trust considers that a fee, charge, cost or expense will be payable by the undertaker pursuant to sub-paragraph (1), the Canal and River Trust will first provide an estimate of that fee, charge, cost or expense and supporting information in relation to the estimate to the undertaker along with a proposed timescale for payment for consideration and the undertaker may, within a period of twenty-one days—

- (a) provide confirmation to the Canal and River Trust that the estimate is agreed and pay to the Canal and River Trust, by the date stipulated, that fee, charge, cost or expense; or
- (b) provide confirmation to the Canal and River Trust that the estimate is not accepted along with a revised estimate and a proposal as to how or why the undertaker considers that the estimate can be reduced and or paid at a later date.

(3) The Canal and River Trust must take in to account any representations made by the undertaker in accordance with this paragraph 31 and must, within twenty-one days of receipt of the information pursuant to sub-paragraph (1), confirm the amount of the fee, charge, cost or expense to be paid by the undertaker (if any) and the date by which this is to be paid.

(4) The Canal and River Trust must, when estimating and incurring any charge, cost or expense pursuant this paragraph 31, do so with a view to being reasonably economic and acting as if the Canal and River Trust were itself to fund the relevant fee, charge, cost or expense.

Making good of detriment; compensation and indemnity, etc.

32.—(1) If any detriment is caused by the construction or failure of the specified works or the protective works if carried out by the undertaker, the undertaker (if so required by the Canal and River Trust) must make good such detriment and must pay to the Canal and River Trust all reasonable expenses incurred by the Canal and River Trust, and compensation for any loss sustained by the Canal and River Trust in making good or otherwise by reason of the detriment.

(2) The undertaker must be responsible for and make good to the Canal and River Trust all costs, charges, damages, expenses and losses not otherwise provided for in this Part which may be occasioned to and reasonably incurred by the Canal and River Trust—

- (a) by reason of the construction of a specified work or a protective work or the failure of such a work; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction of a specified work or protective work; and subject to sub-paragraph (4) the undertaker must effectively indemnify and hold harmless the Canal and River Trust from and against all claims and demands arising out of or in connection with any of the matters referred to in sub-paragraphs (a) and (b) (provided that the Canal and River Trust is not entitled to recover from the undertaker any consequential losses which are not reasonably foreseeable).

(3) The fact that any act or thing may have been done by the Canal and River Trust on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision or in accordance with any directions or awards of an arbitrator is not to (if it was done without negligence on the part of the Canal and River Trust or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph.

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

(5) The Canal and River Trust must give the undertaker reasonable notice of any such claim or demand as aforesaid and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

(6) The aggregate cap of the undertaker's gross liability for consequential losses shall be limited to £15,000,000 (fifteen million pounds) for any one occurrence or all occurrences of a series arising out of the one original cause.

Arbitration

33. Any difference arising between the undertaker and the Canal and River Trust under this Part (other than a difference as to the meaning or construction of this Part) must be referred to and settled by arbitration in accordance with article 44 (arbitration) of this Order.

Capitalised sums

34. Any capitalised sum which is required to be paid under this Part must be calculated by multiplying the cost of the maintenance or renewal works to the waterway necessitated as a result of the operation of the authorised development by the number of times that the maintenance or renewal works will be required during the operation of the authorised development.

PART 3

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

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

36. In this Part of this Schedule—

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

“apparatus” means—

- (a) in the case of a utility undertaker within sub-paragraph (a) of the definition of that term, electric lines or electrical plant (as defined in the Electricity Act 1989^(a)), belonging to or maintained by that utility undertaker;
- (b) in the case of a utility undertaker within sub-paragraph (b) of the definition of that term, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a utility undertaker within sub-paragraph (c) of the definition of that term—
 - (i) mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
 - (ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991^(b);
- (d) in the case of a utility undertaker within sub-paragraph (d) of the definition of that term—
 - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991; and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

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

“utility undertaker” means—

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

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.

37. This Part 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 of the 1991 Act.

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

39.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the utility undertaker’s apparatus is relocated or diverted, that apparatus must not be removed under this Part, and any right of a utility undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(a) 1989 c. 29.

(b) 1991 c. 56.

(c) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45) and was further amended by the Utilities Act 2000 (c. 27).

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

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

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 44 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 44 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question 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 controlled by 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.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

40.—(1) Where, in accordance with the provisions of this Part, 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 must 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 44 (arbitration).

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

41.—(1) Not less than twenty-eight days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under

paragraph 6(2), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of twenty-one days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) 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 35 to 40 apply as if the removal of the apparatus had been required by the undertaker under paragraph 39(2).

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

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

42.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 39(2).

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

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

- (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,

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 44 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) is to 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 is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 39(2); 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 (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.

43.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 39(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

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

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

(2) 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.

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

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

PART 4

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

45.—(1) For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

(2) In this Part—

“the 2003 Act” means the Communications Act 2003(a);

“electronic communications apparatus” has the same meaning as set out in paragraph 5 of the electronic communications code;

“the electronic communications code” has the same meaning as set out in sections 106 to 119 and Schedule 3A of the 2003 Act(b);

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7 of that code;

“network” means—

(a) 2003 c. 21 as amended by the Digital Economy Act 2017 (c. 30).
(b) Added by Schedule 1 of the Digital Economy Act 2017 (c. 30).

- (a) so much of a network or infrastructure system provided by an operator as is not excluded from the application of the electronic communications code by a direction under section 106(5) of the 2003 Act; and
 - (b) a network which the Secretary of State is providing or proposing to provide;
- “operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act and who is an operator of a network.

46. The exercise of the powers of article 29 (statutory undertakers) is subject to Part 10 of Schedule 3A of the 2003 Act.

47.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the construction of authorised development, or of any subsidence resulting from any of those works—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, 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 an operator, its officers, servants, contractors or agents.

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

(4) Any difference arising between the undertaker and the operator under this part of this Schedule must be referred to and settled by arbitration under article 44 (arbitration).

48. This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

49. Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 5

FOR THE PROTECTION OF RAILWAY INTERESTS

50. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 68 of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

51. In this Schedule—

“asset protection agreement” means an agreement to regulate the construction and maintenance of the specified work in a form prescribed from time to time by Network Rail;

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of their powers under section 8 (licences) of the Railways Act 1993;

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at 1 Eversholt Street, London NW1 2DN) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006 the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail or a tenant or licensee of Network Rail for the purposes of such railway or works, apparatus or equipment

“regulatory consents” means any consent or approval required under:

- (a) the Railways Act 1993;
- (b) the network licence; and/or
- (c) any other relevant statutory or regulatory provisions;

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised development;

“specified work” means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and, for the avoidance of doubt, includes the powers conferred by article 4 (maintenance of the authorised development);

“undertaker” has the same meaning as in article 2 (interpretation) of this Order;

52.—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

53.—(1) The undertaker must not exercise the powers conferred by—

- (a) Article 14 (discharge of water);
- (b) Article 15 (authority to survey and investigate the land);
- (c) Article 18 (compulsory acquisition of land);

- (d) Article 19 (statutory authority to override easements and other rights);
- (e) Article 21 (compulsory acquisition of rights);
- (f) Article 22 (private rights);
- (g) Article 24 (acquisition of subsoil or airspace only);
- (h) Article 27 (temporary use of land for carrying out the authorised development);
- (i) Article 28 (temporary use of land for maintaining the authorised development);
- (j) Article 29 (statutory undertakers);
- (k) Article 33 (felling or lopping of trees and removal of hedgerows);
- (l) the powers conferred by section 11(3) (power of entry) of the 1965 Act;
- (m) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;
- (n) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;
- (o) the powers conferred by section 18 (power to take temporary possession of land) of the Neighbourhood Planning Act 2017

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, or article 29 (statutory undertakers), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property, except with the consent of Network Rail.

(5) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

(6) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

54.—(1) The undertaker must, before commencing construction of any specified work, supply to Network Rail; (a) proper and sufficient plans of that work for the reasonable approval of the engineer and (b) the specified work must not be commenced, except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated their disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the

reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation decommissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to their reasonable satisfaction.

55.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 54(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 54;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

56. The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as they may reasonably require with regard to a specified work or the method of constructing it.

57. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

58.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives the undertaker 56 days written notice.

(2) If during the construction of a specified work by the undertaker, Network Rail gives written notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe

operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 54(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 59(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

59. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 54(3) or in constructing any protective works under the provisions of paragraph 54(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

60.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 54(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)—

- (a) The undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must

continue to consult with Network Rail (both before and after formal submission of plans under paragraph 54(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;

- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 54(1) has effect subject to the sub-paragraph.

(6) Prior to the commencement of operation of the authorised development the undertaker shall test the use of the authorised development in a manner that shall first have been agreed with Network Rail and if, notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

- (a) The undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI;
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI; and
- (d) The undertaker shall not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to subparagraphs (5) or (6)—

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
- (b) any modifications to Network Rail's apparatus approved pursuant to those subparagraphs must be carried out and completed by the undertaker in accordance with paragraph 55.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 64(1) applies to the costs and expenses reasonably incurred or losses suffered by network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which subparagraph (6) applies.

(10) For the purpose of paragraph 59(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 44 (Arbitration) to a single arbitrator shall be read as a reference to the Institution of Engineering and Technology.

61. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives written notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

62. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

63. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous written notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

64.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (subject to article 31 (recovery of costs of new connections)) which may be occasioned to or reasonably incurred by Network Rail—

- (a) By reason of the construction, maintenance or operation of a specified work or the failure thereof;
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;
- (c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development;
- (d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;
- (e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development; and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must—

- (a) give the undertaker reasonable written notice of any such claims or demands;
- (b) not make any settlement or compromise of such a claim or demand without the prior consent of the undertaker; and
- (c) take all reasonable steps to mitigate any liabilities relating to such claims or demands.

(3) The sums payable by the undertaker under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail’s railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

65. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Schedule (including the amount of the relevant costs mentioned in paragraph 64 and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Schedule (including any claim relating to those relevant costs).

66. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Schedule or increasing the sums so payable.

67. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

68. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

69. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State’s consent, under article 7 (consent to transfer benefit of the Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) The nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

70. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 41 (certification of plans etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.

71. In relation to any dispute arising under this part of this Schedule (except for those disputes referred to in paragraph 60(11)) the provisions of article 44 (Arbitration) shall not apply and any such dispute, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) to the President of the Institution of Civil Engineering and Technology.

PART 6

FOR THE PROTECTION OF NATIONAL GRID CARBON LIMITED

Application

72. For the protection of NGC the following provisions have effect, unless otherwise agreed in writing between the undertaker and NGC.

73. The undertaker hereby agrees not to exercise its powers under this Order without fully complying with the provisions of this Part of this Schedule.

74. Section A and paragraph 88 of Section B of this Part 6 of Schedule 10 shall have effect from the date this Order is made and the remainder of Section B of this Part 6 of Schedule 10 shall have effect from the date that NGC apparatus is installed and completed in accordance with an agreed schedule of NGC apparatus between the undertaker and NGC.

Interpretation

75.—(1) In this Part of this Schedule—

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

“affiliates” means any of NGC’s parent or subsidiary undertakings together with any subsidiary undertakings of any such parent undertakings from time to time involved in promoting, constructing or operating the NGC Pipeline Network;

“alternative apparatus” means apparatus in the alternative to NGC apparatus adequate to enable NGC to operate and maintain its undertaking in a manner no less efficient than previously;

“carbon dioxide export connection work” means the infrastructure proposed to deliver the export of carbon dioxide arising from Work No.1C to the NGC Pipeline Network and comprising Work No.7B;

“construction” includes execution, placing, installation, altering, replacing, relaying and removal and excavation and “construct” and “constructed” will be construed accordingly;

“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;

“NGC” means National Grid Carbon Limited (Company Number 03932833) whose registered office is at 1-3 Strand, London, WC2N 5EH and includes all of its affiliates, transferees and assignees;

“NGC apparatus” means any mains, pipes, plant or other apparatus belonging to, operated or maintained by NGC whether temporary or permanent, and includes, where the context so requires, apparatus constructed as part of the authorised development and intended for beneficial use by NGC;

“NGC Pipeline Network DCO” means a development consent order for the construction operation and maintenance of the NGC Pipeline Network;

“NGC Pipeline Network” means the proposed network of high pressure carbon dioxide and hydrogen pipelines to be developed by NGC for the transportation of carbon dioxide and hydrogen to and from industrial emitters in the Humber region and references to the NGC Pipeline Network in this Part of this Schedule include any part of that network;

“NGC Pipeline Network site” means land on which any NGC apparatus is situated;

(a) 1991 c. 22.

“plan” includes all sections, designs, drawings, maps, specifications, method statements, soil reports and other survey data, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed; and

“specified work” means so much of any work or operation authorised by this Order (other than an carbon dioxide export connection work) as—

- (a) will or may be situated over, or within 15 metres measured in any direction of any NGC apparatus; and/or
- (b) may in any way adversely affect any NGC apparatus the removal of which has not been required by the undertaker under paragraph 85 or otherwise.

(2) In paragraph (1), references to “subsidiary undertakings” and “parent undertakings” have the meaning given to them by section 1162 (parent and subsidiary undertakings) of the Companies Act 2006(a), except that references in that section to majority are to be read as references to “25 per cent or more” and provided further that a company will be treated, for the purposes only of the membership requirement contained in that section of that Act, as a member of another company even if its shares in that other company are registered in the name of—

- (a) another person (or its nominee) by way of security or in connection with the taking of security; or
- (b) its nominee.

SECTION A

Interaction with the NGC Pipeline Network

76. Without limiting any other provision of this Part of this Schedule, the undertaker must use reasonable endeavours to avoid any conflict arising between the carrying out, maintenance and operation of the authorised development and the NGC Pipeline Network. For the purposes of this sub-paragraph, “reasonable endeavours” means—

- (a) undertaking consultation with NGC on detailed design of the carbon capture and compression plant, and all works associated with or ancillary to the carbon capture and compression plant, and ensuring the plans as submitted for approval under the requirements do not unreasonably impede or interfere with the construction of the NGC Pipeline Network having regard to such information as NGC notifies to the undertaker;
- (b) having regard to the proposed programme of works for the NGC Pipeline Network as may be made available to the undertaker by NGC and facilitating a co-ordinated approach to the programme, land assembly, and the carrying out of the carbon capture and compression plant and the NGC Pipeline Network;
- (c) providing a point of contact for continuing liaison and co-ordination throughout the construction and operation of the authorised development; and
- (d) keeping NGC informed on the programme of works for the authorised development.

Carbon dioxide export connections works

77. The undertaker must not except with the agreement of NGC carry out Work No.7B, or any part of it.

78. Without limiting any other provision of this Order, where NGC proceeds to carry out Work No.7B or any part of it, the undertaker must use its reasonable endeavours to facilitate the programming, execution, commissioning and future operation and maintenance of those works in a safe, efficient and economic manner alongside any other part of the authorised development.

(a) 2006 c. 46.

79.—(1) Before beginning to construct any carbon dioxide export connection work, or any part of it, the undertaker must submit to NGC plans of the relevant carbon dioxide export connection work (or part of it) and such further particulars available to it as NGC may request within 28 days of receipt of the plans reasonably requested.

(2) Any carbon dioxide export connection work must not be constructed except in accordance with such plans as may be approved in writing by NGC.

80.—(1) Any approval of NGC required under this Schedule—

- (a) must not be unreasonably withheld or delayed;
- (b) in the case of a refusal must be accompanied by a statement of grounds of refusal; and
- (c) may be given subject to such reasonable requirements as NGC may have in connection with the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the NGC Pipeline Network or otherwise for the protection of NGC apparatus,

provided always that in relation to a refusal under sub-paragraph (b) or any requirements requested pursuant to sub-paragraph (c) the undertaker shall be permitted to refer such matters to dispute resolution pursuant to paragraph 92.

(2) NGC must employ reasonable endeavours to respond to the submission of any plans within a period of 56 days from the date of submission of the plans. If NGC require further particulars, such particulars must be requested by NGC no later than 21 days from the submission of plans and thereafter NGC must employ reasonable endeavours to respond to the submission within 56 days from receipt of the further particulars.

81.—(1) The undertaker must give to NGC not less than 14 days' notice in writing of its intention to commence construction of any carbon dioxide export connection work and notice in writing of its completion not later than 7 days after the date on which it is completed and NGC will be entitled by its officer to watch and inspect the construction of such works.

(2) If any part of a carbon dioxide export connection work is constructed otherwise than in accordance with paragraph 79(2) above NGC may by notice in writing identify the extent to which the carbon dioxide export connection works does not comply with the approved details and request the undertaker at the undertaker's own expense carry out remedial works so as to comply with the requirements of paragraph 79(2) of this Part of this Schedule or such alternative works as may be agreed with NGC or as otherwise may be agreed between the parties.

(3) Subject to sub-paragraph (4), if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (2) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, NGC may execute the works specified in the notice and any reasonable expenditure incurred by NGC in so doing will be recoverable from the undertaker.

(4) In the event of any dispute as to whether sub-paragraph (2) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, NGC will not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 92.

SECTION B

On street apparatus

82. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and NGC are regulated by the provisions of Part 3 of the 1991 Act.

Acquisition of land

83. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire or extinguish any NGC rights in relation to NGC apparatus, otherwise than by agreement.

Protective works to buildings

84. The undertaker, in the case of the powers conferred by article 34 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any NGC apparatus or any NGC Pipeline Network site.

Removal of NGC apparatus

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

(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 NGC apparatus placed in that land, the undertaker must give to NGC 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 NGC reasonably needs to remove any NGC apparatus) the undertaker must, subject to sub-paragraph (3), afford to NGC the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) 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 NGC and the undertaker or in default of agreement settled by arbitration in accordance with article 44 (arbitration).

(4) NGC must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 44, and after the grant to NGC of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any NGC apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

86.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to NGC facilities and rights for the construction, commissioning, maintenance and operation of alternative apparatus in substitution for NGC 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 NGC or in default of agreement settled by arbitration in accordance with article 44 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to NGC than the facilities and rights enjoyed by it in respect of the NGC 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 NGC as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Specified works plan approval

87.—(1) Before beginning to construct any specified work, the undertaker must submit to NGC plans of the specified work and such further particulars available to it as NGC may within 28 days of receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by NGC, or determined under paragraph 92.

(3) Any approval of NGC required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) in the case of a refusal must be accompanied by a statement of grounds of refusal; and
- (c) may be given subject to such reasonable requirements as NGC may have in connection with the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the NGC Pipeline Network or otherwise for the protection of NGC apparatus.

(4) NGC must use its reasonable endeavours to respond to the submission of any plans within a period of 56 days from the date of submission of the plans or receipt of further particulars if such particulars have been requested by NGC for approval.

(5) Without limiting sub-paragraph (3), the requirements which NGC may have under that paragraph include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works or other works as are reasonably considered by NGC to be necessary to safeguard the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the NGC Pipeline Network or otherwise for the protection of NGC apparatus.

88.—(1) Subject to sub-paragraph (5), any specified work, and all protective or additional works required by NGC under sub-paragraph 87(5), must be constructed—

- (a) without unreasonable delay in accordance with the plans approved under this Part of this Schedule; and
- (b) to the reasonable satisfaction of NGC,

and NGC will be entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give to NGC not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If any part of a specified work or any protective or additional work required by NGC is constructed otherwise than in accordance with the requirements of this Part of this Schedule, NGC may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and NGC in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as NGC reasonably requires.

(4) Subject to sub-paragraph (5), if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (3) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, NGC may execute the works specified in the notice and any reasonable expenditure incurred by NGC in so doing will be recoverable from the undertaker.

(5) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, NGC will not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined in accordance with paragraph 92.

Expenses and costs

89.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to NGC all expenses reasonably and properly incurred by NGC in, or in connection with, the inspection, removal, alteration or protection of any NGC apparatus or the construction of the carbon dioxide export connection works or any alternative apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 86.

(2) Without prejudice to the generality of sub-paragraph (1), the undertaker must repay to NGC all reasonable costs, charges and expenses which NGC may reasonable incur—

- (a) in the examination or approval of plans under this Part of this Schedule;
- (b) in the inspection of the construction of the carbon dioxide export connection works, the specified works or any protective or additional works required by NGC under this Part of this Schedule and;
- (c) in carrying out any of the surveys or tests by NGC which are reasonably required in connection with the construction of the carbon dioxide export connections work or any specified works.

(3) This paragraph shall be subject to—

- (a) any contrary provisions made in a charging methodology approved by the Office of Gas and Electricity Markets from time to time (or successor body); or
- (b) such alternative cost apportionment as may be agreed between NGC and the undertaker in a connection agreement (and for the avoidance of doubt the provisions of paragraphs 89(1) and 89(2) are not intended to set a precedent for such cost apportionment terms as may be agreed between the parties) whereupon the relevant parts of paragraph 89 shall be of no further effect insofar as such an agreement remains in force.

Indemnity

90.—(1) Subject to sub-paragraphs (5) to (6), if by reason or in consequence of the construction of the authorised development or in consequence of the construction, use or maintenance of any of the authorised works or of any subsidence resulting from any of those works, or the failure of any such work, any damage is caused to any NGC 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 other property belonging to NGC, or there is any interruption in the supply of the service provided by NGC, or the efficiency of that supply is impaired in each case directly or in consequence of such construction works, the undertaker must—

- (a) bear and pay the cost reasonably incurred by NGC in making good such damage or restoring the supply or making good any impairment of the efficiency of that supply; and
- (b) make reasonable compensation to NGC for any other expenses, loss, damages, liabilities, claims, demands, penalty or costs incurred by it, by reason or in consequence of, any such damage or interruption.

(2) NGC must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 90 applies where it is within NGC's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of NGC's control and if reasonably requested to do so by the undertaker, NGC must provide an explanation of how the claim has been minimised, where relevant or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1).

(3) If as a result of the authorised development NGC's access to the NGC Pipeline Network, or to any NGC Pipeline Network site, is materially obstructed, the undertaker must provide such alternative means of access that will allow NGC to maintain NGC apparatus or use NGC apparatus no less efficiently than was possible before the obstruction and such alternative means of access must be provided within 24 hours of the undertaker becoming aware of such obstruction.

(4) The fact that any act or thing may have been done by NGC on behalf of the undertaker or in accordance with a plan approved by NGC or in accordance with any requirement of NGC or under

its supervision does not, subject to sub-paragraph (5), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(5) 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 NGC, its officers, servants, contractors or agents.

(6) NGC must give the undertaker reasonable notice of any third party claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker 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.

(7) This paragraph shall be subject to any alternative indemnity provisions as may be agreed between NGC and the undertaker in a connection agreement or operating agreement (and for the avoidance of doubt the provisions of paragraph 90 are not intended to set a precedent for such indemnity terms as may be agreed between the parties) whereupon the relevant parts of this paragraph shall be of no further effect.

Co-operation

91. Where in consequence of the proposed construction of any of the authorised development, the undertaker or NGC requires the removal of NGC apparatus under paragraph 85 or NGC specifies requirements for the protection or alteration of apparatus under paragraph 85 the undertaker must use 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 the NGC Pipeline Network.

Disputes

92. Any dispute arising between the undertaker and NGC under this part of this Schedule will, if the parties agree, be determined by arbitration under article 44 (arbitration), but will otherwise be determined by the Secretary of State on a reference to it by the undertaker or NGC, after notice in writing by one to the other.

PART 7

FOR THE PROTECTION OF NORTHERN POWERGRID

93. For the protection of Northern Powergrid the following provisions have effect, unless otherwise agreed in writing between the undertaker and Northern Powergrid.

94. In this Part of this Schedule—

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

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

“apparatus” means electric lines or electrical plant (as defined in the Electricity Act 1989), belonging to or maintained by Northern Powergrid and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“authorised works” means so much of the works authorised by this Order which affect existing Northern Powergrid’s apparatus within the Order limits;

“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;

(a) 1991 c.22.

“plan” 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 shall include measures proposed by the undertaker to ensure the grant of sufficient land or rights in land necessary to mitigate the impacts of the works on Northern Powergrid’s undertaking; and

“Northern Powergrid” means Northern Powergrid (Yorkshire) PLC (Company Number 04112320) whose registered address is Lloyds Court, 78 Grey Street, Newcastle upon Tyne NE1 6AF being a licence holder within the meaning of Part 1 (electricity supply) of the Electricity Act 1989 for the area of the authorised development and in relation to any apparatus belonging to it or maintained by it.

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

96. Regardless of any provision in this Order or anything shown on the land plans, or contained in the book of reference, the undertaker shall not acquire any apparatus, or override any easement or other interest of Northern Powergrid otherwise than by agreement with Northern Powergrid, such agreement not to be unreasonably withheld or delayed.

97.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that Northern Powergrid’s apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Northern Powergrid to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided pursuant to a completed easement for a tenure no less than exists to the apparatus being relocated or diverted, all to the reasonable satisfaction of Northern Powergrid in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Northern Powergrid 42 days’ advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Northern Powergrid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Northern Powergrid the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Northern Powergrid must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably practicable and at the cost of the undertaker (subject to prior approval by the undertaker of its estimate of costs of doing so) use reasonable endeavours 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 Northern Powergrid to use its compulsory purchase powers to this end unless:

- (a) the undertaker has first used reasonable endeavours to acquire the relevant land, rights and/or interests and provided reasonable evidence of the same to Northern Powergrid in accordance with the measures set out in the plan (in default of agreement, the reasonableness of any such measures to be determined through arbitration under article 44 (arbitration)); and
- (b) the undertaker and Northern Powergrid agree (or in default of agreement, it is determined through arbitration under article 44 (arbitration)) that the promotion of compulsory purchase powers by the undertaker would be significantly more onerous than the exercise of Northern Powergrid’s own compulsory powers.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Northern Powergrid and the undertaker or in default of agreement settled by arbitration in accordance with article 44 (arbitration).

(5) Northern Powergrid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 44 (arbitration), and after the grant to Northern Powergrid 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.

98.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Northern Powergrid facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Northern Powergrid or in default of agreement settled by arbitration in accordance with article 44 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Northern Powergrid 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 Northern Powergrid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

99.—(1) Not less than 48 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 (including conducting any activities whether intentionally or unintentionally, through for example ground or machinery collapse, which may affect Northern Powergrid's apparatus or encroach on safety distances to live equipment) or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 97(2), the undertaker must submit to Northern Powergrid a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Northern Powergrid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Northern Powergrid is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Northern Powergrid under sub-paragraph (2) must be made within a period of 42 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If Northern Powergrid 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 93 to 98 apply as if the removal of the apparatus had been required by the undertaker under paragraph (2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 35 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to Northern Powergrid notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

100.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northern Powergrid all reasonable and proper expenses costs or charges incurred by Northern Powergrid—

- (a) 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 97(2) including without limitation:
 - (i) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that it is agreed Northern Powergrid elects to use compulsory purchase powers to acquire any necessary rights under paragraph 97(3) all costs reasonably incurred as a result of such action;
 - (ii) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
 - (iii) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
 - (iv) the approval of plans;
 - (v) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
 - (vi) 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); and
- (b) in assessing and preparing a design for its apparatus to address and accommodate the proposals of the undertaker whether or not the undertaker proceeds to implement those proposals or alternative or none at all,

provided that if it so prefers Northern Powergrid may abandon apparatus that the undertaker does not seek to remove in accordance with paragraph 97(1) having first decommissioned such apparatus.

(2) There is to 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, that value being calculated after removal and for the avoidance of doubt, if the apparatus removed under the provisions of this Part of this Schedule has nil value, no sum will be deducted from the amount payable under sub-paragraph (1) 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

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 44 (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 Northern Powergrid by virtue of sub-paragraph (1) is to be reduced by the amount of that excess save where it is not possible on account of project time limits and/or supply issues to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker.

(3) For the purposes of sub-paragraph (2)—

- (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 where such extension is required in consequence of the execution of any such works as are referred to in paragraph 97(2); 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.

101.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 97(2), or in consequence of the, 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 it) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Schedule or any subsidence resulting from any of these works any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Northern Powergrid, or there is any interruption in any service provided by Northern Powergrid, or Northern Powergrid becomes liable to pay any amount to a third party as a consequence of any default, negligence or omission by the undertaker in carrying out the authorised works, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Northern Powergrid in making good such damage or restoring the supply; and
- (b) indemnify Northern Powergrid for any other expenses, loss, damages, penalty, proceedings, claims or costs incurred by or recovered from Northern Powergrid,

by reason or in consequence of any such damage or interruption or Northern Powergrid becoming liable to any third party.

(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 Northern Powergrid, its officers, employees, servants, contractors or agents.

(3) Northern Powergrid 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, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Northern Powergrid must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 101 applies. If requested to do so by the undertaker, Northern Powergrid must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 101 for claims reasonably incurred by Northern Powergrid.

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

103. Where in consequence of the proposed construction of any of the authorised development, the undertaker or Northern Powergrid requires the removal of apparatus under paragraph 97 or otherwise or Northern Powergrid makes requirements for the protection or alteration of apparatus under paragraph 99, the undertaker shall use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the need to ensure the safe and efficient operation of Northern Powergrid's undertaking taking into account the undertaker's desire for the efficient and economic execution of the authorised development and the undertaker and Northern Powergrid shall use reasonable endeavours to co-operate with each other for those purposes.

104. If in consequence of an agreement reached in accordance with paragraph 96 or the powers granted under this Order the access to any apparatus or alternative apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus or

alternative apparatus as will enable Northern Powergrid to maintain or use the said apparatus no less effectively than was possible before such obstruction.

105. The plans submitted to Northern Powergrid by the undertaker pursuant to this Part of this Schedule must be sent to Northern Powergrid at property@northernpowergrid.com or such other address as Northern Powergrid may from time to time appoint instead for that purpose and notify to the undertaker in writing

SCHEDULE 11

Requirement 5

DESIGN PARAMETERS

1. Maximum parameters for buildings and structures are set out at table 6.
2. The finished ground level in respect of Work No. 1A, Work No. 1C and Work No. 1E may be higher than 2.8 metres above ordinance datum (AOD) but in all cases the maximum heights measured AOD shall not exceed the measurement in column 5 of table 6.
3. Maximum parameters of the A18 Gatehouse building (Work No. 8B) are set out in table 7.
4. Maximum parameters for length (m), width (m) or diameter (m) exclude external support structures such as (but not limited to) ladders, platforms, external piping and structural supports.

Table 6

<i>(1)</i> Component	<i>(2)</i> Length (m)	<i>(3)</i> Width (m) or diameter (m)	<i>(4)</i> Height (m) above ground level (AGL) (in the case that the finished ground level is 2.8m AOD)	<i>(5)</i> Height (M) AOD (in all cases)
Gas Turbine Hall (Work No. 1A)	22	50	31.8	34.6
Steam Turbine Hall (Work No. 1A)	50	40	34.8	37.6
HRSG Building (Work No. 1A)	28	50	55.8	58.6
Absorber (Work No. 1C) (in the case that a single absorber is developed)	16 (Note 4)	43 (Note 4)	98.8	101.6
Absorber Stack (Work No. 1C) (in the case that a single absorber is developed)	-	6.7	104.8	107.6
Twin Absorbers (Work No. 1C) (in the case that two absorbers are developed)	-	19.0 (Note 4)	80	82.8
Twin Absorber Stacks (Work No. 1C) (in the case that two absorbers are developed)	-	6.7	95.5	98.3
HRSG Stack (Work No. 1A)	-	8.0	84.8	87.6

Carbon Dioxide stripper (Work No. 1C)	-	15.0 (Note 4)	63	65.8
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Table 7

<i>(1)</i> Component	<i>(2)</i> Length (m)	<i>(3)</i> Width (m)	<i>(4)</i> Height (m) above ground level (AGL)	<i>(5)</i> Height (m) AOD
A18 Gatehouse (Work No. 8B)	6	7	4	5.5

SCHEDULE 12

Article 41

DOCUMENTS AND PLANS TO BE CERTIFIED

Table 8

<i>(1) Document Name</i>	<i>(2) Document Reference</i>
Access and rights of way plans	4.4
Book of reference	3.1
Land plans	4.2
Works plans	4.3
Combined heat and power assessment	5.7
Environmental statement	6.0, 10.6-10.9
Design principles statement (appendix 1 of the design and access statement)	5.6 (appendix 1)
Flood risk assessment	6.3.20
Outline written scheme of investigation	7.4
Indicative landscape and biodiversity plan	4.15
Landscaping and Biodiversity Management and Enhancement plan	5.10
Indicative surface water drainage plan	4.13
Framework construction environmental management plan	7.1
Framework construction traffic management plan	7.2
Framework construction workers travel plan	7.3
Indicative lighting strategy	5.11
Haul road plans	4.19
Pilfrey laydown plans	4.20
Application guide	1.2

DEEMED MARINE LICENCE UNDER PART 4 (MARINE
LICENSING) OF THE MARINE AND COASTAL ACCESS ACT 2009
/ DEEMED MMO LICENCE PROVISIONS

PART 1

INTRODUCTION

1.—(1) In this licence the definitions in article 2 must apply save where amended—

“2009 Act” means the Marine and Coastal Access Act 2009;

“ABP Humber” means Associated British Ports, Humber Estuary Services located at Port Office, Cleethorpe Road, Grimsby, North East Lincolnshire;

“authorised deposits” means the substances specified in paragraph 2(4) of Part 2 of this licence;

“the authorised development” has the meaning given in paragraph 2(4) of Part 2 of this licence;

“business day” means a day other than a Saturday or Sunday, which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971;

“Cefas” means the Centre for Environment, Fisheries and Aquaculture Science or any successor body to its function;

“CEMP” means the construction and environmental management plan;

“commence” for the purposes of this Schedule means the first carrying out of any licensed activities, save for pre-construction surveys approved under this licence and “commenced” and “commencement” shall be construed accordingly;

“condition” means a condition under Part 3 of this licence;

“enforcement officer” means a person authorised to carry out enforcement duties under Chapter 3 of the 2009 Act;

“licensed activities” means the activities specified in Part 2 of this licence;

“licensable marine activities” means any activity licensable under section 66 of the 2009 Act;

“local enforcement office” means the Marine Management Office (Local Enforcement Office) as further detailed in paragraph 5(b) below;

“maintain” includes inspect, repair, alter, refurbish, reconstruct, replace and improve any part of, but not remove, reconstruct or replace the whole of an existing structure or asset wholly within its existing three dimensional boundaries and “maintenance” and “maintaining” are to be construed accordingly;

“marine area” has the meaning given to ‘UK marine area’ in section 42 of the 2009 Act

“Marine Management Organisation” means the body created under the 2009 Act which is responsible for the regulation of this licence or any successor of that function and “MMO” shall be construed accordingly;

“MCA” means the Maritime and Coastguard Agency, the executive agency of the Department for Transport;

“mean high water springs” or “MHWS” means the average of high water heights occurring at the time of spring tides;

“office hours” means the period from 0900 until 1700 on any business day;

“Order limits” means the limits shown on the works plans within which the authorised development may be carried out, whose grid co-ordinates seaward of MHWS are set out in paragraph 6 of Part 2 of this licence;

“river” means the River Trent;

“TH” means the corporation of Trinity House of Deptford Strond;

“undertaker” means the undertaker Keadby Generation Limited (company registration number 02729513), and any agent, contractor or sub-contractor acting on its behalf or any person who has the benefit of this Order in accordance with article 6 (Benefit of Order) and 7 (Consent to transfer benefit of Order);

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on, under or over water and which is at the time in, on, under or over water, whether or not self-propelled;

(2) A reference to any statute, order, regulation or similar instrument is to be construed as reference to a statute, order, regulation or similar instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

(3) Unless otherwise indicated—

- (a) all times are taken to be Greenwich Mean Time (GMT);
- (b) all co-ordinates are taken to be latitude and longitude degrees minutes and seconds to three decimal places.

(4) Unless otherwise advised in writing by the MMO, the address for electronic communication with the MMO for the purpose of this licence is marine.consent@marinemangement.org.uk or where contact to the local MMO office is required is beverley@marinemangement.org.uk.

(5) Unless otherwise stated or agreed with the MMO, all notifications that must be sent by the undertaker to the MMO must be sent using the MMO’s Marine Casement Management System (MCMS) web portal. Except where otherwise notified in writing by the relevant organisation, the addresses for postal correspondence for the purposes of this Schedule are—

(a) Marine Management Organisation (Marine Licensing Team)

Lancaster House,
Hampshire Court,
Newcastle Business Park,
Newcastle Upon Tyne,
NE4 7YH,
Tel: 0300 123 1032;

(b) Marine Management Organisation (Local Enforcement Office)

Beverley office,
Room 13, Ground Floor,
Crosskill House,
Mill Lane,
Beverley,
HU17 9JB,
Tel: 0208 026 0519;

(c) Trinity House

Tower Hill,
London,
EC3N 4DH,

- Tel: 020 7481 6900;
- (d) The United Kingdom Hydrographic Office
Admiralty Way,
Somerset,
TA1 2DN,
Tel: 01823 337 900;
- (e) Maritime and Coastguard Agency (Navigation Safety Branch)
Bay 2/20, Spring Place,
105 Commercial Road,
Southampton,
SO15 1EG,
Tel: 020 3817 2418;
- (f) Natural England
Sterling House,
Dix's Field,
Exeter,
EX1 1QA,
Tel: 0300 060 39000;
- (g) Historic England
Cannon Bridge House,
25 Dowgate Hill,
London,
EC4R 2YA,
Tel: 020 7973 370;
- (h) Centre for Environment, Fisheries and Aquaculture Science ('Cefas')
Pakefield Road,
Lowestoft,
Suffolk,
NR33 0HT,
Tel: 01502 562 244.

PART 2

DETAILS OF LICENSED MARINE ACTIVITIES

2. Subject to the conditions, this licence authorises the undertaker to carry out any licensable marine activities under section 66(1) of the 2009 Act which—

- (a) form part of, or are related to, the authorised development; and
- (b) are not exempt from requiring a marine licence by virtue of any provision made under section 74 of the 2009 Act.

3. Licensed activities are authorised in relation to the construction, maintenance and operation of—

- (a) Work No. 4B – River Water Abstraction Option—
Works to the existing cooling water supply pipelines running from Work No. 1E to the existing intake structures within the River Trent, including, as necessary, a temporary

cofferdam structure, new, upgraded or replacement pipelines, plant, buildings, enclosures, structures and cable;

(b) Work No. 5 – Water Discharge Corridor—

Works to discharge used cooling water and treated wastewater comprising works to the existing cooling water discharge pipeline(s) running from Work No. 1B to the existing outfall structures within the River Trent, including, as necessary, new, upgraded or replacement pipelines, plant, enclosures, outfall structure, screens and other structures, and cable; and

(c) any such work, further associated development listed in Schedule 1 ancillary to Work Nos. 4B and 5.

4. The substances or articles authorised for deposit associated with the completion of the construction, maintenance and operational activities described in item 3, sub paragraph (1) (a) and (b) above include—

(a) Silt, algal growth and biota;

(b) Stone, rock and concrete;

(c) Grout and sealant material; and

(d) any other material of substance to the extent its effects have been considered within the environmental statement.

5. The undertaker may engage in the licensed activities in the area bounded by the coordinates set out in Table 9 in this paragraph to the extent that they fall below MHWS at the time the licensed activities are carried out.

6. The coordinates in Table 9 are defined in accordance with reference system WGS84 - World Geodetic System 1984.

Table 9

<i>Works No.</i>	<i>Description</i>	<i>Longitude</i>	<i>Latitude</i>	
Works No. 4B	River Water	-0.73879	53.59523	
	Abstraction Option	-0.73893	53.5941	
	– Intake Works		-0.73952	53.59412
			-0.73936	53.59525
			-0.73891	53.59432
			-0.73886	53.59492
	-0.73891	53.59457		
Works No. 5	Water Discharge	-0.73769	53.59966	
	Corridor – Existing Outfall Option		-0.73732	53.60015
			-0.73702	53.60006
			-0.73709	53.6
			-0.73736	53.59997
			-0.73742	53.59989
			-0.73735	53.59978
			-0.73739	53.59973
			-0.73731	53.59968
	-0.73731	53.59964		
	-0.73737	53.59957		

PART 3 CONDITIONS

General

7. Any oil, fuel or chemical spill within the marine environment must be reported to the MMO Marine Pollution Response Team within 12 hours of being identified in accordance with the following—

- (a) within office hours: 0300 200 2024;
- (b) outside office hours: 07770 977 825; or
- (c) at all times if other numbers are unavailable: 0845 051 8486 or dispersants@marinemanagement.org.uk.

Notifications and Inspections

8.—(1) The undertaker must ensure that—

- (a) a copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to—
 - (i) all agents and contractors notified to the MMO in accordance with condition 12 and
 - (ii) the masters responsible for the vessels notified to the MMO in accordance with condition 13.

(2) Only those persons and vessels notified to the MMO in accordance with condition 12 and 13 are permitted to carry out the licensed activities.

(3) Copies of this licence must also be available for inspection at the following locations—

- (a) the undertaker's registered address;
- (b) any site office located at or adjacent to the construction site and used by the licence holder or its agents and contractors responsible for the loading, transportation or deposit of the authorised deposits; and
- (c) on board each vessel or at the office with responsibility for vessels from which authorised deposits or removals are to be made.

(4) The documents referred to in sub-paragraph (1)(a) must be available for inspection by an enforcement officer at the locations set out in sub-paragraph (3)(b) above.

(5) The undertaker must provide access, and if necessary appropriate transportation, to the offshore construction site or any other associated works or vessels to facilitate any inspection that the MMO considers necessary to inspect the works during construction and operation of the authorised development.

(6) A notice to mariners must be issued at least 14 days prior to the commencement of the licensed activities or any part of them advising of the start date of those activities and the expected vessel routes from the construction ports to the relevant location. Copies of all notices must be provided to the MMO, TH, MCA and United Kingdom Hydrographic Office within 24 hours of issue.

(7) The undertaker must notify the United Kingdom Hydrographic Office of the commencement (within ten days), progress and completion of construction (within ten days) of the licensed activities in order that all necessary amendments to nautical charts are made and the undertaker must send a copy of such notifications to the MMO within 24 hours of issue.

Pre-construction

9. Not later than 8 weeks prior to the proposed commencement of licences activities the undertaker must submit to the MCA and the MMO for review and approval in writing by the MMO the CEMP covering the period of construction to include details of—

- (a) a marine pollution contingency plan to address the risks, methods and procedures to deal with any spills and collision incidents of the authorised development in relation to all activities to be carried out;
- (b) a biosecurity plan detailing how risk of the introduction and spread of invasive non-native species will be minimised; and
- (c) waste management and disposal arrangements.

The authorised development must be undertaken in accordance with the CEMP, unless otherwise agreed in writing by the MMO.

10.—(1) The undertaker must submit a marine method statement (MMS) to the MMO no later than 8 weeks prior to the proposed commencement of the licensed activities for its written approval. The MMS is to include details of—

- (a) any proposed refurbishment and/or construction activities;
- (b) if a cofferdam is proposed to be constructed as part of Work No. 4B, the cofferdam installation technique and piling methodology;
- (c) any construction works at the intake, including the level or refurbishment or replacement works required;
- (d) an indicative programme for the completion of the licensed activities; and
- (e) the details of engagement undertaken with ABP Humber, as the appropriate navigational authority. This must include the design of the cofferdam and any measures which will be installed around the toe of the cofferdam to manage risk of shoaling, if necessary. It must also include details of any specification demarcation or lighting requests, as directed by ABP Humber.

(2) The licensed activities must not commence until written approval of the MMS is provided by the MMO.

(3) All licensed activities must be undertaken in accordance with the approved MMS.

(4) The MMS may be amended from time to time subject to the approval in writing of the MMO.

11. The undertaker must complete pre-works bathymetry of the areas specified in Part 2, paragraph 5, before the commencement of works. The results of pre-works bathymetry must be shared with ABP Humber, as the appropriate navigational authority and the MMO.

12. The undertaker must notify the MMO in writing of any agents, contractors or subcontractors that will carry on any licensed activity listed in this licence on behalf of the undertaker this must include the name, address, company number (if applicable) and role. Such notification must be received by the MMO no less than 24 hours before the commencement of the licensed activity and any change to a notified agent, contractor or subcontractors must be updated and notified to the MMO accordingly.

13. The undertaker must notify the MMO in writing of any vessel being used to carry on any licensed activity listed in this licence on behalf of the undertaker. Such notification must be received by the MMO no less than 24 hours before the commencement of the licensed activity. Notification must include the master's name, vessel type, vessel IMO number and vessel owner or operating company.

During Construction, Operation and Maintenance

14. The undertaker must ensure that any coatings and treatments used are suitable for use in the marine area and are used in accordance with either guidelines approved by the Health and Safety Executive or the Environment Agency Pollution prevention for businesses guidelines.

15. The storage, handling, transport and use of fuels, lubricants, chemicals and other substances must be undertaken so as to prevent releases into the marine environment including bunding of 110% of the total volume of all reservoirs and containers.

16. The undertaker must not discharge waste concrete slurry or wash water from concrete or cement into the river. The undertaker must site concrete and cement mixing and washing areas at least 10 metres from the river or surface water drain to minimise the risk of run off entering the river. If concrete is to be sprayed, suitable protective sheeting must be provided to prevent rebounded or windblown concrete from entering the marine environment. Rebounded material must be cleared away before the sheeting is removed.

17. During licensed activities all wastes must be stored in designated areas that are isolated from surface water drains, open water and bunded to contain any spillage.

18.—(1) Vibratory piling must be used as standard, with percussive piling only used if required to drive a pile to its design depth and where drill or vibratory piling has been unsuccessful. If percussive piling is necessary, soft-start procedures must be used to ensure incremental increase in pile power over a set time period until full operational power is achieved.

(2) The soft-start duration must be a period of not less than twenty minutes.

(3) Should piling cease for a period greater than ten minutes, then the soft start procedure must be repeated.

19. Piling must not be undertaken between 01 September and 31 November, inclusive, in order to minimize any potential effects on the upstream migration of adult Salmon during their most sensitive migratory period and on wintering birds. Piling will be restricted between 0700 and 1900 hours.

20. The undertaker must comply with the lighting, hazard marking and demarcation requirements of ABP Humber, as the appropriate navigational authority.

21. The undertaker must ensure any rock material used in the construction of the authorised development is from a recognised source, free from contaminants and containing minimal fines.²

22. In the event that any rock or stone material is misplaced or lost below MHWS, the undertaker must report the loss to the Local Enforcement Office within 48 hours of becoming aware and if the MMO reasonably considers such material to constitute a navigation or environmental hazard (dependent on the size and nature of the material) the MMO must notify the undertaker and the undertaker must use reasonable endeavours to locate the material and recover it. In that event, the undertaker must demonstrate to the MMO that reasonable attempts have been made to locate, remove or move any such material.

23.—(1) The undertaker must report all dropped objects to the MMO using the Marine Licence Dropped Incident Report (MLDIR) as soon as reasonably practicable and in any event within 24 hours of becoming aware of an incident.

(2) On receipt of the MLDIR, the MMO may require, acting reasonably, the undertaker to carry out relevant surveys directly related to such MLDIR and where there is a need to remedy any effect related to the MLDIR. The undertaker must carry out surveys at its own expense in accordance with the MMO's reasonable requirements and must report the results of such survey results to the MMO.

(3) On receipt of such survey results the MMO may, acting reasonably, require the undertaker to remove specific obstructions from the riverbed. The undertaker must carry out removal of specific obstructions from the riverbed in accordance with the MMO's reasonable requirements and at its own expense.

Post Construction

24. The undertaker must ensure that any equipment, temporary structures, waste and debris associated with the licensed activities are removed within six weeks of completion of the licensed activity.

25. The undertaker must ensure that the MMO Local Enforcement Office is notified of the completion of the licensed activities and operations within ten days following the completion of the works.

26. The undertaker must complete post-works bathymetry of the areas specified in paragraph 5 of Part 2 of this licence, following the completion of the licensed activities. The results of post-works bathymetry must be shared with ABP Humber, as the appropriate navigational authority and with the MMO.2

Conditions Discharge

27. The MMO must determine an application for discharge of a condition as soon as reasonably practicable and in any event within a period of three months commencing on the date the application is received by the MMO, unless otherwise agreed in writing with the undertaker.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises the undertaker (referred to in this Order as the undertaker) to construct, operate and maintain a power generating station and carbon capture and compression plant. The Order permits the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

The Order also grants a deemed marine licence under Part 4 of the Marine and Coast Access Act 2009.

A copy of the Order plans and the book of referenced mentioned in this Order and certified in accordance with Article 41 (certification of plans, etc.) may be inspected free of charge during working hours at Crowle Library, The Market Hall, Market Place, Crowle, North Lincolnshire, DN17 4LA.

2024 No. 0000

INFRASTRUCTURE PLANNING

**Medworth Energy from Waste Combined Heat and Power
Facility Order 2024**

Made - - - - 20th February 2024
Coming into force - - 13th March 2024

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An application under section 37 of the Planning Act 2008^(a) (the “2008 Act”) has been made to the Secretary of State for an order granting development consent in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009^(b).

(a) 2008 c. 29. The relevant provisions of the 2008 Act are amended by section 137(5) of, and Schedule 13 to, the Localism Act 2011 (c. 20).

(b) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682, S.I. 2017/524, S.I. 2017/572, S.I. 2018/378 and S.I. 2019/734

The application has been examined by the Examining Authority appointed by the Secretary of State pursuant to Chapter 2 of Part 6 of the 2008 Act and in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(a). The Examining Authority has submitted a report and recommendation to the Secretary of State under section 74(b) of the 2008 Act.

The Secretary of State has considered the report and recommendation of the Examining Authority, has taken into account the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(c) and has had regard to the documents and matters referred to in section 104(2)(d) of the 2008 Act.

The Secretary of State, having decided the application, has determined to make an Order granting development consent for the development described in the application on terms that in the opinion of the Secretary of State are not materially different from those proposed in the application.

In accordance with section 127 of the 2008 Act(e), the Secretary of State has applied the relevant tests and is satisfied that they have been met.

Accordingly, the Secretary of State, in exercise of the powers in sections 114, 115, 120, 122, 123 and 140 of the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Medworth Energy from Waste Combined Heat and Power Facility Order 2024 and comes into force on 13th March 2024.

Interpretation

2.—(1) In this Order, unless otherwise stated—

“the 1961 Act” means the Land Compensation Act 1961(f);

“the 1965 Act” means the Compulsory Purchase Act 1965(g);

“the 1980 Act” means the Highways Act 1980(h);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(i);

“the 1984 Act” means the Road Traffic Regulation Act 1984(j);

“the 1990 Act” means the Town and Country Planning Act 1990(k);

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

(a) S.I. 2010/103, amended by S.I. 2012/635.

(b) 2008 c. 29. Section 74 was amended by the Localism Act 2011 (c. 20) section 240(2), Schedule 13 paragraph 29() and Schedule 25 Part 20.

(c) S.I. 2017/572.

(d) Section 104 was amended by section 58(5) of the Marine and Coastal Access Act 2009 (c. 23) and by section 240(2) and Schedule 13, paragraph 49(1) to (6) of the Localism Act 2011 (c. 20).

(e) 2008 c. 29. Section 127 was amended by sections 23(2)(a), 23(2)(b) and 23(2)(c) of the Growth and Infrastructure Act 2013 (c. 27) and by paragraph 64(2) of Schedule 13 paragraph 64(2) of the Localism Act 2011 (c. 20).

(f) 1961 c. 33

(g) 1965 c. 56

(h) 1980 c. 66

(i) 1981 c. 66

(j) 1984 c. 27

(k) 1990 c. 8

(l) 1991 c. 22

“the 2003 Act” means the Communications Act 2003(a);

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

“access and public rights of way plans” means the plans of that name identified in Table 10 of Schedule 13 (documents and plans to be certified) and which is certified by the Secretary of State as the access and public rights of way plans for the purposes of this Order under article 42 (certification of plans etc.);

“Anglian Water” means Anglian Water Services Limited (company number 02366656);

“AOD” means above ordnance datum;

“apparatus” has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act save that “apparatus” further includes pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks; electricity cables; telecommunications equipment and electricity cabinets;

“authorised development” means the development described in Schedule 1 (authorised development) and any other development authorised by this Order which is development within the meaning of section 32 (meaning of “development”) of the 2008 Act;

“book of reference” means the document of that name identified in Table 10 of Schedule 13 and which is certified by the Secretary of State as the book of reference for the purposes of this Order under article 42;

“brown roof” means a roof which has a layer of material typically derived from on-site sources including crushed building materials and provides a growing medium for native pioneer plants and an ecological habitat;

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

“carbon capture and export embedded design measures” means the document of that name identified in Table 10 of Schedule 13 and which is certified by the Secretary of State as the carbon capture and export embedded design measures for the purposes of this Order under article 42;

“carbon capture and export readiness reserve space” means the area identified on the carbon capture and export readiness reserve space plan for future installation and operation of any carbon capture and export equipment;

“carbon capture and export readiness reserve space plan” means the document of that name identified in Table 10 of Schedule 13 and which is certified by the Secretary of State as the carbon capture and export readiness reserve space plan for the purposes of this Order under article 42;

“carriageway” has the same meaning as in the 1980 Act;

“combined heat and power embedded design measures” means the document of that name identified in Table 10 of Schedule 13 and which is certified by the Secretary of State as the combined heat and power embedded design measures for the purposes of this Order under article 42;

“combined heat and power assessment” means the document of that name identified in Table 10 of Schedule 13 and which is certified by the Secretary of State as the combined heat and power assessment for the purposes of this Order under article 42;

“commence” means the first carrying out of any material operation, as defined in section 155 of the 2008 Act (which explains when development begins), comprised in or carried out for the purposes of the authorised development other than the permitted preliminary works and the words “commencement” and “commenced” are to be construed accordingly;

“commissioning” means the process of testing all systems and components of the authorised development or part of the authorised development which are installed to verify that they, and the authorised development as a whole, function and are operable in accordance with design objectives, specifications and operational and safety requirements of the undertaker;

(a) 2003 c. 21
(b) 2008 c. 29

“date of final commissioning” means the date on which the commissioning of the authorised development is completed as notified as such by the undertaker to the relevant planning authority pursuant to requirement 20 of Schedule 2 (requirements);

“design and access statement” means the document of that name identified in Table 10 of Schedule 13 and which is certified by the Secretary of State as the design and access statement for the purposes of this Order under article 42;

“EWC” means European Waste Catalogue;

“EPN” means Eastern Power Networks plc (company number 02366906);

“electronic transmission” means a communication transmitted—

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

(b) by other means provided it is in an electronic form;

“environmental statement” means the document of that name identified in Table 10 of Schedule 13 and which is certified by the Secretary of State as the environmental statement for the purposes of this Order under article 42;

“flood risk assessment” means the document of that name identified in Table 10 of Schedule 13 and which is certified by the Secretary of State as the flood risk assessment for the purposes of this Order under article 42;

“footpath” and “footway” have the same meaning as in the 1980 Act;

“green wall” means a vertical structure against which vegetation is grown;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“land plans” means the plans of that name identified in Table 10 of Schedule 13 and which is certified by the Secretary of State as the land plans for the purposes of this Order under article 42;

“maintain” includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part, but not remove, reconstruct or replace the whole of, the authorised development, but only insofar as such activities are unlikely to give rise to any materially new or materially different environmental effects from those identified in the environmental statement and “maintenance” and “maintaining” are to be construed accordingly;

“this Order” means the Medworth Energy from Waste Combined Heat and Power Facility Order 202*;

“Order land” means the land shown on the land plans and within the Order limits which is required for the authorised development;

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

“outline biodiversity net gain strategy” means the document of that name identified in Table 10 of Schedule 13 and which is certified by the Secretary of State as the outline biodiversity net gain strategy for the purposes of this Order under article 42;

“outline construction environmental management plan” means the document of that name identified in Table 10 of Schedule 13 and which is certified by the Secretary of State as the outline construction environmental management plan for the purposes of this Order under article 42;

“outline construction traffic management plan” means the document of that name identified in Table 10 of Schedule 13 and which is certified by the Secretary of State as the outline construction traffic management plan for the purposes of this Order under article 42;

“outline decommissioning plan” means the document of that name identified in Table 10 of Schedule 13 and which is certified by the Secretary of State as the outline decommissioning plan for the purposes of this Order under article 42;

“outline drainage strategy” means the document of that name identified in Table 10 of Schedule 13 and which is certified by the Secretary of State as the outline drainage strategy for the purposes of this order under article 42;

“outline employment and skills strategy” means the document of that name identified in Table 10 of Schedule 13 and which is certified by the Secretary of State as the outline employment and skills strategy for the purposes of this Order under article 42;

“outline fire prevention plan” means the document of that name identified in Table 10 of Schedule 13 and which is certified by the Secretary of State as the outline fire prevention plan for the purposes of this Order under article 42;

“outline flood emergency management plan” means the document of that name identified in Table 10 of Schedule 13 and which is certified by the Secretary of State as the outline flood emergency management plan for the purposes of this Order under article 42;

“outline landscape and ecology management plan” means the document of that name identified in Table 10 of Schedule 13 and which is certified by the Secretary of State as the outline landscape and ecology management plan for the purposes of this Order under article 42;

“outline landscape and ecology strategy” means the document of that name identified in Table 10 of Schedule 13 and which is certified by the Secretary of State as the outline landscape plans and ecology strategy for the purposes of this Order under article 42;

“outline lighting strategy” means the document of that name identified in Table 10 of Schedule 13 and which is certified by the Secretary of State as the outline lighting strategy for the purposes of this Order under article 42;

“outline local air quality monitoring strategy” means the document of that name identified in Table 10 of Schedule 13 and which is certified by the Secretary of State as the outline local air quality monitoring strategy for the purposes of this Order under article 42;

“outline odour management plan” means the document of that name identified in Table 10 of Schedule 13 and which is certified by the Secretary of State as the outline odour management plan for the purposes of this Order under article 42;

“outline operational noise management plan” means the document of that name identified in Table 10 of Schedule 13 and which is certified by the Secretary of State as the outline operational noise management plan for the purposes of this Order under article 42;

“outline operational traffic management plan” means the document of that name identified in Table 10 of Schedule 13 and which is certified by the Secretary of State as the outline operational traffic management plan for the purposes of this Order under article 42;

“outline operational travel plan” means the document of that name identified in Table 10 of Schedule 13 and which is certified by the Secretary of State as the outline operational travel plan for the purposes of this Order under article 42;

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

“permitted preliminary works” means operations consisting of site clearance, pre-planting of landscaping works, ecological mitigation works, archaeological investigations, intrusive environmental surveys, environmental monitoring, investigations for the purpose of assessing ground conditions (including the making of trial boreholes), erection of construction welfare facilities, erection of any temporary means of enclosure and the temporary display of site notices or advertisements, provided that no permitted preliminary works will give rise to any materially new or materially different effects from those assessed in the environmental statement;

“relevant planning authority” means the waste planning authority for the area in which the land to which the provisions of this Order apply is situated;

“requirements” means those matters set out in Schedule 2 (requirements) to this Order;

“section 106 agreement” means the agreement made under section 106 of the 1990 Act and section 278 of the 1980 Act dated 11 December 2013 between (1) Cambridgeshire County Council and (2) Tesco Stores Limited;

(a) 1981. c. 67 The definition of “owner” was amended by section 17 and paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34). There are other amendments to section 7 which are not relevant to this Order.

“statutory undertaker” means any person falling within section 127(8) (statutory undertakers’ land) of the 2008 Act and includes a public communications provider defined by section 151(1) (interpretation of Chapter 1) of the 2003 Act;

“street” means a street within the meaning of section 48 (streets, street works and undertakers) of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes any footpath and any part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“traffic authority” has the same meaning as in section 121A of the 1984 Act;

“undertaker” means Medworth CHP Limited (company number 13130012) or any other person who for the time being has the benefit of this Order in accordance with article 7 (benefit of this Order) and article 8 (consent to transfer benefit of the Order);

“waste area plan” means the document of that name identified in Table 10 of Schedule 13 and which is certified by the Secretary of State as the waste area plan for the purposes of this Order under article 42;

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

“working day” means any day other than a Saturday, Sunday or English bank or other public holiday; and

“works plans” means the plans of that name identified in Table 10 of Schedule 13 and which is certified by the Secretary of State as the works plans for the purposes of this Order under article 42.

(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 airspace above its surface and to any trusts or incidents (including restrictive covenants) to which the land is subject and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or over which rights are created and acquired under this Order or is otherwise comprised in this Order.

(3) All distances, directions, volumes, heights, widths and lengths referred to in this Order are approximate and distances between points on a numbered work comprised in the authorised development and shown on the works plans and access and public rights of way plans are taken to be measured along that work.

(4) All areas described in square metres in the book of reference are approximate.

(5) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1.

(6) References to “Schedule” are, unless otherwise stated, references to Schedules to this Order.

(7) In this Order, the expression “includes” is to be construed without limitation.

(8) References to any statutory body include that body’s successor in respect of functions which are relevant to this Order.

PART 2

PRINCIPAL POWERS

Development consent granted by the Order

3.—(1) Subject to the provisions of this Order and to the requirements, the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(a) “street authority” is defined in section 49, which was amended by paragraph 117 of Schedule 1 to the Infrastructure Act 2015 (c. 7)

(2) Each numbered work must be situated within the corresponding numbered area shown on the works plans.

Maintenance of authorised development

4.—(1) The undertaker may at any time maintain the authorised development except to the extent that this Order or an agreement made under this Order provides otherwise.

(2) This article only authorises the carrying out of maintenance works within the Order limits.

Operation of the authorised development

5.—(1) The undertaker is authorised to operate and use the authorised development for which development consent is granted by this Order..

(2) Other than as set out in this Order, this article does not relieve the undertaker of any requirement to obtain any permit or licence or any obligation under any legislation that may be required to authorise the operation of an electricity generating station.

Disapplication of legislative provisions

6. The following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purposes of, or in connection with, the construction, operation or maintenance of any part of the authorised development—

- (a) section 24 (restrictions on abstraction) of the Water Resources Act 1991**(a)**;
- (b) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 to the Water Resources Act 1991;
- (c) section 23 of the Land Drainage Act 1991 (prohibition of obstructions etc. in watercourses);
- (d) the provisions of any byelaws made under section 66 of the Land Drainage Act 1991 (powers to make byelaws); and
- (e) the provisions of the Neighbourhood Planning Act 2017**(b)** insofar as they relate to temporary possession of land under articles 32 (temporary use of land for the construction of the authorised development) and 33 (temporary use of land for maintaining the authorised development) of this Order.

Benefit of this Order

7.—(1) Subject to paragraph (2), paragraph (3) and article 8 (consent to transfer benefit of the Order), the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to Work No. 6A and 6B in respect of which the provisions of this Order have effect for the benefit of the undertaker and Anglian Water.

(3) Paragraph (1) does not apply to Work No. 9 in respect of which the provisions of this Order have effect for the benefit of the undertaker and EPN.

Consent to transfer benefit of the Order

8.—(1) Subject to paragraph (4), the undertaker may—

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

(a) 1991 c. 57.
(b) 2017 c. 20.

numbered works or any part of the numbered works) and such related statutory rights as may be agreed between the undertaker and the lessee.

(2) Where an agreement has been made in accordance with paragraph (1)(a) or (1)(b) references in this Order to the undertaker, except paragraph (3), include 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 required for the exercise of the powers of paragraph (1) except where—

- (a) the transferee or lessee holds a licence under section 6 (licenses authorising supply, etc) of the Electricity Act 1989(a);
- (b) in relation to a transfer or lease of any works within a highway, the transferee or lessee is a highway authority responsible for the relevant highway; or
- (c) the time limits for all claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
 - (i) no such claims have been made;
 - (ii) any such claims that have been made have all been compromised or withdrawn;
 - (iii) compensation has been paid in final settlement of any claims made;
 - (iv) payment of compensation into court in lieu of settlement of all such claims has taken place; or
 - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of all claims that no compensation is payable.

(5) Where the consent of the Secretary of State is not required under paragraph (4), the undertaker must notify the Secretary of State in writing before transferring or granting all or any part of the benefit of the provisions of this Order and such related statutory rights referred to in paragraph (1).

(6) The notification referred to in paragraph (5) must state—

- (a) the name and contact details of the person to whom the benefit of the powers will be transferred or granted;
- (b) subject to paragraph (7), the date on which the transfer will take effect;
- (c) the powers to be transferred or granted;
- (d) pursuant to paragraph (3), the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted; and
- (e) where relevant, a plan showing the works or areas to which the transfer or grant relates.

(7) The date specified under paragraph (6)(b) must not be earlier than the expiry of fourteen working days from the date of the receipt of the notice.

(8) The notice given under paragraph (5) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.

Security in respect of payment of compensation

9.—(1) The undertaker must not begin to exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any part of the Order land unless it has first put in place, following approval by the Secretary of State, either—

(a) 1989 c. 29. Section 6 was amended by section 30 of the Utilities Act 2000 (c. 27), sections 89(3), 136(1), 136(2), 145(5), 145(6), and 145(7), and paragraph 5 of Schedule 19 and paragraph 1 of Schedule 23(1) to the Energy Act 2004 (c. 20), articles 6(2)(a), 6(2)(b), 6(3), 6(4) of the Electricity and Gas (Smart Meters Licensable Activity) Order 2012/2400, regulation 19 of the Electricity and Gas (Internal Markets) Regulations 2011/2704, and by paragraph 2 of Schedule 8 to the Climate Change Act 2008 (c. 27).

- (a) a guarantee in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2) in respect of the exercise of the relevant provision in relation to that part of the Order land; or
- (b) an alternative form of security in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2) in respect of the exercise of the relevant provision in relation to that part of the Order land.

(2) The provisions are—

- (a) article 23 (compulsory acquisition of land);
- (b) article 25 (compulsory acquisition of rights and imposition of restrictive covenants);
- (c) article 26 (acquisition of subsoil only);
- (d) article 27 (private rights);
- (e) article 28 (power to override easements and other rights);
- (f) article 31 (rights under or over streets);
- (g) article 32 (temporary use of land for the construction of the authorised development);
- (h) article 33 (temporary use of land for maintaining the authorised development); and
- (i) article 34 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under this Order is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

PART 3

STREETS

Street works

10.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any streets specified in Schedule 3 (streets subject to street works) and may—

- (a) break up or open the street, or any sewer, drain or tunnel within or under it;
- (b) drill, tunnel or bore under the street;
- (c) place and keep apparatus in the street;
- (d) maintain apparatus in the street, change its position or remove it; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c) or (d).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) Where the undertaker is not the street authority, the provisions of sections 54 (advance notice of certain works) to 106 (index of defined expressions) of the 1991 Act apply to any street works carried out under paragraph (1).

Power to alter layout, etc., of streets

11.—(1) The undertaker may for the purposes of the authorised development alter the layout of or construct any works in the street in the case of permanent works as specified in column (2) of Schedule 4 (streets subject to permanent alteration of layout) in the manner specified in relation to that street in column (3) of that Schedule and in the case of temporary works as specified in column

(2) of Schedule 5 (streets subject to temporary alteration of layout) in the manner specified in relation to that street in column (3) of that Schedule.

(2) Without prejudice to the powers conferred by paragraph (1) in respect of specific streets, but subject to paragraphs (3) and (4), the undertaker may, for the purposes of constructing, operating or maintaining the authorised development alter the layout of any street within the Order limits and, without limiting the scope of this paragraph, the undertaker may—

- (a) alter the level or increase the width of any kerb, footway, footpath, cycle track or verge; and
- (b) make and maintain passing places.

(3) The undertaker must restore any street that has been temporarily altered under this article to the reasonable satisfaction of the street authority.

(4) The powers conferred by paragraph (2) must not be exercised without the consent of the street authority.

(5) Paragraphs (3) and (4) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

Construction and maintenance of new or altered means of access

12.—(1) Those parts of each means of access specified in Part 1 of Schedule 6 (access) to be constructed or altered under this Order must be completed to the reasonable satisfaction of the highway authority and must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the highway authority.

(2) Those parts of each means of access specified in Part 2 of Schedule 6 (access) to be constructed or altered under this Order and which are not intended to be a public highway must be completed to the reasonable satisfaction of the street authority and must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the street authority.

(3) Those restoration works carried out pursuant to article 11(3) (power to alter layout, etc., of streets) identified in Part 3 of Schedule 6 (access) which are not intended to be a public highway must be completed to the reasonable satisfaction of the street authority and must be maintained by and at the expense of the street authority.

(4) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(5) For the purposes of a defence under paragraph (4), a court must in particular have regard to the following matters—

- (a) the character of the street including the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant that the undertaker had arranged for a competent person to carry out or supervise the maintenance of that part of the street to which the

action relates unless it is also proved that the undertaker had given that person proper instructions with regard to the maintenance of the street and that those instructions had been carried out.

Temporary prohibition or restriction of use of streets and public rights of way

13.—(1) The undertaker may, during and for the purposes of constructing the authorised development, temporarily alter, divert, prohibit or restrict the use of any street or public right of way within the Order limits and may for any reasonable time—

- (a) divert the traffic from the street or public right of way; and
- (b) subject to paragraph (3), prevent all persons from passing along the street or public right of way.

(2) Without prejudice to the scope of paragraph (1), the undertaker may use any street or public right of way where the use has been prohibited or restricted under the powers conferred by this article and within the Order limits as a temporary working site.

(3) The undertaker must provide reasonable access for non-motorised users (including pedestrians) and vehicles going to or from premises abutting a street or public right of way affected by the temporary alteration, diversion, prohibition or restriction of a street or public right of way under this article if there would otherwise be no such access.

(4) Without prejudice to the generality of paragraph (1), the undertaker may temporarily alter, divert, prohibit or restrict the use of the streets or public rights of way specified in columns (1) and (2) of Schedule 7 (temporary prohibition or restriction of the use of streets or public rights of way) to the extent specified in column (3) of that Schedule.

(5) The undertaker must not temporarily alter, divert, prohibit or restrict the use of—

- (a) any street specified in paragraph (4) without first consulting the street authority; and
- (b) any other street without the consent of the street authority which may attach reasonable conditions to any such consent.

(6) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(7) If the undertaker uses any street or public right of way as a temporary working site under this article the undertaker must restore the street or public right of way to the reasonable satisfaction of the street authority.

Use of private roads

14.—(1) The undertaker may use any private road within the Order limits for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with, the construction of the authorised development.

(2) The undertaker must compensate the person liable for the repair of a road to which paragraph (1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph (1).

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of such compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Access to works

15. The undertaker may, for the purposes of the authorised development—

- (a) form and lay out the permanent means of access, or improve existing means of access in the location specified in Schedule 4 (streets subject to permanent alteration of layout);
- (b) form and lay out the temporary means of access in the locations specified in Schedule 5 (streets subject to temporary alteration of layout); and

- (c) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve the existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

Agreements with street authorities

- 16.—**(1) A street authority and the undertaker may enter into agreements with respect to—
- (a) the construction of any new street including any structure carrying the street over or under any part of the authorised development;
 - (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
 - (c) the maintenance of any street or of the structure of any bridge or tunnel carrying a street over or under the authorised development;
 - (d) any alteration, diversion, prohibition or restriction in the use of a street authorised by this Order;
 - (e) the construction in the street of any of the authorised development; or
 - (f) any such works as the parties may agree.
- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
 - (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
 - (c) contain such terms as to payment and otherwise as the parties consider appropriate.

Traffic regulation measures

17.—(1) Subject to the provisions of this article, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with, or in consequence of, the construction of the authorised development, temporarily—

- (a) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road;
- (b) make provision as to the direction or priority of vehicular traffic on any road;
- (c) permit, prohibit or restrict the use of any road;
- (d) permit, prohibit or restrict vehicular access to any road;
- (e) amend or suspend in whole or in part any order made, or having effect as if made under the 1984 Act;
- (f) determine that no person is to drive any motor vehicle at a speed exceeding 30 miles per hour along the length of road known as New Bridge Lane and shown coloured blue on the access and public rights of way plans; and
- (g) place traffic signs and signals in the extents of the road specified in column 3 of Schedule 7 (temporary prohibition or restriction of the use of streets or public rights of way), and the placing of those traffic signs and signals is deemed to have been permitted by the traffic authority for the purposes of section 65 of the 1984 Act and the Traffic Signs Regulations and General Directions 2016^(a),

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(2) Before exercising the power conferred by paragraph (1) the undertaker must

- (a) consult with the chief officer of police in whose area the road is situated; and

(a) S.I. 2016/362.

- (b) obtain the written consent of the traffic authority in whose area the road concerned is situated.
- (3) The undertaker must not exercise the powers under paragraph (1) of this article unless it has—
- (a) given not less than four weeks’ notice in writing of its intention so to do to the chief officer of police and to the traffic authority in whose area the road is situated; and
 - (b) advertised its intention not less than seven days before the provision is to take effect, in such manner as the traffic authority may specify in writing within seven days of its receipt of notice of the undertaker’s intention in the case of sub-paragraph (a).
- (4) Any prohibition, restriction or other provision made by the undertaker under article 13 (temporary prohibition or restriction of use of streets and public rights of way) or paragraph (1) of this article has effect as if duly made by, as the case may be—
- (a) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or
 - (b) the local authority in whose area the road is situated as an order under section 32 (power of local authorities to provide parking places) of the 1984 Act,
- and the instrument by which it is effected is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004 (road traffic contraventions subject to civil enforcement)(a).
- (5) No speed limit imposed by or under this Order applies to vehicles falling within regulation 3(4) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011(b) when used in accordance with regulation 3(5) of those regulations.
- (6) In this article—
- (a) subject to sub-paragraph (b) expressions used in this article and in the 1984 Act have the same meaning; and
 - (b) a “road” means a road that is a public highway maintained by and at the expense of the traffic authority.

PART 4

SUPPLEMENTARY POWERS

Discharge of water

18.—(1) Subject to paragraphs (3) and (4), the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction 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 (right to communicate with public sewers) of the Water Industry Act 1991(c).

(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, whose consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld or delayed.

(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, whose approval must not be unreasonably withheld; and

(a) 2004 c.18. There are amendments to this Act not relevant to this Order.

(b) S.I. 2011/935

(c) 1991 c. 56. Section 106 was amended by sections 43(2) and 35(8)(a) and paragraph 1 of Schedule 2 to the Competition and Service (Utilities) Act 1992 (c. 43) and sections 99(2), (3), (4), (5)(a), (5)(b), (5)(c) and 36(2) of the Water Act 2003 (c. 37) and Schedule 3, paragraph 16(1) of the Flood and Water Management Act 2010 c. 29.

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) 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.

(6) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2016(a).

(7) In this article—

(a) “public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, a harbour authority within the meaning of section 57 (interpretation) of the Harbours Act 1964(b), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and

(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(c) have the same meaning as in that Act.

Authority to survey and investigate the land

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

- (a) survey or investigate the land;
- (b) without limitation 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, subsoil and groundwater and remove soil and groundwater samples;
- (c) without limitation to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land, including the digging of trenches; 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, bore holes or trenches.

(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 and occupier of the land.

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

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

(4) No trial holes, bore holes or trenches are to 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 or delayed.

(5) The undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land once it has ceased to use the land for the purposes authorised by this article.

(6) 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.

(a) S.I. 2016/1154.

(b) 1964 c. 40.

(c) 1991 c. 57.

(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.

Protective works to buildings

20.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order land as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the construction of any part of the authorised development in the vicinity of the building; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of five years beginning with the day on which that part of the authorised development is first opened for use.

(3) For the purpose of determining how the powers under this article are to be exercised, the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it) within the Order land.

(5) Before exercising—

- (a) a power under paragraph (1) to carry out protective works under this article to a building;
- (b) a power under paragraph (3) to enter a building and land within its curtilage;
- (c) a power under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a power under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that power and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of ten days beginning with the day on which the notice was served, require the question of whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 46 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which powers under this article have been exercised for any loss or damage arising to them by reason of the exercise of those powers.

(8) Where—

- (a) protective works are carried out to a building under this article; and
- (b) within five years, beginning with the date of completion of commissioning for that part of the authorised development in the vicinity of the building, it appears that the protective works are inadequate to protect the building against damage caused by the construction, operation or maintenance of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act.

(10) Any compensation payable under paragraph (7) or (8) must be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(11) 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.

(12) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building or structure by the construction, operation or maintenance of the authorised development; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, operation or maintenance of the authorised development.

Felling or lopping of trees

21.—(1) Subject to paragraph (2), the undertaker may fell or lop any tree or shrub within or overhanging the Order land, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development;
- (b) from constituting a danger to persons using the authorised development; or
- (c) from obstructing or interfering with the passage of construction vehicles to the extent necessary for the purposes of construction of 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, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Removal of human remains

22.—(1) Before the undertaker carries out any development or works which will or may disturb any human remains within the Order limits it must remove those human remains from the Order limits, or cause them to be removed, in accordance with the following provisions of this article.

(2) Before any such remains are removed from the Order limits the undertaker must give notice of the intended removal, describing the Order limits and stating the general effect of the following provisions of this article, by—

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised development; and
- (b) displaying a notice in a conspicuous place within or near the Order limits.

(3) As soon as reasonably practicable after the first publication of a notice under paragraph (2) the undertaker must send a copy of the notice to the relevant burial authority for the land from which the relevant human remains are to be removed.

(4) At any time within 56 days after the first publication of a notice under paragraph (2) any person who is a personal representative or relative of any deceased person whose remains are interred within the Order limits may give notice in writing to the undertaker of that person’s intention to undertake removal of the remains.

(5) Where a person has given notice under paragraph (4), and the remains in question can be identified, that person may cause such remains to be—

- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
- (b) removed to, and cremated in, any crematorium,

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (10).

(6) If the undertaker is not satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question must be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who must remove the remains and as to the payment of the costs of the application.

(7) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(8) If—

- (a) within the period of 56 days referred to in paragraph (4) no notice under that paragraph has been given to the undertaker in respect of any remains within the Order limits; or
- (b) such notice is given and no application is made under paragraph (6) within 56 days after the giving of notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or
- (c) within 56 days after any order is made by the county court under paragraph (6) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (9) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves are to be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(9) If the undertaker is satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that the person may make in relation to the removal and re-interment or cremation of the remains.

(10) On the re-interment or cremation of any remains under this article—

- (a) a certificate of re-interment or cremation must be sent by the undertaker to the Registrar General giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (8) must be sent by the undertaker to the local authority mentioned in paragraph (3).

(11) In this article references to a relative of the deceased are to a person who—

- (a) is a husband, wife, civil partner, parent, grandparent, child or grandchild of the deceased;
- (b) is, or is a child of, a brother, sister, uncle or aunt of the deceased;
- (c) is the lawful executor of the estate of the deceased; or
- (d) is the lawful administrator of the estate of the deceased.

(12) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(13) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(14) Section 25 of the Burial Act 1857^(a) (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) is not to apply to a removal carried out in accordance with this article.

(15) The Town and Country Planning (Churches, Places of Religious Worship and Burial Ground) Regulations 1950^(b) do not apply to the authorised development.

PART 5

POWERS OF ACQUISITION AND POSSESSION OF LAND

Compulsory acquisition of land

23.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate it, or as is incidental to it.

(2) This article is subject to article 24 (time limit for exercise of authority to acquire land compulsorily), article 25 (compulsory acquisition of rights and imposition of restrictive covenants), article 26 (acquisition of subsoil only), article 31 (rights under or over streets), article 32 (temporary use of land for the carrying out of the authorised development) and schedule 11 (protective provisions).

Time limit for exercise of authority to acquire land compulsorily

24.—(1) After the end of the period of five years beginning on the day on which this Order is made—

- (a) no notice to treat may be served under Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act; and
- (b) no declaration may be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 29 (application of the 1981 Act).

(2) The authority conferred by article 32 (temporary use of land for the construction of the authorised development) ceases at the end of the period referred to in paragraph (1), save that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights and imposition of restrictive covenants

25.—(1) Subject to paragraph (2) the undertaker may acquire compulsorily such rights over the Order land or impose such restrictive covenants affecting the land as may be required for any purpose for which that land may be acquired under article 23 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of the table in Schedule 8 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of existing rights and the benefit of restrictive covenants over that land and the creation and acquisition of such new rights and the imposition of such new restrictive covenants for the purpose specified in column (2) of the table in that Schedule.

(3) Subject to section 8 (other provisions as to divided land) of the 1965 Act and Schedule 2A (counter-notice requiring purchase of land not in notice to treat) of the 1965 Act (as substituted by paragraph 5 of Schedule 9 to this Order) and section 12 (divided land) of the 1981 Act, where the undertaker creates or acquires a right over land or the benefit of a restrictive covenant under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(a) 1857 c. 81. Substituted by Church of England (Miscellaneous Provisions) Measure 2014, section 2 (January 1, 2015; substitution has effect subject to transitional and saving provisions specified in S.I. 2014/2077, paragraphs 1 and 2).

(b) S.I. 1950/792.

(4) Schedule 9 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

(5) In any case where the acquisition of new rights or the imposition of restrictive covenants under paragraph (1) or (2) is required for the purposes of diverting, replacing or protecting the apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to create and acquire such rights or impose such restrictive covenants to the statutory undertaker in question.

(6) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (5) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(7) Subject to the modifications set out in Schedule 9 the enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply in the case of a compulsory acquisition under this Order in respect of a right by the creation of a new right or imposition of a restrictive covenant as they apply to the compulsory purchase of land and interests in land.

Acquisition of subsoil only

26.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 23 (compulsory acquisition of land) and paragraph (1) of article 25 (compulsory acquisition of rights and imposition of restrictive covenants) as may be required for any purpose for which that land or rights over land may be created or acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of land under paragraph (1), the undertaker is not to be required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153(4A) (reference to objection to Upper Tribunal: general) of the 1990 Act.

(4) Paragraphs (2) and (3) do not apply where the undertaker acquires a cellar, vault, arch, or other construction forming part of a house, building or manufactory.

Private rights

27.—(1) Subject to the provisions of this article, all private rights and restrictive covenants over land subject to compulsory acquisition under article 23 are extinguished—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement or through the grant of a lease of the land by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) (power of entry) of the 1965 Act,

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights and restrictive covenants over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order are suspended and unenforceable or, where the owner of such rights or the person having the benefit of such restrictive covenants is notified by the undertaker, extinguished, in so far as the continuance of the right or the burden of the restrictive covenant would be inconsistent with the exercise of the right or burden of the restrictive covenant by the undertaker—

- (a) as from the date of acquisition of the right by the undertaker, whether compulsorily or by agreement or through the grant of a lease of the land by agreement; or
- (b) on the date of entry onto the land by the undertaker under section 11(1) (power of entry) of the 1965 Act in pursuance of the right,

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights or restrictive covenants over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land and so far as their continuance would be inconsistent with the exercise of the temporary possession of that land.

(4) Any person who suffers loss by the extinguishment or suspension of any private right or restrictive covenant under this Order is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) This article does not apply in relation to any right or apparatus to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 34 (statutory undertakers) applies.

(6) Paragraphs (1) to (3) have effect subject to—

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land or the acquisition or creation of rights over land or the imposition of restrictive covenants over or affecting the land;
 - (ii) the undertaker's appropriation of it;
 - (iii) the undertaker's entry onto it; or
 - (iv) the undertaker's taking temporary possession of it,
 that any or all of those paragraphs do not apply to any right specified in the notice; and
- (b) any agreement made at any time between the undertaker and the person in or to whom the right or restriction in question is vested or belongs.

(7) If any such agreement as is referred to in paragraph (6)(b)—

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(8) References in this article to private rights and restrictions over land includes any right of way, trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support, and include restrictions as to the use of land arising by virtue of a contract, agreement or undertaking having that effect.

Power to override easements and other rights

28.—(1) Any authorised activity which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title from the undertaker or by any contractor, servants or agents of the undertaker) is authorised by this Order if it is done in accordance with the terms of this Order, notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the user of land arising by virtue of a contract.

(2) In this article “authorised activity” means—

- (a) the erection, construction or maintenance of any part of the authorised development;
- (b) the exercise of any power authorised by this Order; or
- (c) the use of any land within the Order limits (including the temporary use of land).

(3) The interests and rights to which this article applies include any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by the virtue of a contract.

(4) Where an interest, right or restriction is overridden by paragraph (1), compensation—

(a) is payable under section 7 (measure of compensation in case of severance) or 10 (further provision as to compensation for injurious affection) of the 1965 Act; and

(b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—

(i) the compensation is to be estimated in connection with a purchase under that Act; or

(ii) the injury arises from the execution of works on or use of land acquired under that Act.

(5) Where a person is deriving title under the undertaker or any contractors, servants or agents of the undertaker by whom the land in question was acquired—

(a) is liable to pay compensation by virtue of paragraph (4); and

(b) fails to discharge that liability,

the liability is enforceable against the undertaker.

(6) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1) of this article.

Application of the 1981 Act

29.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.

(3) In section 1 (application of the Act) for subsection (2) substitute—

“This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”.

(4) In section 5(2) (earliest date for execution of declaration), omit the words from “, and this subsection” to the end.

(5) Omit section 5A (time limit for general vesting declaration).

(6) In section 5B (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 24 (time limit for exercise of authority to acquire land compulsorily) of the Medworth Energy from Waste Combined Heat and Power Facility Order 202*”.

(7) In section 6 (notices after execution of declaration), in subsection (1)(b) for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.

(8) In section 7 (constructive notice to treat), in subsection (1)(a), omit the words “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—

“(2) But see article 26 (acquisition of subsoil only) of the Medworth Energy from Waste Combined Heat and Power Facility Order 202*, which excludes the acquisition of subsoil only from this Schedule”.

(10) References to the 1965 Act in the 1981 Act must be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 30 (modification of Part 1 of the Compulsory Purchase Act 1965)) to the compulsory acquisition of land under this Order.

Modification of Part 1 of the Compulsory Purchase Act 1965

30.—(1) Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 24 (time limit for exercise of authority to acquire land compulsorily) of the Medworth Energy from Waste Combined Heat and Power Facility Order 202*”.

(3) In section 11A (powers of entry: further notices of entry)—

(a) in subsection (1)(a) after “land” insert “under that provision”; and

(b) in subsection (2) after “land” insert “under that provision”.

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 24 (time limit for exercise of authority to acquire land compulsorily) of the Medworth Energy from Waste Combined Heat and Power Facility Order 2024”.

(5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—

(a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 26(3) (acquisition of subsoil only) of the Medworth Energy from Waste Combined Heat and Power Facility Order 2024, which excludes the acquisition of subsoil only from this Schedule.”.

(b) after paragraph 29 insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 32 (temporary use of land for the construction of the authorised development) or article 33 (temporary use of land for maintaining the authorised development) or article 20 (protective works to buildings) of the Medworth Energy from Waste Combined Heat and Power Order 2024”.

Rights under or over streets

31.—(1) The undertaker may enter upon, appropriate and use so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development or for any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) is not to apply in relation to—

(a) any subway or underground building; or

(b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person’s interest in the land, and who suffers loss as a result, is to be entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for the carrying out of the authorised development

32.—(1) The undertaker may, in connection with the construction of the authorised development—

- (a) enter on and take temporary possession of—
 - (i) so much of the land specified in columns (1) and (2) of Schedule 10 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule;
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;
- (b) remove any buildings, fences, drainage, debris and vegetation from that land;
- (c) construct temporary works (including the provision of means of access), security fencing, bridges, services, signage and buildings on that land;
- (d) construct any works (including mitigation works), or use the land, for the purposes specified in Schedule 10 (land of which temporary possession may be taken) in relation to that land;
- (e) construct any works on that land as are mentioned in Schedule 1 (authorised development); and
- (f) carry out any mitigation works required pursuant to the requirements in Schedule 2 (requirements).

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker must not remain in possession of any land under this article for longer than reasonably necessary and in any event may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in paragraph (1)(a)(i) after the end of the period of one year beginning with the date of final commissioning of the authorised development; or
- (b) in the case of land referred to in paragraph (1)(a)(ii) after the end of the period of one year beginning with the date of final commissioning of the authorised development unless the undertaker has, before the end of that period, served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or has otherwise acquired the land subject to temporary possession.

(4) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or has otherwise acquired the land subject to temporary possession, the undertaker must, before giving up possession of land of which temporary possession has been taken under this article, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

- (a) replace a building, drain or any debris removed under this article;
- (b) remove any drainage works installed by the undertaker under this article;
- (c) remove any new road surface or other improvements carried out under this article to any street specified in Schedule 3 (streets subject to street works), Schedule 4 (streets subject to permanent alteration of layout), Schedule 5 (streets subject to temporary alteration of layout), or land that is subject to an agreement with the local highway authority for it to be dedicated as highway;

- (d) remove any fencing or boundary treatments installed by the undertaker under this article to replace or enhance existing fencing or boundary treatments; or
- (e) restore the land on which any works have been carried out under paragraph (1)(f) insofar as the works relate to mitigation works identified in the environmental statement or required pursuant to the requirements in Schedule 2 (requirements).

(5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(7) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i).

(9) Nothing in this article precludes the undertaker from—

- (a) creating and acquiring new rights over any part of the Order land identified in Schedule 8 under article 25 (compulsory acquisition of rights and imposition of restrictive covenants); or
- (b) acquiring any right in the subsoil of any part of the Order land under article 26 (acquisition of subsoil only) or article 31 (rights under or over streets).

(10) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire the land or any interest in it.

(11) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to 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.

(12) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 10.

Temporary use of land for maintaining the authorised development

33.—(1) Subject to paragraph (2), at any time during the maintenance period (as defined in paragraph (11)) relating to any part of the authorised development, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order land if possession is reasonably required for the purpose of maintaining the authorised development;
- (b) enter on any land within the Order land for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire the land or any interest in it.

(10) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to 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.

(11) In this article "the maintenance period" means the period of five years beginning with the date of final commissioning unless a different maintenance period is stated in the landscape and ecology management plan approved under requirement 5 in Schedule 2 (requirements).

Statutory undertakers

34. Subject to the provisions of Schedule 11 (protective provisions), the undertaker may—

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, any land belonging to statutory undertakers within the Order land;
- (b) extinguish or suspend the rights of or restrictive covenants for the benefit of, and remove or reposition the apparatus belonging to, statutory undertakers on, under, over or within the Order land.

Apparatus and rights of statutory undertakers in altered or closed streets

35. Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 10 (street works), article 11 (power to alter layout, etc., of streets), article 12 (construction and maintenance of new or altered means of access) or article 13 (temporary prohibition or restriction of use of streets and public rights of way) any statutory undertaker whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to Schedule 11 (protective provisions), as if this Order had not been made.

Recovery of costs of new connections

36.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 34 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 34 (statutory undertakers) any person who is—

- (a) the owner or occupier of premises the drains of which communicated with the sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 35 (apparatus and rights of statutory undertakers in altered or closed streets) or Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this article—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(a); and

“public utility undertaker” has the same meaning as in the 1980 Act.

PART 6

MISCELLANEOUS AND GENERAL

Electronic communications

37.—(1) In this Order—

(a) references to documents, plans, drawings, certificates, or to copies, include references to them in electronic form; and

(b) references to a form of communication being “in writing” include references to an electronic communication that satisfies the conditions in paragraph (3) and references to “written” and cognate expressions are to be construed accordingly.

(2) If an electronic communication is received outside the recipient’s business hours, it is to be taken to have been received on the next working day.

(3) The conditions are that the communication is—

(a) capable of being accessed by the recipient;

(b) legible in all material respects; and

(c) sufficiently permanent to be used for subsequent reference.

(4) For the purposes of paragraph (3)(b), a communication is legible in all material respects if the information contained in it is available to the recipient to no lesser extent than it would be if transmitted by means of a document in printed form.

(5) In this article “electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000(b).

Application of landlord and tenant law

38.—(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 prejudices the operation of any agreement to which this article applies.

(a) 2003 c. 21. Section 151(1) was amended by paragraphs 90(a)(i), (ii), (iii), 90(b), 90(c) and 90(d) of Schedule 1 to the Electronic Communications and Wireless Telegraphy Regulations (2011/1210).

(b) 2000 c. 7. As amended by paragraph 158 of Schedule 17 to the Communications Act 2003 c. 7.

(3) Accordingly, no such enactment or rule of law applies 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.

Operational land for the purposes of the 1990 Act

39. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as not being operational land) of the 1990 Act.

Defence to proceedings in respect of statutory nuisance

40.—(1) Where proceedings are brought under section 82(1) (summary proceedings by persons aggrieved by statutory nuisances) of the Environmental Protection Act 1990(a) in relation to a nuisance falling within sub-paragraph (g) of section 79(1) (statutory nuisances and inspections therefor) of that Act no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance or decommissioning 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 sites), or a consent given under section 61 (prior consent for work on construction sites), of the Control of Pollution Act 1974(b); or
 - (ii) is a consequence of the construction or maintenance or decommissioning 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 compliance with requirement 19 of Schedule 2 (requirements); or
 - (ii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance or decommissioning of the authorised development.

Protective provisions

41. Schedule 11 (protective provisions) has effect.

(a) 1990 c. 43. Section 82 was amended by section 103 of the Clean Neighbourhoods and Environment Act 2005 (c. 16); Section 79 was amended by sections 101 and 102 of the same Act. There are other amendments not relevant to this Order.

(b) 1974 c. 40. Sections 61(9) was amended by paragraph 1 of Schedule 24 to the Environment Act 1995 and by section 162(1) and paragraph 15(3) of Schedule 15 to the Environmental Protection Act 1990 c. 25. There are other amendments to the 1974 Act which are not relevant to this Order.

Certification of plans etc.

42.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of all documents and plans listed in Table 10 of Schedule 13 (documents and plans to be certified) to this Order for certification that they are true copies of those documents.

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

(3) Where a plan or document certified under paragraph (1)—

- (a) refers to a provision of this Order (including any specified requirement) when it was in draft form; and
- (b) identifies that provision by number, or combination of numbers and letters, which is different from the number, or combination of numbers and letters by which the corresponding provision of this Order is identified in this Order as made;

the reference in the plan or document concerned must be construed for the purposes of this Order as referring to the provision (if any) corresponding to that provision in this Order as made.

Service of notices

43.—(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 (6) to (8), by electronic transmission.

(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 service 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 that 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 an 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 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 the 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 is to 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

(a) 1978 c. 30.

(d) 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 seven days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of an electronic transmission 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 is final and takes effect on a date specified by the person in the notice but that date must not be less than seven days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

Procedure in relation to certain approvals etc.

44.—(1) Where an application is made to or request is made of the relevant planning authority, a highway authority, a traffic authority, a street authority, or the owner of a watercourse, sewer or drain or the beneficiary of any of the protective provisions contained in Part 1 or Part 2 of Schedule 11 (protective provisions) for any consent, agreement or approval required or contemplated by any of the provisions of the Order (not including the requirements), such consent, agreement or approval to be validly given, must be given in writing and must not be unreasonably withheld or delayed.

(2) Save for applications made pursuant to Schedule 12 (procedure for the discharge of requirements), if, within eight weeks after the application or request has been submitted to an authority, beneficiary of protective provisions or an owner as referred to in paragraph (1) of this article (or such longer period as may be agreed with the undertaker in writing) it has not notified the undertaker of its decision (and if it is a disapproval the grounds of the disapproval), it is deemed to have approved the application or request.

(3) Schedule 12 is to have effect in relation to all consents, agreements or approvals required from the relevant planning authority in respect of discharge of requirements listed in Schedule 2.

No double recovery

45. Compensation is not payable in respect of the same matter both under this Order and under any enactment, any contract or any rule of law.

Arbitration

46. Any difference or dispute arising under any provision of this Order shall, unless otherwise agreed in writing between the undertaker and the party in question, be referred to and settled in arbitration in accordance with the rules at Schedule 15 (arbitration rules) of this Order, 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.

Incorporation of the mineral code

47. Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981(a) are incorporated in this order subject to the following modifications—

(a) for “the acquiring authority” substitute “the undertaker”; and

(a) 1981 c. 67

- (b) for the “undertaking” substitute “authorised development”.

Modification of the section 106 agreement relating to land

48.—(1) The section 106 agreement is modified so that the section 106 agreement no longer applies to and can no longer be enforced in respect of any land within the Order limits.

(2) The modification set out in sub-section (1) will only have effect if—

- (a) Work No. 4A has commenced;
- (b) the highway authority serves a notice pursuant to section 228(1) of the 1980 Act in respect of any land within the Order limits that is bound by the section 106 agreement; and
- (c) the period of one month from the day on which the notice was first displayed pursuant to section 228(1) of the 1980 Act has expired.

(3) This article does not affect the terms of, any rights or liabilities under or the ability of any person to enforce the section 106 agreement in respect of any other land bound by the section 106 agreement that is outside of the Order limits.

Signed by authority of the Secretary of State for Energy Security and Net Zero



David Wagstaff
Deputy Director Energy Infrastructure Planning
Department for Energy Security and Net Zero

20th February 2024

SCHEDULES

SCHEDULE 1

Article 2

AUTHORISED DEVELOPMENT

Authorised Development

1. In the County of Cambridgeshire and the County of Norfolk a nationally significant infrastructure project as defined in section 14(1)(a) (nationally significant infrastructure projects: general) and section 15 (generating stations) of the 2008 Act and associated development within the meaning of section 115(2) (development for which development consent may be granted) of the 2008 Act comprising all or part of—

In the County of Cambridgeshire

Work No. 1 – an electricity generating station with a gross installed generating capacity of up to 60 MW and capacity to process up to 625,600 tonnes of residual waste per annum, including—

- (a) fuel reception and storage facilities consisting of tipping hall, tipping bays, tipping bunker, main waste bunker, shredder, waste chutes, cranes, cabin and handling and maintenance equipment;
- (b) a combustion system including boiler house, air cooled moving grates, boilers and water tanks;
- (c) air pollution control plant and monitoring systems including silos, reactors, filter houses, fans, cabins and loading and storage areas;
- (d) a steam turbine and generator including turbine hall and cooling system;
- (e) a bottom ash handling system, including ash storage bunker, conveyors, collection bays, cranes and handling and maintenance equipment;
- (f) air cooled condenser;
- (g) compressed air system;
- (h) tank(s) for the storage of urea;
- (i) switch gear building;
- (j) control room; and
- (k) water treatment and storage plant.

Work No. 1A – two chimneys and associated continuous emissions monitoring systems and platform.

Work No. 1B – administration building, including—

- (a) roof-mounted photovoltaic solar panels to supplement energy use within the administration building, generating approximately 50kW (0.05MW) of electricity;
- (b) brown roof and green walls;
- (c) natural cooling apparatus including brise soleil to eastern elevation;
- (d) bat and bird boxes; and
- (e) rainwater harvesting apparatus.

Work No. 2 – in connection with and in addition to Work Nos 1, 1A and 1B—

Work No. 2A

- (a) fire water tank and fire water pump cabin;
- (b) diesel generator and diesel storage tanks;

- (c) 132kV switching compound, transformers, switch gear, cabling, kiosk and associated telemetry;
- (d) workshop and stores; and
- (e) gatehouse and weighbridges; and

Work No. 2B

- (a) vehicle layby and queuing areas;
- (b) laydown and maintenance areas;
- (c) internal access roads and pedestrian walkways;
- (d) parking areas and electrical vehicle charging points;
- (e) pipes, cables, telecommunications and other services and associated infrastructure;
- (f) site drainage, including works to drains and culverts, potable and wastewater services and associated infrastructure;
- (g) hard and soft landscaping; and
- (h) biodiversity enhancement measures and environmental mitigation measures.

Work No. 3 – associated development comprising combined heat and power equipment including heat exchangers, pipework, valving, pumps, pressurisation, water treatment systems and associated instrumentation and telemetry.

Work No. 3A – associated development comprising combined heat and power equipment including steam and condensate pipes, pipe racks, supports, pipe runs, valving, electrical supply cables and associated instrumentation and telemetry, vertical expansion loops and pipe bridges.

Work No. 3B – associated development comprising combined heat and power equipment including steam and condensate pipes, pipe racks, supports, pipe runs, valving, electrical supply cables and associated instrumentation and telemetry, bellows expansion connections, vertical expansion loops and pipe bridges.

Work No. 4A – associated development comprising a new site access and access improvements on New Bridge Lane including carriageway and footway widening, highway alteration works, junction improvements including signalisation and pedestrian crossing, culverts, drains, street lighting, services and utilities connections and compact substation.

Work No. 4B – associated development comprising a new site access and access improvements on Algores Way including carriageway and footway widening, highway alteration work, culverts, drains, services and utilities connections and street lighting.

Work No. 5 – associated development being a temporary construction compound and laydown area including—

- (a) hard standings;
- (b) materials storage and laydown areas;
- (c) construction fabrication areas;
- (d) generators;
- (e) vehicle parking areas;
- (f) wheel washing facilities;
- (g) accommodation, office and welfare buildings;
- (h) new or alteration to accesses;
- (i) internal haul roads; and
- (j) temporary pedestrian bridges.

Work No. 6A – comprising associated development for the potable water connection—

- (a) water pipe(s) and associated instrumentation and telemetry;

- (b) cable trenches, ducting, protection plates and jointing bays; and
- (c) horizontal directional drilling compound.

Work No. 6B – comprising associated development for the foul water connection—

- (a) water pipe(s) and associated instrumentation and telemetry; and
- (b) cable trenches, ducting, protection plates and jointing bays.

Work No. 7 – comprising associated development—

- (a) 132kV electrical underground cables and associated instrumentation and telemetry;
- (b) cable trenches, ducting, protection plates and jointing bays; and
- (c) temporary storage compounds in laybys on the A47.

In the County of Norfolk

Work No. 8 – comprising associated development—

- (a) 132kV electrical underground cables and associated instrumentation and telemetry;
- (b) cable trenches, ducting, protection plates and jointing bays; and
- (c) temporary storage compounds in laybys on the A47.

Work No. 9 – comprising associated development—

- (a) electrical substation and compound including clean air switchgear, control room kiosks and monitoring kiosk;
- (b) cables and associated instrumentation and telemetry;
- (c) cable trenches, ducting, protection plates and jointing bays; and
- (d) new or alteration to accesses, internal pedestrian and vehicular access road and parking area.

In the County of Cambridgeshire

Work No. 10 – comprising associated development, being an acoustic fence.

In connection with and in addition to Work Nos 1, 1A, 1B, 2A, 2B, 3, 3A, 3B, 4A, 4B, 5, 6A, 6B, 7, 8, 9 and 10 and, to the extent that it does not otherwise form part of those Work Nos, further associated development comprising such other works or operations as may be necessary or expedient for the purposes of or in connection with the authorised development, and which are within the Order limits and fall within the scope of the work assessed by the environmental statement including—

- (a) external lighting infrastructure, including lighting columns;
- (b) fencing, boundary treatment and other means of enclosure;
- (c) demolition of existing buildings and structures;
- (d) signage;
- (e) CCTV and other security measures;
- (f) surface and foul water drainage facilities;
- (g) potable water supply;
- (h) new telecommunications and utilities apparatus and connections;
- (i) hard and soft landscaping;
- (j) biodiversity enhancement measures and environmental mitigation measures;
- (k) works permanently to alter the position of existing telecommunications and utilities apparatus and connections;
- (l) works for the protection of buildings and land;

- (m) establishment of temporary construction compounds, including vehicle parking areas, hard standing, materials storage and laydown areas, construction fabrication areas, construction related buildings, accommodation buildings, temporary offices, structures, plant and machinery, lighting and fencing, internal haul routes and wheel wash facilities; and
- (n) site establishment and preparation works, including site clearance (including temporary fencing and vegetation removal), earthworks (including soil stripping and storage and site levelling) and excavations, the creation of temporary construction access points and the temporary alteration of the position of services and utilities apparatus and connections.

SCHEDULE 2 REQUIREMENTS

Article 2

Time limits

1. The authorised development must not commence after the expiration of five years beginning with the date on which this Order comes into force.

Detailed design approval

2.—(1) No part of Work Nos. 1, 1A, 1B, 2A, 2B, 3, 6A, 6B, 7, 8, 9 or 10 may commence until details of the layout, scale and external appearance for that Work No. have been submitted to and approved by the relevant planning authority.

(2) The details submitted for approval under sub-paragraph (1) must be substantially in accordance with the design principles set out in Appendix A of the design and access statement.

(3) Where a requirement requires the authorised development to be constructed in accordance with details approved by the relevant planning authority, the approved details are taken to include any amendments subsequently approved by the relevant planning authority.

(4) The authorised development must be carried out in accordance with the approved details.

Parameters of authorised development

3. The elements of the authorised development listed in column (1) of Table 11 in Schedule 14 (maximum and minimum design parameters) must not exceed the maximum and minimum dimensions and levels set out in relation to that element in columns (3) to (6) of that table.

Biodiversity and landscape mitigation

4.—(1) No part of the authorised development may commence until a written landscape and ecology strategy for that part has been submitted to and approved by the relevant planning authority. The landscape and ecology strategy must be substantially in accordance with the outline landscape and ecology strategy.

(2) The landscape and ecology strategy must be implemented as approved under sub-paragraph (1).

Landscape and ecology management plan

5.—(1) Prior to the date of final commissioning a landscape and ecology management plan for Work No. 1, 1A, 1B, 2A, 2B and 9 must be submitted to and approved by the relevant planning authority for the operation of that part of the authorised development. The landscape and ecology management plan must be substantially in accordance with the outline landscape and ecology management plan.

(2) The landscape and ecology management plan must be implemented as approved under sub-paragraph (1).

Biodiversity net gain

6.—(1) No part of the authorised development may commence until a biodiversity net gain strategy has been submitted to and approved by the relevant planning authority, in consultation with the relevant statutory nature conservation body.

(2) The biodiversity net gain strategy must include details of how the strategy will secure a minimum of 10% biodiversity net gain, calculated using the biodiversity metric 3.0 published by Natural England in July 2021 or such other biodiversity metric approved by the relevant planning authority in consultation with the relevant statutory nature conservation body, during the operation

of the authorised development including onsite and offsite measures and be substantially in accordance with the outline biodiversity net gain strategy.

(3) The biodiversity net gain strategy must be implemented as approved under sub-paragraph (1).

Highway works

7.—(1) Construction of any new permanent or temporary means of access to a highway, or alteration of an existing means of access to a highway, or other works to alter the layout of a highway, must not commence until a plan for that access or other work has been submitted to and approved by the relevant highway authority.

(2) No part of Work No. 4A may commence until written details for that Work No. have been submitted to and approved by the relevant highway authority.

(3) No part of Work No. 4B may commence until written details for that Work No. have been submitted to and approved by the relevant planning authority in consultation with the relevant highway authority.

(4) Any new permanent or temporary means of access to a highway, or alteration of an existing means of access to a highway, or other works to alter the layout of a highway must be constructed or altered in accordance with the details approved pursuant to sub-paragraph (1).

(5) Work No. 4A must be constructed in accordance with the details approved pursuant to sub-paragraph (2).

(6) Work No. 4B must be constructed in accordance with the details approved pursuant to sub-paragraph (3).

Drainage strategy

8.—(1) No part of Work No. 1, 1A, 1B, 2A, 2B, 4A, 4B, 6A, 6B and 9 may commence until written details of the drainage strategy for that Work No. has been submitted to and approved by the relevant planning authority.

(2) The written details submitted for approval must be substantially in accordance with the outline drainage strategy.

(3) The relevant planning authority must consult with Anglian Water in respect of any discharge to a public sewer before approving any drainage strategy submitted under sub-paragraph (1).

(4) The relevant planning authority must consult with the Environment Agency before approving any drainage strategy submitted under sub-paragraph (1).

(5) The drainage strategy must be implemented as approved under sub-paragraph (1).

Contamination and groundwater

9.—(1) No part of the authorised development may commence until a scheme (which may be included in the construction environmental management plan to be submitted under requirement 10) to deal with the contamination of any land (including groundwater) for that part which is likely to cause significant harm to persons or significant pollution of controlled waters or the environment has been submitted to and approved in writing by the relevant planning authority.

(2) The scheme must include an investigation and assessment report, prepared by a specialist consultant, to identify the extent of any contamination and any remedial measures to be taken to render the land fit for its intended purpose, together with a management plan which sets out long-term measures with respect to any contaminants remaining on the site.

(3) The relevant planning authority must consult with the Environment Agency before approving a scheme under sub-paragraph (1).

(4) Any remedial measures must be carried out in accordance with the approved scheme.

Construction environmental management plan

10.—(1) No part of the authorised development may commence until a construction environmental management plan for that part has been submitted to and approved by the relevant planning authority.

(2) The construction environmental management plan submitted for approval must be substantially in accordance with the outline construction environmental management plan.

(3) The relevant planning authority must consult with the Environment Agency before approving the construction environmental management plan.

(4) All construction works associated with the authorised development must be undertaken in accordance with the approved construction environmental management plan unless otherwise agreed with the relevant planning authority in consultation with the Environment Agency.

Construction traffic management plan

11.—(1) No stage of the authorised development may commence until a construction traffic management plan for that stage has been submitted to and approved by the relevant planning authority in consultation with the highway authority. The construction traffic management plan must be substantially in accordance with the outline construction traffic management plan.

(2) The construction traffic management plan must be implemented as approved throughout the construction of the authorised development unless otherwise agreed by the relevant planning authority in consultation with the highway authority.

Operational traffic management plan

12.—(1) Prior to the date of final commissioning, an operational traffic management plan must be submitted to the relevant planning authority for approval in consultation with the highway authority. The operational traffic management plan must be substantially in accordance with the outline operational traffic management plan.

(2) The operational traffic management plan must be implemented as approved throughout the operation of the authorised development unless otherwise agreed by the relevant planning authority in consultation with the highway authority.

Flood emergency management plan

13.—(1) Prior to the date of final commissioning, a flood emergency management plan for Work Nos. 1, 1A, 1B, 2A, 2B and 9 must be submitted to the relevant planning authority for approval.

(2) The flood emergency management plan submitted for approval must be substantially in accordance with the outline flood emergency management plan.

(3) The relevant planning authority must consult with the Environment Agency and lead local flood authority before approving any flood emergency management plan submitted under sub-paragraph (1).

(4) The flood emergency management plan submitted and approved under sub-paragraph (1) must be implemented as approved and remain in place throughout the operation of the authorised development unless otherwise agreed by the relevant planning authority in consultation with the Environment Agency and lead local flood authority.

Waste hierarchy scheme

14.—(1) Prior to the date of final commissioning, the undertaker must submit to the relevant planning authority for approval a scheme, which sets out arrangements for maintenance of the waste hierarchy and which aims to minimise recyclable and reusable waste received at the authorised development during the commissioning and operational period of the authorised development (the “waste hierarchy scheme”).

(2) The waste hierarchy scheme must include details of—

- (a) operational procedures that seek to ensure that waste suitable for recycling and reuse is not received at the authorised development. These procedures are to be annually reviewed and, where practicable, improved;
- (b) a record of the tonnages of any waste identified by the undertaker prior to tipping into the waste bunker at the authorised development and rejected as it was identified as being suitable for recycling, reuse or both;
- (c) a record of tonnages of waste considered suitable for recycling, reuse or both that has been diverted further up the waste hierarchy by persons who also send waste to be processed at the authorised development, as far as practicable;
- (d) a record to be kept of how these procedures have been regularly reviewed (on an annual basis at a minimum), what changes were made, and how these have reduced the amount of waste potentially suitable for recycling and reuse being processed at the authorised development;
- (e) how waste transfer notes and weighbridge data detailing the sources of the residual waste will be collected and retained;
- (f) the types of waste and permitted EWC codes to be accepted at the authorised development as specified by the environmental permit;
- (g) how waste delivered to the authorised development will be checked to ensure compliance with the permitted EWC codes;
- (h) arrangements for ensuring that commercial suppliers deliver only those EWC codes which are permitted; and
- (i) records which are to be kept for the purposes of demonstrating compliance with the waste hierarchy scheme and for allowing inspection of such records by the relevant planning authority.

(3) The relevant planning authority must consult with the Environment Agency before approving any scheme submitted under sub-paragraph (1).

(4) The waste hierarchy scheme must be implemented as approved under sub-paragraph (1).

Operational travel plan

15.—(1) Prior to the date of final commissioning, an operational travel plan must be submitted to and approved by the relevant planning authority. The operational travel plan must set out measures to encourage staff working at Work No. 1, 1A, 1B, 2A and 2B to use sustainable modes of transport and must be substantially in accordance with the outline operational travel plan.

(2) The operational travel plan must be implemented as approved under sub-paragraph (1).

Odour management plan

16.—(1) Prior to completion of commissioning of any part of Work No. 1, an odour management plan must be submitted to the relevant planning authority for approval. The odour management plan submitted for approval must be substantially in accordance with the outline odour management plan.

(2) The relevant planning authority must consult with the Environment Agency before approving the odour management plan.

(3) The odour management plan must be implemented as approved under sub-paragraph (1).

Fire prevention plan

17.—(1) Prior to the completion of commissioning of any part of Work No. 1, a fire prevention plan must be submitted to and approved by the relevant planning authority. The fire prevention plan submitted for approval must be substantially in accordance with the outline fire prevention plan.

(2) The fire prevention plan must be implemented as approved under sub-paragraph (1).

Lighting strategy

18.—(1) Prior to the installation of any permanent lighting for the authorised development, a written scheme for the management and mitigation of artificial light emissions for that part of the authorised development must be submitted to and approved by the relevant planning authority. The lighting strategy submitted for approval must be substantially in accordance with the outline lighting strategy.

(2) The written scheme for the management and mitigation of artificial light emissions must be implemented as approved under sub-paragraph (1).

Noise management

19.—(1) No part of Work No. 4A may commence until the residential use at plot numbers 11/4a and 11/4b shown on the land plans and described in the book of reference has ceased unless otherwise agreed by the relevant planning authority.

(2) Plot numbers 11/4a and 11/4b shown on the land plans and described in the book of reference must not be used for residential purposes until the authorised development has been decommissioned in accordance with requirement 28 unless otherwise agreed by the relevant planning authority.

(3) No part of Work No. 4A may commence until Work No. 10 has been constructed. Work No. 10 must be maintained until the authorised development has been decommissioned in accordance with requirement 28 unless otherwise agreed by the relevant planning authority.

(4) Prior to the date of completion of commissioning of any part of Work No. 1, 1A, 2A, 2B and 9(a), an operational noise management plan for that part must be submitted to and approved by the relevant planning authority.

(5) The operational noise management plan submitted for approval must be substantially in accordance with the outline operational noise management plan.

(6) The relevant planning authority must consult with the Environment Agency before approving the operational noise management plan.

(7) The operational noise management plan must be implemented as approved under sub-paragraph (4).

Notice of start of commissioning and notice of date of final commissioning

20.—(1) Notice of the commencement of commissioning of Work No. 1 must be given to the relevant planning authority within 7 days of the date on which commissioning is commenced.

(2) Notice of the completion of commissioning of Work No. 1 must be given to the relevant planning authority within 7 days of the date on which commissioning is completed.

Employment and skills strategy

21.—(1) No part of the authorised development may commence until an employment and skills strategy has been submitted to the relevant planning authority for approval. The employment and skills strategy submitted for approval must be substantially in accordance with the outline employment and skills strategy.

(2) The employment and skills strategy must be implemented as approved under sub-paragraph (1).

Carbon capture and export readiness reserve space

22.—(1) Prior to the date of final commissioning, the undertaker must demonstrate to the relevant planning authority that it has constructed Work No. 1 in accordance with the carbon capture and export embedded design measures.

(2) Following commencement of the authorised development and until such time as the authorised development is decommissioned, the undertaker must not, without the consent of the Secretary of State—

- (a) dispose of any interest in the carbon capture and export readiness reserve space; or
- (b) do anything, or allow anything to be done or to occur which may reasonably be expected to diminish the undertaker's ability to prepare the carbon capture and export readiness reserve space for the installation and operation of carbon capture and export equipment within two years of such action or occurrence.

(3) In this paragraph “export” means the removal of carbon from the authorised development and transporting it to a place of usage or sequestration to avoid its release to the atmosphere.

Carbon capture readiness monitoring report

23.—(1) The undertaker must make a report (“carbon capture and export readiness monitoring report”) to the Secretary of State—

- (a) on or before the date which is three months after the date of completion of commissioning of Work No. 1A; and
- (b) within one month of the second anniversary, and each subsequent even-numbered anniversary, of that date.

(2) Each carbon capture and export readiness monitoring report must provide evidence that the undertaker has complied with Requirement 22—

- (a) in the case of the first carbon capture and export readiness monitoring report, since commencement of the authorised development; and
- (b) in the case of any subsequent report, since the making of the previous carbon capture and export readiness monitoring report,

and explain how the undertaker expects to continue to comply with Requirement 22 over the next two years.

(3) Each carbon capture and export readiness monitoring report must state whether the undertaker considers the retrofit of carbon capture and export technology is feasible explaining the reasons for any such conclusion and whether any impediments could be overcome.

(4) Each carbon capture and export readiness monitoring report must state, with reasons, whether the undertaker has decided to seek any additional regulatory clearances, or to modify any existing regulatory clearances, in respect of any carbon capture and export readiness proposals.

(5) In this paragraph “export” means the removal of carbon from the authorised development and transporting it to a place of usage or sequestration to avoid its release to the atmosphere.

Community liaison manager

24. Prior to the date of final commissioning, the undertaker must notify the relevant planning authority of the name of the community liaison manager appointed and thereafter must keep the relevant planning authority up to date on any changes.

Combined heat and power

25.—(1) Prior to the date of final commissioning, the undertaker must demonstrate to the relevant planning authority that it has constructed Work No. 1 and Work No. 2 in accordance with the combined heat and power embedded design measures.

(2) No later than the date that is 18 months after the date of final commissioning, the undertaker must submit to the relevant planning authority for its approval a report (“the CHP review”) updating the combined heat and power assessment.

(3) The CHP review submitted must—

- (a) consider the opportunities that reasonably exist for the export of heat from Work No. 3, 3A and 3B at the time of submission of the CHP review; and
 - (b) include a list of actions (if any) that the undertaker is reasonably and practicably able to take (without material additional cost to the undertaker) to increase the potential for the export of heat from Work No. 3, 3A and 3B.
- (4) The undertaker must take such actions as are included, within the timescales specified, in the approved CHP review.
- (5) The relevant planning authority must consult with the Environment Agency before approving any CHP review.
- (6) On each date (or the first date thereafter which is a working day) during the operation of Work No. 1 that is five years after the date on which it last submitted the CHP review or a revised CHP review to the relevant planning authority, the undertaker must submit to the relevant planning authority for its approval a revised CHP review.
- (7) Sub-paragraphs (3) to (5) apply in relation to a revised CHP review submitted under sub-paragraph (6) in the same way as they apply in relation to the CHP review submitted under sub-paragraph (7).

Air safety

26.—(1) The information specified in sub-paragraph (2), that is required by the Defence Geographic Centre of the Ministry of Defence to chart the authorised development for aviation purposes, must be submitted to the relevant planning authority and the Ministry of Defence before any part of the authorised development is commenced.

(2) The information submitted to and approved under sub-paragraph (1) must include—

- (a) location of the authorised development;
- (b) date of commencement of construction;
- (c) anticipated date of completion of construction of tall structures including the chimneys;
- (d) height above ground level of tall structures including the chimneys;
- (e) maximum extension height of any construction equipment; and
- (f) details of aviation warning lighting to be fitted to the tall structures, which must include fitting the chimneys with an infra-red light fitted at the highest practicable point of the structure.

(3) The aviation warning lighting details submitted under sub-paragraph (2)(f) must be implemented in full before the construction of the chimneys is complete unless otherwise agreed by the relevant planning authority in consultation with the Ministry of Defence.

(4) At the earliest opportunity prior to the date of completion of the construction of the chimneys, the anticipated date of construction completion must be submitted to the relevant planning authority and provided in copy to the Ministry of Defence.

(5) All details submitted to and approved under this requirement must be implemented as approved and maintained throughout (to the extent relevant) the construction of the authorised development and the operation of the authorised development unless otherwise agreed by the relevant planning authority in consultation with the Ministry of Defence.

Local air quality monitoring strategy

27.—(1) Prior to the commencement of the authorised development, a local air quality monitoring strategy must be submitted to the relevant planning authority for approval. The local air quality monitoring strategy submitted for approval must be substantially in accordance with the outline local air quality monitoring strategy.

(2) The local air quality monitoring strategy must be implemented as approved under sub-paragraph (1).

Decommissioning

28.—(1) Within 24 months of the permanent cessation of the commercial operation of the authorised development, the undertaker must submit to the relevant planning authority for its approval a decommissioning plan for the authorised development, including a timetable for its implementation.

(2) The decommissioning plan submitted for approval must be substantially in accordance with the outline decommissioning plan.

(3) The plan submitted to and approved under sub-paragraph (1) must be implemented as approved unless otherwise agreed with the relevant planning authority.

Origin of waste

29.—(1) Not less than 17.5% of the waste processed at the authorised development per operational year must originate from within Waste Area 1 unless otherwise agreed by the relevant planning authority. Waste originating outside of Waste Area 1 and then transported to a waste loading point located in Waste Area 1 is not considered to have originated in Waste Area 1.

(2) Not less than 80% of the waste processed at the authorised development per operational year must originate from Waste Area 1 and Waste Area 2 unless otherwise agreed by the relevant planning authority. Subject to sub-paragraph (1), waste transported into Waste Area 2 to a waste loading point is considered to have originated in Waste Area 2.

(3) No more than 20% of the waste processed at the authorised development per operational year must originate from outside of Waste Area 1 and Waste Area 2 unless otherwise agreed by the relevant planning authority. Waste sent direct to the authorised development from a location that is not located in either Waste Area 1 or Waste Area 2 will be deemed to originate from outside of Waste Area 2.

(4) The maximum tonnage of waste received from any one waste planning authority's administrative area within Waste Area 2 must not exceed 312,800 tonnes in any operational year unless otherwise agreed by the relevant planning authority.

(5) From the date of final commissioning of the authorised development until the authorised development has been decommissioned in accordance with requirement 28 (unless otherwise agreed by the relevant planning authority), the undertaker must maintain a written record, retained at the authorised development, of the quantities and origin of the waste treated by the authorised development for each operational year.

(6) From the date of final commissioning until the authorised development has been decommissioned in accordance with requirement 28 (unless otherwise agreed by the relevant planning authority), on or prior to 1 February each year, the undertaker must provide to the relevant planning authority a report for the preceding operational year (the "Waste Catchment Report"). The Waste Catchment Report must identify—

- (a) the waste throughput of the authorised development including the total tonnage of waste processed at the authorised development for the operational year;
- (b) waste catchment including as far as it is reasonably practicable to audit, the waste area for each waste loading point for waste processed at the authorised development for the operational year, separately totalling tonnages received from waste area 1, waste area 2 and outside of waste area 2; and
- (c) the total annual tonnage processed at the authorised development from each waste planning authority for the operational year.

(7) The relevant planning authority can request an interim Waste Catchment Report at any time for the preceding 12 month period. The undertaker must submit an interim Waste Catchment Report to the relevant planning authority within 6 weeks of receiving the request. The interim Waste Catchment Report must cover the 12 month period ending on the last day of the month the written request was made by the relevant planning authority to the undertaker unless otherwise agreed by the relevant planning authority.

(8) In this paragraph—

“operational year” means the period from 1 January to 31 December, inclusive;

“throughput” means the tonnage of waste received at the authorised development;

“waste area 1” means a 75 kilometre radius from the point that has grid reference N307892.6931 and E545496.9373 and shown on the waste area plan;

“waste area 2” means the area shown on the waste area plan; and

“waste loading point” means the location where the waste is loaded onto a vehicle prior to being sent directly to the authorised development.

(9) In sub-paragraph (6)(b) “waste area” means the areas or locations for each waste loading point, disaggregated to the smallest administrative area practicable, including but not limited to county, unitary, district, borough or postcode area.

Amendments to approved details

30.—(1) With respect to the documents certified under article 42 (certification of plans etc.), the parameters specified in Table 11 of Schedule 14 (maximum and minimum design parameters) and any other plans, details or schemes which require approval by the relevant planning authority pursuant to any requirement (together “Approved Documents, Plans, Parameters, Details or Schemes”), the undertaker may submit to the relevant planning authority for approval any amendments to the Approved Documents, Plans, Parameters, Details or Schemes and following any such approval by the relevant planning authority the Approved Documents, Plans, Parameters, Details or Schemes are to be taken to include the amendments approved by the relevant planning authority pursuant to this paragraph.

(2) Approval under sub-paragraph (1) for the amendments to Approved Documents, Plans, Parameters, Details or Schemes must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

SCHEDULE 3

Article 10

STREETS SUBJECT TO STREET WORKS

Table 1

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Streets subject to street works</i>	<i>(3)</i> <i>Description of the street works</i>
In the County of Cambridgeshire and the County of Norfolk	A47 (public highway)	Street works to the extent of the A47 coloured light purple on the access and public rights of way plan
In the County of Cambridgeshire	Algores Way (private street)	Street works to the extent of Algores Way coloured yellow on the access and public rights of way plan
In the County of Norfolk	Broadend Road (public highway)	Street works to the extent of Broadend Road coloured light green on the access and public rights of way plan
In the County of Cambridgeshire	Cromwell Road (public highway)	Street works to the extent of Cromwell Road coloured pink on the access and public rights of way plan
In the County of Cambridgeshire	Cromwell Road (private street)	Street works to the extent of Cromwell Road coloured pink on the access and public rights of way plan
In the County of Norfolk	Elm High Road (public highway)	Street works to the extent of Elm High Road coloured turquoise on the access and public rights of way plan
In the County of Cambridgeshire	New Drove (public highway)	Street works to the extent of New Drove coloured dark green on the access and public rights of way plan
In the County of Cambridgeshire	New Bridge Lane (public highway)	Street works to the extent of New Bridge Lane coloured blue on the access and public rights of way plan
In the County of Cambridgeshire	New Bridge Lane (private street)	Street works to the extent of New Bridge Lane coloured blue on the access and public rights of way plan
In the County of Cambridgeshire	Salters Way (public highway)	Street works to the extent of Salters Way coloured dark purple on the access and public rights of way plan
In the County of Cambridgeshire	Weasenham Lane (public highway)	Street works to the extent of Weasenham Lane coloured red on the access and public rights of way plan

SCHEDULE 4

Article 11

STREETS SUBJECT TO PERMANENT ALTERATION OF LAYOUT

Table 2

<i>(1)</i> Area	<i>(2)</i> Streets subject to alteration of layout	<i>(3)</i> Description of alteration
In the County of Cambridgeshire	Algores Way (private street)	Permanent alteration of layout to the extent of Algores Way shown as Work No. 4B on the works plan and located within that area coloured yellow on the access and public rights of way plan including carriageway and footway widening and highway alteration works
In the County of Cambridgeshire	Cromwell Road (public highway)	Permanent alteration of layout to the extent of Cromwell Road coloured pink on the access and public rights of way plan including carriageway and footway widening and highway alteration works
In the County of Cambridgeshire	Cromwell Road (private street)	Permanent alteration of layout to the extent of Cromwell Road coloured pink on the access and public rights of way plan including carriageway and footway widening and highway alteration works
In the County of Cambridgeshire	New Bridge Lane (public highway)	Permanent alteration of layout to the extent of New Bridge Lane coloured blue on the access and public rights of way plan including carriageway and footway widening and highway alteration works
In the County of Cambridgeshire	New Bridge Lane (private street)	Permanent alteration of layout to the extent of New Bridge Lane coloured blue on the access and public rights of way plan including carriageway and footway widening and highway alteration works
In the County of Cambridgeshire	Salters Way (public highway)	Permanent alteration of layout to the extent of Salters Way coloured dark purple on the access and public rights of way plan including carriageway and footway

		widening and highway alteration works
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SCHEDULE 5

Article 11

STREETS SUBJECT TO TEMPORARY ALTERATION OF LAYOUT

Table 3

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to alteration of layout</i>	<i>(3)</i> <i>Description of alteration</i>
In the County of Cambridgeshire and the County of Norfolk	A47 (public highway)	Temporary alteration of layout to the extent of the A47 coloured light purple on the access and public rights of way plan
In the County of Norfolk	Broadend Road (public highway)	Temporary alteration of layout to the extent of Broadend Road coloured light green on the access and public rights of way plan
In the County of Norfolk	Elm High Road (public highway)	Temporary alteration of layout to the extent of Elm High Road coloured turquoise on the access and public rights of way plan
In the County of Cambridgeshire	New Bridge Lane (public highway)	Temporary alteration of layout to the extent of New Bridge Lane coloured blue on the access and public rights of way plan
In the County of Cambridgeshire	New Drove (public highway)	Temporary alteration of layout to the extent of New Drove coloured dark green on the access and public rights of way plan
In the County of Cambridgeshire	Weasenham Lane (public highway)	Temporary alteration of the layout to the extent of Weasenham Lane coloured red on the access and public rights of way plan

SCHEDULE 6

Article 12

ACCESS

PART 1

THOSE PARTS OF THE ACCESS TO BE MAINTAINED AT THE PUBLIC EXPENSE

Table 4

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of relevant part of access</i>
In the County of Cambridgeshire	Weasenham Lane (public highway)	Access to the area shown coloured orange and marked A1 on sheet 2 of the access and public rights of way plan to the extent that such access is or will be located within the public highway
In the County of Cambridgeshire	Weasenham Lane (public highway)	Access to the area shown coloured orange and marked A2 on sheet 2 of the access and public rights of way plan to the extent that such access is or will be located within the public highway
In the County of Cambridgeshire	New Bridge Lane (public highway)	Access to the area shown coloured orange and marked A8 on sheet 1 of the access and public rights of way plan to the extent that such access is or will be located within the public highway
In the County of Cambridgeshire	New Bridge Lane (public highway)	Access to the area shown coloured orange and marked A6 on sheet 1 of the access and public rights of way plan to the extent that such access is or will be located within the public highway.
In the County of Cambridgeshire	New Bridge Lane (public highway)	Access to the area shown coloured orange and marked A7 on sheet 1 of the access and public rights of way plan to the extent that such access is or will be located within the public highway
In the County of Cambridgeshire	New Drove (public highway)	Access to the area shown coloured orange and marked A10 on sheet 1 of the access and public rights of way plan to the extent that such access is or will be located within the public highway

In the County of Cambridgeshire	New Bridge Lane (public highway)	Access to the area shown coloured orange and marked A11 on sheet 1 of the access and public rights of way plan to the extent that such access is or will be located within the public highway
In the County of Cambridgeshire	Broadend Road (public highway)	Access to the area shown coloured orange and marked A12 on sheet 4 of the access and public rights of way plan to the extent that such access is or will be located within the public highway

PART 2

THOSE PARTS OF THE ACCESS TO BE MAINTAINED BY THE STREET AUTHORITY

Table 5

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of relevant part of access</i>
In the County of Cambridgeshire	Algores Way (private street)	Access to the area shown coloured yellow between the area shown coloured orange and marked A3 and the area shown coloured orange and marked A5 on sheet 1 of the access and public rights of way plan to the extent that such access is or will be located outside the public highway
In the County of Cambridgeshire	Algores Way (private street)	Access to the area shown coloured orange and marked A4 on sheet 1 of the access and public rights of way plan
In the County of Cambridgeshire	New Bridge Lane (public highway)	Access to the area shown coloured orange and marked A6 on sheet 1 of the access and public rights of way plan to the extent that such access is or will be located outside of the public highway
In the County of Cambridgeshire	New Bridge Lane (public highway)	Access to the area shown coloured orange and marked A7 on sheet 1 of the access and public rights of way plan to the extent that such access is or will be located outside of the public highway
In the County of Cambridgeshire	New Bridge Lane (public highway)	Access to the area shown coloured orange and marked

		A8 on sheet 1 of the access and public rights of way plan to the extent that such access is or will be located outside of the public highway
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PART 3

THOSE WORKS TO RESTORE THE TEMPORARY ACCESSES WHICH WILL BE MAINTAINED BY THE STREET AUTHORITY

Table 6

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of relevant part of access</i>
In the County of Cambridgeshire	Weasenham Lane (public highway)	Access to the area shown coloured orange and marked A1 on sheet 2 of the access and public rights of way plan to the extent that such access is or will be located outside of the public highway
In the County of Cambridgeshire	Weasenham Lane (public highway)	Access to the area shown coloured orange and marked A2 on sheet 2 of the access and public rights of way plan to the extent that such access is or will be located outside of the public highway
In the County of Cambridgeshire	New Bridge Lane (public highway)	Access to the area shown coloured orange and marked A9 on sheet 1 of the access and public rights of way plan to the extent that such access is or will be located outside of the public highway
In the County of Cambridgeshire	New Drove (public highway)	Access to the area shown coloured orange and marked A10 on sheet 1 of the access and public rights of way plan to the extent that such access is or will be located outside of the public highway
In the County of Cambridgeshire	New Bridge Lane (public highway)	Access to the area shown coloured orange and marked A11 on sheet 1 of the access and public rights of way plan to the extent that such access is or will be located outside of the public highway
In the County of Norfolk	Broadend Road (public highway)	Access to the area shown coloured orange and marked A12 on sheet 4 of the access and public rights of way plan to the extent that such access is

		or will be located outside of the public highway
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SCHEDULE 7

Article 13

TEMPORARY PROHIBITION OR RESTRICTION OF THE USE OF
STREETS OR PUBLIC RIGHTS OF WAY

Table 7

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to temporary prohibition or restriction of use</i>	<i>(3)</i> <i>Extent of temporary prohibition or restriction of use of streets</i>
In the County of Cambridgeshire and the County of Norfolk	A47 (public highway)	Temporary stopping up of the extent of the A47 shown coloured light purple and hatched blue on the access and public rights of way plan
In the County of Cambridgeshire	Algores Way (private street)	Temporary stopping up of the extent of Algores Way shown coloured yellow and hatched blue on the access and public rights of way plan
In the County of Norfolk	Broadend Road (public highway)	Temporary stopping up of the extent of Broadend Road shown coloured light green and hatched blue on the access and public rights of way plan
In the County of Cambridgeshire	Cromwell Road (public highway)	Temporary stopping up of the extent of Cromwell Road shown coloured pink and hatched blue on the access and public rights of way plan
In the County of Cambridgeshire	Cromwell Road (private street)	Temporary stopping up of the extent of Cromwell Road shown coloured pink and hatched blue on the access and public rights of way plan
In the County of Norfolk	Elm High Road (public highway)	Temporary stopping up of the extent of Elm High Road shown coloured turquoise and hatched blue on the access and public rights of way plan
In the County of Cambridgeshire	New Drove (public highway)	Temporary stopping up of the extent of New Drove shown coloured dark green and hatched blue on the access and public rights of way plan
In the County of Cambridgeshire	New Bridge Lane (public highway)	Temporary stopping up of the extent of New Bridge Lane shown coloured blue and hatched blue on the access and public rights of way plan
In the County of Cambridgeshire	New Bridge Lane (private street)	Temporary stopping up of the extent of New Bridge Lane shown coloured blue and hatched blue on the access and public rights of way plan

In the County of Cambridgeshire	Salters Way (public highway)	Temporary stopping up of the extent of Salters way shown coloured dark purple and hatched blue on the access and public rights of way plan
In the County of Cambridgeshire	Weasenham Lane (public highway)	Temporary stopping up of the extent of Weasenham Lane shown coloured red and hatched blue on the access and public rights of way plan

SCHEDULE 8

Article 25

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

Table 8

<i>(1)</i> <i>Number of plot shown on the land plans</i>	<i>(2)</i> <i>Rights etc. which may be acquired</i>
<p>1/1a, 1/1b, 1/1c, 1/1d, 1/1e, 1/2a, 2/1a, 2/1b, 3/1a, 3/1b, 4/1a, 4/1b, 5/1a, 5/1b, 5/1c, 6/1a, 6/1b, 6/1c, 6/1d, 6/1e, 6/1f, 6/1g, 6/1h, 6/1i, 6/1j, 6/1k, 6/2a, 6/2b, 7/1a, 8/1a, 8/1b, 8/2a, 9/1a, 9/1b, 9/1c, 10/1a, 10/2e, 10/2f, 10/5a, 11/1a(i), 11/2a</p>	<p>Rights to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve underground electricity cables, jointing bays, protection plates, ducting, telemetry and other ancillary apparatus (including but not limited to access chambers, manholes and marker posts) and any other works as necessary together with the right to fell, trim or lop trees and bushes which may obstruct or interfere with the said cables, telemetry and other ancillary apparatus</p>
	<p>Rights to pass and repass on foot, with or without vehicles, plant and machinery (including any temporary surface) for all purposes in connection with the construction, use, maintenance and decommissioning of the authorised development</p>
	<p>Rights to continuous vertical and lateral support for the authorised development</p>
	<p>Rights to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve sewers, drains, pipes, ducts, mains, conduits, services, flues and to drain into and manage waterflows in any drains, watercourses and culverts</p>
	<p>Rights to install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodlands, shrubs, hedgerows, seeding, landscaping and other ecological measures together with the right to maintain, inspect and replant such trees, shrubs, hedgerows, landscaping and other ecological measures and the right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the implementation and maintenance of landscaping and ecological mitigation or enhancement works</p>
	<p>Rights to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve security fencing, gates, boundary treatment, public rights of way and any other ancillary apparatus and any other works as necessary</p>
	<p>Restrictions on erecting buildings or structures, altering ground levels, planting trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt, or interfere with the</p>

	exercise of the rights or damage the authorised development
1/2a, 11/1a(i), 11/1a(ii), 11/1b(i), 11/1b(ii), 11/1b(iii), 11/2a, 12/1a, 12/1b, 12/1c, 12/1d, 12/1e, 12/1f, 12/1g, 12/1h, 12/1i, 12/1j, 12/1k, 12/1l, 12/2a, 12/4a, 12/5a, 13/4c(ii), 13/4d, 14/1a	Rights to construct, use, maintain and improve a permanent means of access including visibility splays, carriageway and footway widening, highway alteration works and lighting
	Rights to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve security fencing, gates, boundary treatment, public rights of way and any other ancillary apparatus and any other works as necessary
	Rights to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the construction, use, maintenance and decommissioning of the authorised development
	Rights to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve pipes, ducts, mains, wires, cables, conduits, flues, fibre optic cables and other conducting media of whatsoever nature
	Rights to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve sewers, drains, pipes, ducts, mains, conduits, services, flues and to drain into and manage waterflows in any drains, watercourses and culverts
	Rights to install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodlands, shrubs, hedgerows, seeding, landscaping and other ecological measures together with the right to maintain, inspect and replant such trees, shrubs, hedgerows, landscaping and other ecological measures the right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the implementation and maintenance of landscaping and ecological mitigation or enhancement works
	Restrictions on erecting buildings or structures, altering ground levels, planting trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt, or interfere with the exercise of the rights or damage the authorised development
10/1a, 10/1b, 10/1c, 10/2a, 10/2b, 10/2c, 10/2d, 10/2e, 10/2f, 10/2g, 10/3a, 10/4a, 10/5a, 11/1a(i), 11/2a	Rights to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve a potable water connection (including but not limited to pipes, trenches, ducting, protection plates, jointing bays, associated telemetry and other ancillary apparatus) and any other works as necessary

	together with the right to fell, trim or lop trees and bushes which may obstruct or interfere with the said combined potable water connection and other ancillary apparatus
	Rights to pass and repass on foot, with or without vehicles, plant and machinery (including any temporary surface) for all purposes in connection with the construction, use, maintenance and decommissioning of the authorised development
	Rights to continuous vertical and lateral support for the authorised development
	Rights to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve security fencing, gates, boundary treatment, public rights of way and any other ancillary apparatus and any other works as necessary
	Rights to install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodlands, shrubs, hedgerows, seeding, landscaping and other ecological measures together with the right to maintain, inspect and replant such trees, shrubs, hedgerows, landscaping and other ecological measures the right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the implementation and maintenance of landscaping and ecological mitigation or enhancement works
	Restrictions on erecting buildings or structures, altering ground levels, planting trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt, or interfere with the exercise of the rights
13/5a	Rights to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve a foul water connection (including but not limited to pipes, trenches, ducting, protection plates, jointing bays, associated telemetry and other ancillary apparatus) and any other works as necessary together with the right to fell, trim or lop trees and bushes which may obstruct or interfere with the said combined potable water connection and other ancillary apparatus
	Rights to pass and repass on foot, with or without vehicles, plant and machinery (including any temporary surface) for all purposes in connection with the construction, use, maintenance and decommissioning of the authorised development
	Right to continuous vertical and lateral support for the authorised development

	Rights to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve security fencing, gates, boundary treatment, public rights of way and any other ancillary apparatus and any other works as necessary
	Rights to install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodlands, shrubs, hedgerows, seeding, landscaping and other ecological measures together with the right to maintain, inspect and replant such trees, shrubs, hedgerows, landscaping and other ecological measures the right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the implementation and maintenance of landscaping and ecological mitigation or enhancement works
	Restrictions on erecting buildings or structures, altering ground levels, planting trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt, or interfere with the exercise of the rights
11/2d, 11/2f, 11/7b, 13/4a	Rights to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve sewers, drains, pipes, ducts, mains, conduits, services, flues and to drain into and manage waterflows in any drains, watercourses and culverts
	Rights to pass and repass on foot, with or without vehicles, plant and machinery (including any temporary surface) for all purposes in connection with the construction, use, maintenance and decommissioning of the authorised development
	Rights to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve security fencing, gates, boundary treatment, public rights of way and any other ancillary apparatus and any other works as necessary
	Rights to install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodlands, shrubs, hedgerows, seeding, landscaping and other ecological measures together with the right to maintain, inspect and replant such trees, shrubs, hedgerows, landscaping and other ecological measures the right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the implementation and maintenance of landscaping and ecological mitigation or enhancement works

	Restrictions on erecting buildings or structures, altering ground levels, planting trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt, or interfere with the exercise of the rights
11/8a	Rights to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve acoustic fencing and gates and any other ancillary apparatus or works as necessary
	Rights to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the construction, use, maintenance and decommissioning of the acoustic fencing and gates
	Restrictions on erecting buildings or structures, altering ground levels, planting trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt, or interfere with the exercise of the rights or damage acoustic fencing and gates
13/1a, 15/1a, 15/2a, 15/2b, 16/1a(i), 16/1a(ii), 16/1b(i), 16/1b(ii), 16/2a, 16/3a, 16/4a, 16/5a, 17/1a	Rights to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve combined heat and power equipment (including but not limited to steam and condensate pipes, pipe racks, supports, pipe runs, valving, electrical supply cables and associated telemetry, vertical expansion loops, pipe bridges and other ancillary apparatus) and any other works as necessary together with the right to fell, trim or lop trees and bushes which may obstruct or interfere with the said combined heat and power equipment and other ancillary apparatus
	Rights to pass and repass on foot, with or without vehicles, plant and machinery (including any temporary surface) for all purposes in connection with the construction, use, maintenance and decommissioning of the authorised development
	Rights to install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodlands, shrubs, hedgerows, seeding, landscaping and other ecological measures together with the right to maintain, inspect and replant such trees, shrubs, hedgerows, landscaping and other ecological measures and the right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the implementation and maintenance of landscaping and ecological mitigation or enhancement works

	<p>Rights to install, retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve security fencing, gates, boundary treatment, public rights of way and any other ancillary apparatus and any other works as necessary</p>
	<p>Restrictions on erecting buildings or structures, altering ground levels, planting trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt, or interfere with the exercise of the rights or damage the authorised development</p>

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS AND IMPOSITION OF NEW RESTRICTIVE COVENANTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or restrictive covenant as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5—

- (a) for “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable”.

3.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph 2(2).

(2) For section 5A (relevant valuation date) of the 1961 Act, after “if” substitute—

- “(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 9 to the Medworth Energy from Waste Combined Heat and Power Order 202*;
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 9 to the Medworth Energy from Waste Combined Heat and Power Order 202*) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.”.

Application of Part 1 of the 1965 Act

4. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 30 (modification of Part 1 of the 1965 Act)) to the acquisition of land under article 23 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right under article 25 (compulsory acquisition of rights and imposition of restrictive covenants)—

- (a) with the modifications specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4(a) are as follows.

(a) 1973 c. 26

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or the restriction imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restriction is to be enforceable.

(3) For section 7 (measure of compensation in case of severance) of the 1965 Act substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (refusal to convey, failure to make title etc.);
- (b) paragraph 10(3) of Schedule 1 (persons without power to sell their interests);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

(5) Section 11 (powers of entry) of the 1965 Act is modified to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right or restriction, as well as the notice of entry required by subsection (1) of that section (as it applied to compulsory acquisition under article 23 (compulsory acquisition of land)), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A (powers of entry: further notices of entry), 11B (counter-notice requiring possession to be taken on specified date), 12 (unauthorised entry) and 13 (refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

(6) Section 20 (tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 30(7) (modification of Part 1 of the Compulsory Purchase Act 1965) is so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, or enforce the restriction imposed, subject to compliance with that section as respects compensation.

(8) For Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act substitute—

“SCHEDULE 2A COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1.—(1) This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 (execution of declaration) of the 1981 Act as applied by article 29 (application of the 1981 Act) of the Medworth Energy from Waste Combined Heat and Power Facility Order 202* in respect of the land to which the notice to treat relates.

(2) But see article 26 (acquisition of subsoil only) of the Medworth Energy from Waste Combined Heat and Power Facility Order 202* which excludes the acquisition of subsoil only from this Schedule.

2. In this Schedule, “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of twenty-eight days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

6. The authority must serve notice of their decision on the owner within the period of three months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the authority decides to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority does not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serves notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

Determination by Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant,
- (b) the use to be made of the right or covenant proposed to be acquired or imposed, and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

13. If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of six weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”.

SCHEDULE 10

Article 32

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

Table 9

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>
Norfolk	4/1c, 4/1d	Temporary use (including access and compound) of a lay-by to facilitate construction for Work No. 7 and 8
Cambridgeshire	8/1c	Temporary use (including access and compound) to a lay-by to facilitate construction for Work No. 7 and 8
Cambridgeshire	11/2e, 11/2g, 11/2h, 11/2i, 11/2j, 11/2k, 11/2l, 11/2m, 11/2n, 11/2o, 13/4b	Temporary use (including access and compound) to facilitate construction for Work No. 1, 1A, 1B, 2A, 2B, 3, 3A, 3B, 4A, 4B, 5, 6A, 6B, 7, 8, 9 and 10
Cambridgeshire	11/3b, 12/4b, 12/5b	Temporary use (including access) to facilitate construction for Work No. 4A

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. The provisions of this Part have effect for the protection of statutory undertakers (save for EPN, Cadent Gas Limited and Anglian Water) unless otherwise agreed in writing between the undertaker and the statutory undertaker in question.

2. In this Part of this Schedule—

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

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by the utility undertaker for the purposes of electricity supply;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by the utility undertaker for the purposes of gas supply;
- (c) in the case of a water undertaker—
 - (i) mains, pipes or other water apparatus belonging to or maintained by the utility undertaker for the purposes of water supply; and
 - (ii) mains, pipes or other water apparatus that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991; and
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991(b); and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act(c) or an agreement to adopt made under section 104 of that Act, and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and in each case includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

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

“utility undertaker” means—

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

(a) 1989 c. 29.

(b) 1991 c. 56.

(c) 1991 c. 56. Section 102 was amended by sections 96(1)(a), 96(1)(b), 96(1)(c), 96(1)(d) and 96(1)(e) of the Water Act 2003 c. 37 and paragraph 90 of Schedule 7 to the Water Act 2014 c.21.

(d) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).

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.

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 Part 3 of the 1991 Act.

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13 (temporary prohibition or restriction of use of streets and public rights of way), a utility undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

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

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed 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 and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

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

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

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 46, and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by 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.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling

around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must 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 46 (arbitration).

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

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

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) 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 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

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

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 8(2).

(2) There is to 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, 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,

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 46 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) is to 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 is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 8(2); 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 (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.

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

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

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

(2) Nothing in paragraph 8(2) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

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

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

PART 2

PROTECTION FOR OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

12.—(1) For the protection of any operator, the following provisions, unless otherwise agreed in writing between the undertaker and the operator, have effect.

13. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system is construed in accordance with paragraph 1(3A) of that code;

“electronic communications apparatus” has the same meaning as in paragraph 5 of Schedule 3A of the 2003 Act;

“the electronic communications code” has the same meaning as in section 106 of the 2003 Act(b);

“electronic communications code network” means—

(a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and

(b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

“operator” means the operator of an electronic communications code network.

14. The exercise of the powers of article 34 (statutory undertakers) are subject to Part 10 of Schedule 3A to the 2003 Act(c).

15.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works, or other property of an operator); or

(b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and must make reasonable compensation to that operator for loss sustained by it and indemnify an operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, an operator 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 an operator, its officers, servants, contractors or agents.

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

(4) Any difference arising between the undertaker and the operator under this paragraph must be referred to and settled by arbitration under article 46 (arbitration).

(a) 2003 c. 21.

(b) See section 106.

(c) 2003 c. 21.

16. This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

PART 3

FOR THE PROTECTION OF CADENT GAS LIMITED

Application

17. For the protection of Cadent the following provisions will, unless otherwise agreed in writing between the undertaker and Cadent, have effect.

Interpretation

18. In this Part of this Schedule—

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

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by Cadent for the purposes of Cadent’s undertaking together with any replacement apparatus and such other apparatus constructed pursuant to this Order that becomes operational apparatus of Cadent for the purposes of Cadent’s undertaking and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised development” has the same meaning as in article 2 (interpretation) of the 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 development;

“Cadent” means Cadent Gas Limited and includes its successors in title or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

“Cadent’s undertaking” means the rights, duties and obligations of Cadent Gas Limited as a public gas transporter within the meaning of Section 7 of the Gas Act 1986 (as amended by the Gas Act 1995);

“commence” and “commencement” has the same meaning as given in article 2(1) and for the purpose of this Part of this Schedule only includes any below ground surveys, monitoring, work operations, remedial work in respect of any contamination or other adverse ground condition, the receipt and erection of construction plant and equipment, and non-intrusive investigations for the purpose of assessing ground conditions;

“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;

“facilities and rights” for construction and for maintenance include any appropriate working areas required to reasonably and safely undertake that construction or maintenance, and any necessary rights of access;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by Cadent (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, requires the undertaker to submit for Cadent’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” have effect as if Cadent’s existing apparatus was authorised development and as if the term maintain includes protect and use;

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

“rights” includes restrictive covenants and, in relation to decommissioned apparatus, the surrender of rights, release of liabilities and transfer of decommissioned apparatus; and

“specified works” means any part of the authorised development or activities (including maintenance) undertaken in association with the authorised development 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 23(2) or otherwise; or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 23(2) or otherwise.

On street apparatus

19.—(1) This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Cadent are regulated by the provisions of Part 3 of the 1991 Act, except for—

- (a) paragraphs 20, 25, 26, 27 and 28; and
- (b) where sub-paragraph (2) applies, paragraphs 23 and 24.

(2) This sub-paragraph applies where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within the existing public highway, notwithstanding that any diversion may be carried out under the provisions of Part 3 of the 1991 Act.

(3) The protective provisions in this Part of this Schedule apply and take precedence over article 35 (apparatus and rights of statutory undertakers in altered or closed streets) of the Order which does not apply to Cadent.

Apparatus of Cadent in altered or closed streets

20. Notwithstanding the temporary alteration, diversion or restriction of use of any street under the powers of article 11 (power to alter layout, etc., of streets), article 13 (temporary prohibition or restriction of use of streets and public rights of way) or article 17 (traffic regulation measures), Cadent will be at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as it would have been entitled to do immediately before such temporary alteration, diversion or restriction in respect of any apparatus which at the time of the stopping up or diversion was in that street.

Protective works to buildings

21. The undertaker must exercise the powers conferred by article 20 (protective works to buildings) so as not to obstruct or render less convenient the access to any apparatus without the written consent of Cadent (such consent not to be unreasonably withheld or delayed).

Acquisition of land

22.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire any interest in land or appropriate, acquire, extinguish, interfere with or override any easement or other interest in land of Cadent otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the construction or maintenance of any part of the authorised development (or in such other timeframe as may be agreed between Cadent 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 Cadent or affect the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Cadent reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between Cadent and the undertaker acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by Cadent, and the undertaker must use reasonable endeavours to procure or secure the consent to 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 development or maintenance thereof.

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

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

(5) As a condition of an agreement under sub-paragraph (1) that involves de-commissioned apparatus being left in situ the undertaker must accept a surrender of any existing easement or other interest of Cadent in such decommissioned apparatus and release Cadent from all liabilities in respect of such de-commissioned apparatus from the date of such surrender.

(6) Where an undertaker acquires land which is subject to any Cadent right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 23 do not apply, the undertaker must, unless Cadent agrees otherwise—

- (a) retain any notice of Cadent's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; and
- (b) where no such notice of Cadent's easement, right or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register, include with its application to register title to the undertaker's interest in such acquired land at the Land Registry a notice of Cadent's easement, right or other interest in relation to such acquired land.

Removal of apparatus

23.—(1) If, in the exercise of the powers conferred by this Order, including pursuant to any agreement reached in accordance with paragraph 22, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed and any right of Cadent to maintain that apparatus in that land must not be extinguished or interfered with until alternative apparatus has been constructed, is in operation, and the facilities and rights referred

to in sub-paragraph (2) have been provided, to the reasonable satisfaction of Cadent and in accordance with sub-paragraphs (2) to (5) inclusive.

(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 Cadent advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Cadent reasonably needs to move or remove any of its apparatus) the undertaker must afford to Cadent to its satisfaction (taking into account paragraph 24(1)) the necessary facilities and rights—

- (a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus);
- (b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus); and
- (c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus).

(3) If 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, Cadent 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 assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) 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 Cadent and the undertaker.

(5) Cadent must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to Cadent of such facilities and rights as are referred to in sub-paragraph (2) or (3), then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

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

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under sub-paragraph (1) 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 Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed, then the terms and conditions to which those facilities and rights are subject may be referred to arbitration in accordance with paragraph 31 of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of Cadent

25.—(1) Not less than 56 days (or such time period as may be agreed in writing between Cadent and the undertaker) before the commencement of any specified works the undertaker must submit

to Cadent a plan and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to Cadent under sub-paragraph (1) must include a method statement which describes—

- (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 specified works until Cadent has given written approval of the plan so submitted (and the ground monitoring scheme if required).

(4) Any approval of Cadent given under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5); and
- (b) must not be unreasonably withheld or delayed and Cadent must meaningfully engage with the undertaker within 28 days of the date of submission of the plan under sub-paragraph (1).

(5) In relation to any specified works to which sub-paragraph (1) applies, Cadent may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Specified works must only be executed in accordance with—

- (a) the plan submitted under sub-paragraph (1) (and ground monitoring scheme if required), as approved or as amended from time to time by agreement between the undertaker and Cadent; and
- (b) all conditions imposed under sub-paragraph (4)(a), and Cadent is entitled to watch and inspect the execution of those works.

(7) Where Cadent 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 Cadent's satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required prior to commencement.

(8) If Cadent, 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 (3) and (6) to (8) apply as if the removal of the apparatus had been required by the undertaker under paragraph 23(2) provided that such written notice must be given by Cadent to the undertaker within 42 days of submission of a plan pursuant to sub-paragraph (1).

(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 (unless otherwise agreed in writing by Cadent and the undertaker) 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) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development (including such an event attributable to its maintenance)—

- (a) the undertaker must implement an appropriate ground mitigation scheme; and
- (b) Cadent 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 26.

(11) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must comply with the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances.

(12) In this paragraph, “emergency works” means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

Expenses

26.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on demand, all charges, costs and expenses reasonably anticipated or reasonably incurred by Cadent 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 development including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by Cadent in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by Cadent as a consequence of Cadent—
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 23(3) if it elects to do so; or
 - (ii) exercising any compulsory purchase powers under this Order transferred to or benefitting Cadent;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (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 (including any protective works pursuant to article 20 (protective works to buildings), plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works if required;
- (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; and
- (g) any watching brief pursuant to paragraph 25(6).

(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,

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 31 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 Cadent by virtue of sub-paragraph (1) is to 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 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 Cadent 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 Cadent 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.

(6) Where the undertaker has paid to Cadent monies in respect of any reasonably anticipated charges, costs and expenses in accordance with sub-paragraph (1) and such charges, costs and expenses are subsequently not incurred by Cadent, Cadent must repay to the undertaker on demand the amount of such charges, costs and expenses.

Indemnity

27.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised development (including works carried out under article 20 (protective works to buildings)) 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 the undertaker) 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 development) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from Cadent, the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and
- (b) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty, compensation or costs properly incurred by, paid by or recovered from Cadent, by reason or in consequence of any such damage or interruption or Cadent becoming liable to any third party as aforesaid other than arising from any negligence, omission or default of Cadent.

(2) The fact that any act or thing may have been done by Cadent on behalf of the undertaker or in accordance with a plan approved by Cadent or in accordance with any requirement of Cadent or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless Cadent 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 or as otherwise agreed between the undertaker and Cadent.

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

- (a) any damage or interruption to the extent that it is attributable to the neglect, omission or default of Cadent, its officers, servants, contractors or agents; and
- (b) any part of the authorised development carried out by Cadent in the exercise of any functions conferred by this Order pursuant to a grant or transfer under article 8 (consent to transfer benefit of the Order).

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

(5) Cadent must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 27 applies. If requested to do so by the undertaker, Cadent must provide an explanation of how the claim has been minimised. The undertaker is only liable under this paragraph 27 for claims reasonably incurred by Cadent.

Enactments and agreements

28. Except where this Part of this Schedule provides otherwise, or by agreement in writing between Cadent 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 Cadent 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

29.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or Cadent requires the removal of apparatus under paragraph 23(2) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 25, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Cadent's undertaking and Cadent must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever Cadent'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 Cadent, it must not be unreasonably withheld or delayed.

Access

30. If in consequence of any agreement reached in accordance with paragraph 22(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

31. Any difference or dispute arising between the undertaker and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article 46 (arbitration).

Notices

32. Notwithstanding article 43 (service of notices) any plans submitted to Cadent by the undertaker pursuant to paragraph 25(1) must be sent via email to Cadent Gas Limited Plant Protection at plantprotection@cadentgas.com copied by e-mail to toby.feirn@cadentgas.com and sent to the General Counsel Department at Cadent's registered office or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 4

FOR THE PROTECTION OF EASTERN POWER NETWORKS

33. For the protection of EPN as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and EPN.

34. In this Part of this Schedule—

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

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

“EPN” means Eastern Power Networks plc (company number 02366906) whose registered office is at Newington House, 237 Southwark Bridge Road, London SE1 6NP;

“functions” includes powers and duties; and

“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;

35. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and EPN are regulated by the provisions of Part 3 of the 1991 Act.

36. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13 (temporary prohibition or restriction of use of streets and public rights of way), EPN is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

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

38.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that EPN’s apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of EPN to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of EPN in accordance with sub-paragraphs (2) to (7).

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

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, EPN must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed provided that this obligation shall not require EPN to exercise any power it may have to acquire any land or rights by compulsory purchase order.

(a) 1989 c. 29.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between EPN and the undertaker or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

(5) EPN must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 46 (arbitration), and after the grant to EPN of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

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

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

39.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to EPN facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and EPN or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to EPN 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 EPN as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

40.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 38(2), the undertaker must submit to EPN a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by EPN for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and EPN is entitled to watch and inspect the execution of those works.

(3) Any requirements made by EPN under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If EPN 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 38 to 39 apply as if the removal of the apparatus had been required by the undertaker under paragraph 38(2).

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

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to EPN notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

41.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to EPN the reasonable expenses incurred by EPN 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 38(2).

(2) There is to 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, 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,

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 46 (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 EPN by virtue of sub-paragraph (1) is to 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 is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 38(2); 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 EPN 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 EPN 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.

42.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 38(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of EPN, or there is any interruption in any service provided, or in the supply of any goods, by EPN, the undertaker must—

- (a) bear and pay the cost reasonably incurred by EPN in making good such damage or restoring the supply; and
- (b) indemnify EPN for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from EPN,

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 EPN, its officers, servants, contractors or agents.

(3) EPN 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, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

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

PART 5

FOR THE PROTECTION OF NATIONAL HIGHWAYS

Application etc.

44.—(1) The provisions of this Part of this Schedule apply for the protection of National Highways and have effect unless otherwise agreed in writing between the undertaker and National Highways.

(2) Except where expressly amended by the Order the operation of the powers and duties of National Highways or the Secretary of State under the 1980 Act, the 1984 Act, the 1991 Act, the Transport Act 2000, or Town and Country Planning (General Permitted Development) (England) Order 2015 which shall continue to apply in respect of the exercise of all National Highways' statutory functions.

Interpretation

45.—(1) Where the terms defined in article 2 (interpretation) of this Order are inconsistent with sub-paragraph (2) the latter prevail.

(2) In this Part of this Schedule—

“as built information” means one electronic copy of the following information—

- (a) as constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the undertaker; in compliance with Interim Advice Note 184 or any successor document;
- (b) list of suppliers and materials used, as well as any relevant test results and CCTV surveys (if required to comply with DMRB standards);
- (c) product data sheets and technical specifications for all materials used;
- (d) as constructed information for any utilities discovered or moved during the works;
- (e) method statements for the works carried out;
- (f) in relation to road lighting, signs, and traffic signals any information required by Series 1300 and 1400 of the Specification for Highway Works or any replacement or modification of it;
- (g) organisation and methods manuals for all products used;
- (h) as constructed programme;
- (i) test results and records as required by the detailed design information and during construction phase of the project;
- (j) a stage 3 road safety audit subject to any exceptions to the road safety audit standard as agreed by the undertaker and National Highways;
- (k) the health and safety file; and
- (l) such other information as is required by National Highways to be used to update all relevant databases and to ensure compliance with National Highway's Asset Data Management Manual as is in operation at the relevant time.

“the bond sum” means the sum equal to 200% of the cost of the carrying out the specified works (to include all costs plus any commuted sum) or such other sum agreed between the undertaker and National Highways;

“the cash surety” means the sum agreed between the undertaker and National Highways;

“commuted sum” means such sum calculated as provided for in paragraph 59 of this Part of this Schedule to be used to fund the future cost of maintaining the specified works;

“condition survey” means a survey of the condition of National Highways structures and assets within the Order limits that may be affected by the specified works;

“contractor” means any contractor or subcontractor appointed by the undertaker to carry out the specified works;

“defects period” means the period from the date of the provisional certificate to the date of the final certificate which shall be no less than 12 months from the date of the provisional certificate;

“detailed design information” means such of the following drawings specifications and calculations as are relevant to the development—

- (a) site clearance details;
- (b) boundary, environmental and mitigation fencing;
- (c) road restraints systems and supporting road restraint risk appraisal process assessment;
- (d) drainage and ducting as required by DMRB CD 535 Drainage asset data and risk management and DMRB CS551 Drainage surveys – standards for Highways
- (e) earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;
- (f) pavement, pavement foundations, kerbs, footways and paved areas;
- (g) traffic signs and road markings;
- (h) traffic signal equipment and associated signal phasing and timing detail;
- (i) road lighting (including columns and brackets);
- (j) regime of California Bearing Ratio testing;
- (k) electrical work for road lighting, traffic signs and signals;
- (l) motorway communications as required by DMRB;
- (m) highway structures and any required structural approval in principle;
- (n) landscaping;
- (o) proposed departures from DMRB standards;
- (p) walking, cycling and horse riding assessment and review report;
- (q) stage 1 and stage 2 road safety audits and exceptions agreed;
- (r) utilities diversions;
- (s) topographical survey;
- (t) maintenance and repair strategy in accordance with DMRB GD304 Designing health and safety into maintenance or any replacement or modification of it;
- (u) health and safety information including any asbestos survey required by GG105 or any successor document; and
- (v) other such information that may be required by National Highways to be used to inform the detailed design of the specified works;

“DBFO contract” means the contract between National Highways and the highway operations and maintenance contractor for the maintenance and operation of parts of the strategic road network which are within the Order Limits or any successor or replacement contract that may be current at the relevant time;

“DMRB” means the Design Manual for Roads and Bridges or any replacement or modification of it;

“final certificate” means the certificate relating to those aspects of the specified works that have resulted in any alteration to the strategic road network to be issued by National Highways pursuant to paragraph 57;

“the health and safety file” means the file or other permanent record containing the relevant health and safety information for the authorised development required by the Construction Design and Management Regulations 2015 (or such updated or revised regulations as may come into force from time to time);

“highway operations and maintenance contractor” means the contractor appointed by National Highways under the DBFO contract;

“nominated persons” means the undertaker’s representatives or the contractor’s representatives on site during the carrying out of the specified works as notified to National Highways from time to time;

“programme of works” means a document setting out the sequence and timetabling of the specified works;

“provisional certificate” means the certificate of provisional completion relating to those aspects of the specified works that have resulted in any alteration to the strategic road network to be issued by National Highways in accordance with paragraph 50 when it considers the specified works are substantially complete and may be opened for traffic;

“road safety audit” means an audit carried out in accordance with the road safety audit standard;

“road safety audit standard” means DMRB Standard HD GG119 or any replacement or modification of it;

“road space booking” means road space bookings in accordance with National Highways’ Asset Management Operational Requirements (AMOR) including Network Occupancy Management System (NOMS) used to manage road space bookings and network occupancy;

“Specification for Highways Works” means the specification for highways works forming part of the manual of contract documents for highway works published by National Highways and setting out the requirements and approvals procedures for work, goods or materials used in the construction, improvement or maintenance of the strategic road network;

“specified works” means so much of any work, including highway works and signalisation, authorised by this Order including any maintenance of that work, as is undertaken on, in, under or over the strategic road network for which National Highways is the highway authority;

“strategic road network” means any part of the road network including trunk roads, special roads or streets for which National Highways is the highway authority including drainage infrastructure, street furniture, verges and vegetation and all other land, apparatus and rights located in, on, over or under the highway;

“utilities” means any pipes wires cables or equipment belonging to any person or body having power or consent to undertake street works under the New Roads and Street Works Act 1991; and

“winter maintenance” means maintenance of the road surface to deal with snow and ice.

General

46. In respect of any part of the strategic road network that is managed under a DBFO contract both National Highways and the highway operations and maintenance contractor shall have the benefit of this Part of Schedule 11 but for the purposes of any approvals required under this Part of Schedule 11 the undertaker shall liaise directly with National Highways.

47. Notwithstanding the provisions of this Order, no works in carrying out, maintaining or diverting the authorised development may be carried out under the strategic road network at a distance within 4 metres of the lowest point of the ground.

48. References to any standards, manuals, contracts, regulations and directives including to specific standards forming part of the DMRB are, for the purposes of this Part of this Schedule, to be construed as a reference to the same as amended, substituted or replaced, and with such modifications as are required in those circumstances.

Works outside the Order limits

49. If the undertaker proposes to carry out works to the strategic road network that are outside of the Order Limits in connection with the authorised development, the undertaker must enter into an agreement with National Highways in respect of the carrying out of those works prior to the commencement of those works.

Prior approvals and security

50.—(1) The specified works must not commence until—

- (a) a stage 1 and stage 2 road safety audit has been carried out and all recommendations raised by them or any exceptions are approved by National Highways;
- (b) the programme of works has been approved by National Highways;
- (c) the detailed design of the specified works comprising of the following details, insofar as considered relevant by National Highways, has been submitted to and approved by National Highways—
 - (i) the detailed design information, incorporating all recommendations and any exceptions approved by National Highways under paragraph (a);
 - (ii) details of the proposed road space bookings;
 - (iii) the identity and suitability of the contractor and nominated persons;
 - (iv) a process for stakeholder liaison, with key stakeholders to be identified and agreed between National Highways and the undertaker;
 - (v) information demonstrating that the walking, cycling and horse riding assessment and review process undertaken by the undertaker in relation to the specified works has been adhered to in accordance with DMRB GG142 – Designing for walking, cycling and horse riding; and
- (d) a scheme of traffic management has been submitted by the undertaker and approved by National Highways such scheme to be capable of amendment by agreement between the undertaker and National Highways from time to time;
- (e) stakeholder liaison has taken place in accordance with the process for such liaison agreed between the undertaker and National Highways under paragraph (c)(v) above;
- (f) National Highways has approved the audit brief and CVs for all road safety audits and exceptions to items raised in accordance with the road safety audit standard;
- (g) the undertaker has agreed the estimate of the commuted sum with National Highways;
- (h) the scope of all maintenance operations (routine inspections, incident management, reactive and third party damage) to be carried out by the undertaker during the construction of the specified works (which must include winter maintenance) has been agreed in writing by National Highways;
- (i) the undertaker has procured to National Highways collateral warranties in a form approved by National Highways from the contractor and designer of the specified works in favour of National Highways to include covenants requiring the contractor and designer to exercise all reasonable skill care and diligence in designing and constructing the specified works, including in the selection of materials, goods, equipment and plant; and
- (j) a condition survey and regime of monitoring of any National Highways assets or structures that National Highways considers will be affected by the specified works, has been agreed in writing by National Highways.

(2) The undertaker must not exercise—

- (a) article 4 (maintenance of authorised development);
- (b) article 10 (street works);
- (c) article 13 (temporary prohibition or restriction of use of streets and public rights of way);
- (d) article 17 (traffic regulation measures);
- (e) article 18 (discharge of water);
- (f) article 20 (protective works to buildings);
- (g) article 19 (authority to survey and investigate the land);
- (h) article 23 (compulsory acquisition of land);
- (i) article 25 (compulsory acquisition of rights and imposition of restrictive covenants);
- (j) article 32 (temporary use of land for the construction of the authorised development);
- (k) article 33 (temporary use of land for maintaining the authorised development); or
- (l) article 21 (felling or lopping trees) of this Order,

over any part of the strategic road network without the consent of National Highways, and National Highways may in connection with any such exercise require the undertaker to provide details of any proposed road space bookings and/or submit a scheme of traffic management for National Highways' approval.

(3) National Highways must prior to the commencement of the specified works or the exercise of any power referenced in sub-paragraph (2) inform the undertaker of the identity of the person who will act as a point of contact on behalf of National Highways for consideration of the information required under sub-paragraph (1) or (2).

(4) Any approval of National Highways required under this paragraph—

- (a) must not be unreasonably withheld;
- (b) must be given in writing;
- (c) shall be deemed to have been refused if neither given nor refused within 2 months of the receipt of the information for approval or, where further particulars are requested by National Highways within 2 months of receipt of the information to which the request for further particulars relates; and
- (d) may be subject to any conditions as National Highways considers necessary.

(5) Any change to the identity of the contractor and/or designer of the specified works will be notified to National Highways immediately and details of their suitability to deliver the specified works will be provided on request along with collateral warranties in a form agreed by National Highways.

(6) Any change to the detailed design of the specified works must be approved by National Highways in accordance with sub-paragraph (1) of this Part.

Construction of the specified works

51.—(1) The undertaker must give National Highways 28 days' notice in writing of the date on which the specified works will start unless otherwise agreed by National Highways.

(2) The undertaker must comply with National Highways' road space booking procedures prior to and during the carrying out the specified works and no specified works for which a road space booking is required shall commence without a road space booking having first been secured from National Highways.

(3) The specified works must be carried out by the undertaker to the satisfaction of National Highways in accordance with—

- (a) the relevant detailed design information and programme of works approved pursuant to paragraph 50(1) above or as subsequently varied by agreement between the undertaker and National Highways;

- (b) the DMRB, the Manual of Contract Documents for Highway Works, including the Specification for Highway Works, together with all other relevant standards as required by National Highways to include, inter alia; all relevant interim advice notes, the Traffic Signs Manual and the Traffic Signs Regulations and General Directions 2016 save to the extent that exceptions from those standards apply which have been approved by National Highways; and
- (c) all aspects of the Construction (Design and Management) Regulations 2015 or any statutory amendment or variation of the same and in particular the undertaker, as client, must ensure that all client duties (as defined in the said regulations) are undertaken to the satisfaction of National Highways.

(4) The undertaker must ensure that (where possible) without entering the highway the highway is kept free from mud, soil and litter as a result of carrying out a Specified Work.

(5) The undertaker must permit and must require the contractor to permit at all reasonable times persons authorised by National Highways (whose identity must have been previously notified to the undertaker by National Highways) to gain access to the specified works for the purposes of inspection and supervision of the specified works.

(6) If any part of the specified works is constructed—

- (a) other than in accordance with the requirements of this Part of this Schedule; or
- (b) in a way that causes damage to the highway, highway structure or asset or any other land of National Highways,

National Highways may by notice in writing require the undertaker, at the undertaker's own expense, to comply promptly with the requirements of this Part of this Schedule or remedy any damage notified to the undertaker under this Part of this Schedule, to the satisfaction of National Highways.

(7) If during the carrying out of the authorised development the undertaker or its appointed contractors or agents causes damage to the strategic road network then National Highways may by notice in writing require the undertaker, at its own expense, to remedy the damage.

(8) If within 28 days on which a notice under sub-paragraph (6) or sub-paragraph (7) is served on the undertaker (or in the event of there being, in the opinion of National Highways, a danger to road users, within such lesser period as National Highways may stipulate), the undertaker has failed to take the steps required by that notice, National Highways may carry out the steps required of the undertaker and may recover any expenditure incurred by National Highways in so doing, such sum to be payable within 30 days of demand.

(9) Nothing in this Part of this Schedule prevents National Highways from carrying out any work or taking any such action as it reasonably believes to be necessary as a result of or in connection with the carrying out or maintenance of the authorised development without prior notice to the undertaker in the event of an emergency or to prevent the occurrence of danger to the public and National Highways may recover any expenditure it reasonably incurs in so doing.

(10) In constructing the specified works, the undertaker must at its own expense divert or protect all utilities and all agreed alterations and reinstatement of highway over existing utilities must be constructed to the satisfaction of National Highways.

(11) During the construction of the specified works the undertaker must carry out all maintenance (including winter maintenance) in accordance with the scope of maintenance operations agreed by National Highways pursuant to paragraph 50(1)(h) and the undertaker must carry out such maintenance at its own cost.

(12) The undertaker must notify National Highways if it fails to complete the specified works in accordance with the agreed programme pursuant to paragraph 50(1)(b) of this Part or suspends the carrying out of any specified work beyond a reasonable period of time and National Highways reserves the right to withdraw any road space booking granted to the undertaker to ensure compliance with its network occupancy requirements.

Payments

52.—(1) The undertaker must pay to National Highways a sum equal to the whole of any costs and expenses which National Highways incurs (including costs and expenses for using internal or external staff and costs relating to any work which becomes abortive) in relation to the specified works and in relation to any approvals sought under this Order, or otherwise incurred under this Part, including—

- (a) the checking and approval of the information required under paragraph 50(1);
- (b) the supervision of the specified works;
- (c) the checking and approval of the information required to determine approvals under this Order;
- (d) all costs in relation to the transfer of any land required for the specified works; and
- (e) all legal and administrative costs and disbursements incurred by National Highways in connection with the Order and paragraphs (a)-(d); and
- (f) any value added tax which is payable by National Highways in respect of such costs and expenses and for which it cannot obtain reinstatement from HM Revenue and Customs,

together comprising “the NH costs”.

(2) The undertaker must pay to National Highways upon demand and prior to such costs being incurred the total costs that National Highways believe will be properly and necessarily incurred by National Highways in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the authorised development.

(3) National Highways must provide the undertaker with a schedule showing its estimate of the NH costs prior to the commencement of the specified works and the undertaker must pay to National Highways the estimate of the NH costs prior to commencing the specified works and in any event prior to National Highways incurring any cost.

(4) If at any time after the payment referred to in sub-paragraph (3) has become payable, National Highways reasonably believes that the NH costs will exceed the estimated NH costs it may give notice to the undertaker of the amount that it believes the NH costs will exceed the estimate of the NH costs (the excess) and the undertaker must pay to National Highways within 28 days of the date of the notice a sum equal to the excess.

(5) National Highways must give the undertaker a final account of the NH costs referred to in sub-paragraph (1) above within 91 days of the issue of the provisional certificate issued pursuant to paragraph 53(4).

(6) Within 28 days of the issue of the final account—

- (a) if the final account shows a further sum as due to National Highways the undertaker must pay to National Highways the sum shown due to it;
- (b) if the account shows that the payment or payments previously made by the undertaker have exceeded the costs incurred by National Highways, National Highways must refund the difference to the undertaker.

(7) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 3% above the Bank of England base lending rate from time to time being in force for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

Provisional Certificate

53.—(1) Following any closure or partial closure of any of the strategic road network for the purposes of carrying out the specified works, National Highways will carry out a site inspection to satisfy itself that the strategic road network is, in its opinion, safe for traffic and the undertaker must comply with any requirements of National Highways prior to reopening the strategic road network.

(2) As soon as the undertaker considers that the provisional certificate may be properly issued it must apply to National Highways for the provisional certificate.

(3) Following an application for a provisional certificate, National Highways must as soon as reasonably practicable—

- (a) inspect the specified works; and
- (b) provide the undertaker with a written list of works that are required for the provisional certificate to be issued or confirmation that no further works are required for this purpose.

(4) When—

- (a) a stage 3 road safety audit for the specified works has been carried out and all recommendations raised including remedial works have (subject to any exceptions agreed) been approved by National Highways;
- (b) the specified works incorporating the approved remedial works under paragraph (a) and any further works notified to the undertaker pursuant to sub-paragraph (3)(b) have been completed to the satisfaction of National Highways;
 - (i) the as built information has been provided to National Highways; and
 - (ii) the undertaker has paid the commuted sum to National Highways,

National Highways must issue the provisional certificate.

(5) On the issue of the provisional certificate the bond sum shall be reduced to 20% of the total bond sum save insofar as any claim or claims have been made against the bond before that date in which case National Highways will retain a sufficient sum to ensure it does not have to meet any costs for or arising from the specified works.

(6) The undertaker must submit a stage 4 road safety audits as required by and in line with the timescales stipulated in the road safety audit standard. The undertaker must comply with the findings of the stage 4 road safety audit and must pay all costs of and incidental to such and provide updated as-built information to National Highways.

Opening

54. The undertaker must notify National Highways not less than 56 days in advance of the intended date of opening to the public of the strategic road network and the undertaker must notify National Highways of the actual date the strategic road network will be opened to the public within 14 days of that date.

Final condition survey

55.—(1) The undertaker must, as soon as reasonably practicable after making its application for a provisional certificate pursuant to paragraph 53(2), arrange for the highways structures and assets that were the subject of the condition survey to be re-surveyed and must submit the re-survey to National Highways for its approval. The re-survey will include a renewed geotechnical assessment required by DMRB CD622 if the specified works include any works beneath the strategic road network.

(2) If the re-surveys carried out pursuant to sub-paragraph (1) indicates that any damage has been caused to a structure or asset, the undertaker must submit a scheme for remedial works in writing to National Highways for its approval in writing and the undertaker must carry out the remedial works at its own cost and in accordance with the scheme submitted.

(3) If the undertaker fails to carry out the remedial work in accordance with the approved scheme, National Highways may carry out the steps required of the undertaker and may recover any expenditure it reasonably incurs in so doing.

(4) National Highways may, at its discretion, at the same time as giving its approval to the re-surveys pursuant to sub-paragraph (1) give notice in writing that National Highways will remedy any damage identified in the re-surveys and National Highways may recover any expenditure it reasonably incurs in so doing.

(5) The undertaker must make available to National Highways upon request copies of any survey or inspection reports produced pursuant to any inspection or survey of any specified work following its completion that the undertaker may from time to time carry out.

Defects Period

56.—(1) The undertaker must at its own expense remedy any defects in the strategic road network as are reasonably required by National Highways to be remedied during the defects period. All identified defects must be remedied in accordance with the following timescales—

- (a) in respect of matters of urgency, within 24 hours of receiving notification for the same (urgency to be determined at the absolute discretion of National Highways);
- (b) in respect of matters which National Highways considers to be serious defects or faults, within 14 days of receiving notification of the same; and
- (c) in respect of all other defects notified to the undertaker, within 4 weeks of receiving notification of the same.

(2) Following the expiry of the defects period National Highways has responsibility for routine maintenance of the strategic road network save for any soft landscaping works which must be established and which must thereafter be maintained for a period of 3 years by and at the expense of the undertaker.

Final Certificate

57.—(1) The undertaker must apply to National Highways for the final certificate no sooner than 12 months from the date of the provisional certificate.

(2) Following receipt of the application for the final certificate, National Highways must as soon as reasonably practicable—

- (a) inspect the strategic road network; and
- (b) provide the undertaker with a written list of any further works required to remedy or make good any defect or damage in the strategic road network or confirmation that no such works are required for this purpose.

(3) The undertaker must carry out such works notified to it pursuant to sub-paragraph (2).

(4) When National Highways is satisfied that—

- (a) any defects or damage arising from defects during the defects period and any defects notified to the undertaker pursuant to sub-paragraph (2) and any remedial works required as a result of the stage 4 road safety audit have been made good to the satisfaction of National Highways; and
- (b) the NH costs have been paid to National Highways in full;

National Highways must issue the final certificate after which the bond shall be released in full.

(5) The undertaker must pay to National Highways within 28 days of demand the costs reasonably incurred by National Highways in identifying the defects and supervising and inspecting the undertaker's work to remedy the defects that it is required to remedy pursuant to these provisions.

Security

58. The specified works must not commence until—

- (a) the undertaker procures that the specified works are secured by a bond from a bondsman first approved by National Highways in the agreed form between the undertaker and National Highways to indemnify National Highways against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the undertaker in respect of the exercise of the powers under this Order and the specified works under the provisions of this Part of this Schedule provided that the maximum liability of the bond must not exceed the bond sum; and

- (b) the undertaker has provided the cash surety which may be utilised by National Highways in the event of the undertaker failing to meet its obligations to make payments under paragraph 52 or to carry out works the need for which arises from a breach of one or more of the obligations of the undertaker under the provisions of this Part of this Schedule.

Commutated sums

59.—(1) National Highways must provide to the undertaker an estimate of the commuted sum, calculated in accordance with FS Guidance S278 Commuted Lump Sum Calculation Method dated 18 January 2010 or any successor guidance, prior to the commencement of the specified works.

(2) The undertaker must pay to National Highways the commuted sum prior to the issue of the provisional certificate.

Insurance

60. Prior to the commencement of the specified works the undertaker must effect public liability insurance with an insurer in the minimum sum of £10,000,000.00 (ten million pounds) in respect of any one claim against any legal liability for damage loss or injury to any property or any person as a direct result of the execution of specified works or use of the strategic road network by the undertaker.

Indemnity

61. The undertaker fully indemnifies National Highways from and against all costs, claims, expenses, damages, losses and liabilities suffered by National Highways arising from the construction, maintenance or use of the specified works or exercise of or failure to exercise any power under this Order within 14 days of demand save for any loss arising out of or in consequence of any negligent act or default of National Highways.

Maintenance of the specified works

62.—(1) The undertaker must, prior to the commencement of any works of maintenance to the specified works, give National Highways 28 days' notice in writing of the date on which those works will start unless otherwise agreed by National Highways, acting reasonably.

(2) If, for the purposes of maintaining the specified works, the undertaker needs to occupy any road space, the undertaker must comply with National Highways' road space booking requirements and no maintenance of the specified works for which a road space booking is required shall commence without a road space booking having first been secured.

(3) The undertaker must comply with any requirements that National Highways may notify to the undertaker, such requirements to be notified to the undertaker not less than 7 days' in advance of the planned commencement date of the maintenance works.

(4) The provisions of paragraph 54 shall apply to the opening of any part of the strategic road network following occupation of any road space under this paragraph.

Land

63.—(1) Following the issue of the final certificate pursuant to paragraph 57(4) National Highways may serve notice on the undertaker that it wishes to take a freehold transfer of land within the extent of strategic road network boundary which is not in the ownership of National Highways but has been acquired by the undertaker for the purposes of carrying out the specified works.

(2) If the undertaker receives notice under sub-paragraph (1) then the undertaker must effect a freehold transfer of the land which is the subject of the notice and complete such transfer as soon as reasonably practicable at no cost to National Highways.

(3) The undertaker must not under the powers of this Order—

- (a) acquire or use land forming part of;

- (b) acquire new or existing rights over; or
- (c) seek to impose or extinguish any restrictive covenants over;

any of the strategic road network, or extinguish any existing rights of National Highways in respect of any third party property, except with the consent of National Highways by written request to legalserviceteam@nationalhighways.co.uk

(4) Where any land or interest is proposed to be acquired for the benefit of National Highways, the undertaker must, unless otherwise agreed by National Highways, exercise article 23 (compulsory acquisition of land) and article 25 (compulsory acquisition of rights and imposition of restrictive covenants) as applied by article 29 (application of the 1981 Act) of this Order to directly vest in National Highways any such land or interest.

Expert Determination

64.—(1) Article 46 (arbitration) of the Order does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) On notification by either party of a dispute, the parties must jointly instruct an expert within 14 days of notification of the dispute.

(4) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date that an expert is appointed.

(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 7 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 7 days of receipt of the submissions under paragraph (b); and
- (d) give reasons for the decision.

(6) 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 46 (arbitration).

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

PART 6

FOR THE PROTECTION OF INTERNAL DRAINAGE BOARD

65. The provisions of this Part have effect for the protection of the Board unless otherwise agreed in writing between the undertaker and the Board.

66. In this Part—

“the Board” means Hundred of Wisbech Internal Drainage Board or King’s Lynn Internal Drainage Board (as applicable);

“construction” includes execution, placing, altering, replacing, relaying and removal; and “construct” and “constructed” must be construed accordingly;

“drainage work” means any ordinary watercourse and includes any land that provides or is expected to provide flood storage capacity for any ordinary watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence;

“evidence” includes hydraulic modelling, infiltration test results and geotechnical evaluations;

“Internal Drainage District” has the meaning given in the Land Drainage Act 1991;

“ordinary watercourse” has the meaning given in section 72 (Interpretation) of the Land Drainage Act 1991;

“plans” includes sections, drawings, specifications and method statements;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 9 metres of a drainage work within the Board’s Internal Drainage District or is otherwise likely to—

- (a) affect any drainage work within the Board’s Internal Drainage District
- (b) affect the total volume or volumetric rate of flow of water in or flowing to or from any drainage work within the Board’s Internal Drainage District;
- (c) affect the flow of water in any drainage work within the Board’s Internal Drainage District;
or
- (d) affect the conservation, distribution or use of water resources.

67.—(1) Before beginning to construct any specified work, the undertaker must submit to the Board plans of the specified work, evidence to support said plans and any such further particulars available to it as the Board may within 28 days of the submission of the plans (or such other time period as may be agreed between the Board and the undertaker) reasonably require (or submission of further particulars if required by the Board).

(2) Not Used.

(3) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Board or determined under paragraph 76.

(4) Any approval of the Board required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans for approval (or the submission of further particulars if applicable) or, in the case of a refusal, if it is not accompanied by a statement of the grounds of refusal; and
- (c) may be given subject to such reasonable requirements and conditions as the Board may consider appropriate.

(5) The Board must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (4)(b).

68. Without limiting paragraph 67, the requirements which the Board may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified work (including the provision of strike plates, flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

69.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Board under paragraph 68, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part; and
- (b) to the reasonable satisfaction of the Board,

and an officer of the Board is entitled to give such notice as may be reasonably required in the circumstances to watch and inspect the construction of such works.

(2) The undertaker must give to the Board—

- (a) not less than 14 days' notice in writing of its intention to commence construction of any specified work; and
- (b) notice in writing of its completion not later than 7 days after the date on which it is brought into use.

(3) If the Board reasonably requires, the undertaker must construct all or part of the protective works so that they are in place before the construction of the specified work.

(4) If any part of a specified work or any protective work required by the Board is constructed otherwise than in accordance with the requirements of this Part, the Board may by notice in writing require the undertaker at the undertaker's expense to comply with the requirements of this Part or (if the undertaker so elects and the Board in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Board reasonably requires.

(5) Subject to sub-paragraph (8), to the extent that a culvert is within a watercourse maintained by the Board and the Board intends to replace such a culvert, or in the event that the Board requires or gives its consent to a third party to replace a culvert, that is crossed by Work No. 7 or 8, and the replacement of the culvert will reasonably require the relocation of Work No. 7 or 8 either above or below the new culvert, the Board must provide the undertaker with 28 days written notice confirming its intention to replace the culvert or that a third party intends to replace the culvert and—

- (a) the undertaker must, within 28 days of receiving the notice (or such other time period as may be agreed between the Board and the undertaker), advise the Board of the timescale it requires to relocate Work No. 7 or 8 (such timescale not to exceed 12 months unless otherwise agreed with the Board) and the specifications for the relocated Work No. 7 or 8; and
- (b) the undertaker must take all reasonable steps to relocate Work No. 7 or 8 at its own cost including the installation of strike plates if Work No. 7 or 8 is relocated below the new culvert as soon as reasonably practicable and within the timescale advised to the Board.

(6) Subject to sub-paragraph (7), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the Board may execute the works specified in the notice, and any expenditure reasonably incurred by it in so doing is recoverable from the undertaker.

(7) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Board must not except in an emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally resolved by agreement or determined under paragraph 76.

(8) If the undertaker does not comply with the requirements set out in sub-paragraph (5)(a) within 28 days or the timescale specified under sub-paragraph (5)(b), as applicable, the Board must not except in an emergency commence any works to replace the culvert within 6 metres of Work No. 7 or 8 before the matter has been determined under paragraph 76.

70. If by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or the drainage work is otherwise damaged, the impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Board and, if the undertaker fails to do so, the Board may make good the impairment or damage and recover from the undertaker the expense reasonably incurred by it in doing so.

71.—(1) The undertaker must compensate the Board in respect of all costs, charges and expenses that the Board may reasonably incur, have to pay or may sustain—

- (a) in the examination or approval of plans and evidence under this Part;
- (b) in inspecting the proposed site for and construction of any specified work or any protective works required by the Board under this Part; and
- (c) in carrying out of any surveys or tests by the Board that are reasonably required in connection with the construction of the specified work.

(2) Subject to sub-paragraphs (3) and (4), where the Board notifies the undertaker that it intends to replace a culvert that is within a watercourse maintained by the Board, or in the event that the Board requires or gives its consent to a third party to replace a culvert, that is crossed by Work No. 7 or 8, and the replacement of the culvert will not require the relocation of Work No. 7 or 8 under paragraph 69(5), the undertaker must—

- (a) compensate the Board in respect of all additional costs, charges and expenses reasonably incurred by the Board relating to the construction or maintenance of the new culvert that are directly caused by the presence of Work No. 7 or 8; or
- (b) compensate any third party required by the Board, or to whom the Board has given its consent, to replace a culvert in respect of all additional costs, charges and expenses reasonably incurred relating to the construction of the new culvert that are directly caused by the presence of Work No. 7 or 8 up to a maximum of 10% of the total costs of replacing the culvert or £250,000.00 (increased in accordance with the most recent published figure for the Construction Output Price Index or during any period when no such index exists the index which replaces it or is the nearest equivalent to it) whichever is the lower amount.

(3) The undertaker is not liable for any costs, charges and expenses under sub-paragraph (2) to the extent that they are attributable to the Board or a third party failing to carry out and execute works properly with due care and attention and in a skilful and workmanlike manner or are incurred as a result of damage to a culvert caused by a third party and could be recovered from such a third party.

(4) The Board or a third party must provide the undertaker with an estimate of any reasonable costs, charges and expenses to be paid by the undertaker under sub-paragraph (2) prior to such costs, charges and expenses being incurred.

72.—(1) Without limiting the other provisions of this Part, the undertaker must compensate the Board in respect of all claims, demands, proceedings, costs, damages, expenses or loss that may be made or taken against, reasonably recovered from or incurred by the Board by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any raising or lowering of the water table in land adjoining the authorised development or any sewers, drains and watercourses; or
- (c) any flooding or increased flooding of any such land

which is caused by, or results from, the construction of the specified work or any act or omission of the undertaker, its contractors, agents or employees whilst engaged upon the specified work.

(2) The Board must give to the undertaker reasonable notice of any such claim or demand, and no settlement or compromise may be made without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

(3) The Board must use its reasonable endeavours to mitigate in whole or in part and to minimise any claims, demands, proceedings, costs, damages, expenses or loss to which this paragraph applies.

73. The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the Board, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under this Part.

74. If in consequence of the powers granted under this Order the access to any drainage work is materially obstructed, the undertaker must provide such alternative rights and means of access to

such drainage work as will enable the Board to maintain or use the drainage work no less effectively than was possible before such obstruction.

75.—(1) The Board and the undertaker may enter into agreements with respect to the maintenance of any drainage work located within the boundary of Work No. 2B as shown on the works plans.

(2) Such an agreement may, without prejudice to the generality of sub-paragraph (1), contain such terms as to the nature and frequency of any maintenance works, payments and otherwise as the parties consider appropriate.

76. Any dispute between the undertaker and the Board under this Part, unless otherwise agreed, must be determined by arbitration under article 46 (arbitration), but must be determined by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Energy Security and Net Zero acting jointly on a reference to them by the undertaker or the Board, after notice in writing by one to the other.

PART 7

FOR THE PROTECTION OF ANGLIAN WATER

77. For the protection of Anglian Water, the following provisions shall, unless otherwise agreed in writing between the undertaker and Anglian Water, have effect.

78. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in no less efficient a manner than previously;

“Anglian Water” means Anglian Water Services Limited (company number 02366656) whose registered office is at Lancaster House, Lancaster Way, Ermine Business Park, Huntington, Cambridgeshire PE29 6XU;

“apparatus” means:

- (a) works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage;
- (b) any drain or works vested in Anglian Water under the Water Industry Act 1991;
- (c) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of the Water Industry Act 1991 or an agreement to adopt made under section 104 of that Act;
- (d) any drainage system constructed for the purpose of reducing the volume of surface water entering any public sewer belonging to Anglian water; and
- (e) includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any sewer, drain or works (within the meaning of section 219 of that Act) and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus,

and in this definition, expressions and words used in this definition and defined in section 219 (general interpretation) of the Water Industry Act 1991 have the same meaning as in that Act;

“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; and

“plan” 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.

On street apparatus

79. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Anglian Water are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus in stopped up streets

80.—(1) Where any street is stopped up under article 11 (power to alter layout, etc., of streets), where Anglian Water has apparatus in the street or accessed by virtue of the street, it has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to Anglian Water legal easements reasonably satisfactory to Anglian Water in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of Anglian Water to require the removal of that apparatus under paragraph 83 or the power of the undertaker to carry out works under paragraph 85.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 13 (temporary prohibition or restriction of use of streets and public rights of way), Anglian Water is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

81. The undertaker, in the case of the powers conferred by article 20 (protective works to buildings), must not exercise those powers so as to obstruct or render less convenient the access to any apparatus without the written consent of Anglian Water (such consent not to be unreasonably withheld or delayed).

Acquisition of land

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

Removal of apparatus

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

- (a) alternative apparatus has been constructed and is in operation to the reasonable satisfaction of Anglian Water in accordance with sub-paragraphs (2) to (8); and
- (b) facilities and rights have been secured for that alternative apparatus in accordance with paragraph 84.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Anglian Water 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 an undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Anglian Water the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed Anglian Water must, on receipt of a written notice to that effect from

the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Anglian Water and the undertaker or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

(5) Anglian Water must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 46, and after the grant to Anglian Water of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if 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 construction or removal of apparatus in any land of the undertaker or to the extent that Anglian Water fails to proceed with that work in accordance with sub-paragraph (5) 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.

(7) If Anglian Water fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable, any proposed details relating to required removal works under sub-paragraph (2) within 28 days of receiving a notice of the required works from the undertaker, then such details are deemed to have been approved. For the avoidance of doubt, any such “deemed consent” does not extend to the actual undertaking of the removal works, which shall remain the sole responsibility of Anglian Water or its contractors.

(8) Whenever alternative apparatus is to be or is being substituted for existing apparatus, the undertaker shall, before taking or requiring any further step in such substitution works, use best endeavours to comply with Anglian Water’s reasonable requests for a reasonable period of time to enable Anglian Water to—

- (a) make network contingency arrangements; or
- (b) bring such matters as it may consider reasonably necessary to the attention of end users of the utility in question.

Facilities and rights for alternative apparatus

84.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and Anglian Water or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Anglian Water 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 Anglian Water as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

(3) Such facilities and rights as are set out in this paragraph are deemed to include any statutory permits granted to the undertaker in respect of the apparatus in question, whether under the Environmental Permitting Regulations 2010 or other legislation.

Retained apparatus

85.—(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 83(2), the undertaker must submit to Anglian Water a plan of the works to be executed.

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

(3) Any requirements made by Anglian Water under sub-paragraph (2) 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.

(4) If Anglian Water 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 83 to 84 and 86 to 88 apply as if the removal of the apparatus had been required by the undertaker under paragraph 83(2).

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

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

(7) For the purposes of sub-paragraph (1) and without prejudice to the generality of the principles set out in that sub-paragraph, works are deemed to be in land near Anglian Water's apparatus (where it is a pipe) if those works fall within the following distances measured from the medial line of such apparatus—

- (a) 4 metres where the diameter of the pipe is less than 250 millimetres;
- (b) 5 metres where the diameter of the pipe is between 250 and 400 millimetres, and
- (c) a distance to be agreed on a case by case basis and before the submission of the plan under sub-paragraph (1) is submitted where the diameter of the pipe exceeds 400 millimetres.

Expenses and costs

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

(2) There must 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 article 46 (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 Anglian Water by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus 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 is to be treated as if it also had been agreed or had been so determined.

87.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 81 or 83(2), or by reason of any subsidence resulting from such development or 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 Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must—

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

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

(2) The fact that any act or thing may have been done by Anglian Water on behalf of the undertaker or in accordance with a plan approved by Anglian Water or in accordance with any requirement of 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 unlawful or unreasonable act, neglect or default of Anglian Water, its officers, servants, contractors or agents.

(4) 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 (such consent 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.

Cooperation

88. Where in consequence of the proposed construction of any of the authorised development, the undertaker or Anglian Water requires the removal of apparatus under paragraph 83(2) or Anglian Water makes requirements for the protection or alteration of apparatus under paragraph 85, the undertaker must use 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 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.

89. 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.

90. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and 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.

91. 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.

PART 8 FOR THE PROTECTION OF RAILWAY INTERESTS

92. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 106 of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

93. In this Part of this Schedule—

“asset protection agreement” means an agreement to regulate the construction and maintenance of the specified work in a form prescribed from time to time by Network Rail;

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of their powers under section 8 (licences) of the Railways Act 1993;

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at Waterloo General Office, London, SE1 8SW) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited and any successor to Network Rail Infrastructure Limited’s railway undertaking;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail or a tenant or licensee of Network Rail for the purposes of such railway or works, apparatus or equipment;

“regulatory consents” means any consent or approval required under—

- (a) the Railways Act 1993;
- (b) the network licence; and/or
- (c) any other relevant statutory or regulatory provisions;

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised development;

“specified work” means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 4 (maintenance of authorised development) in respect of such works.

94.—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

95.—(1) The undertaker must not exercise the powers conferred by—

- (a) article 3 (development consent granted by the Order);
- (b) article 4 (maintenance of authorised development);
- (c) article 18 (discharge of water);
- (d) article 19 (authority to survey and investigate the land);
- (e) article 21 (felling or lopping of trees);
- (f) article 23 (compulsory acquisition of land);
- (g) article 25 (compulsory acquisition of rights and imposition of restrictive covenants);
- (h) article 26 (acquisition of subsoil only);
- (i) article 27 (private rights);
- (j) article 28 (power to override easements and other rights);
- (k) article 32 (temporary use of land for the construction of the authorised development);
- (l) article 33 (temporary use of land for maintaining the authorised development);
- (m) article 34 (statutory undertakers);
- (n) the powers conferred by section 11(3) (power of entry) of the 1965 Act;
- (o) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;
- (p) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;
- (q) any powers under in respect of the temporary possession of land under the Neighbourhood Planning Act 2017;

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 34 (statutory undertakers), article 28 (power to override easements and other rights) or

article 27 (private rights), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property, except with the consent of Network Rail.

(5) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

(6) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions but it shall never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion).

(7) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.

96.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated their disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to their reasonable satisfaction.

97.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 96(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 96;

- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

98. The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as they may reasonably require with regard to a specified work or the method of constructing it.

99. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

100.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction or completion of a specified work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 96(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 101(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

101. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 96(3) or in constructing any protective works under the provisions of paragraph 96(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

102.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 96(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)—

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 96(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified pursuant to paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 96(1) has effect subject to the sub-paragraph.

(6) Prior to the commencement of operation of the authorised development the undertaker shall test the use of the authorised development in a manner that shall first have been agreed with Network

Rail and if, notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI;
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI; and
- (d) the undertaker shall not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6)—

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 97.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 106(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph 97 applies.

(10) For the purpose of paragraph 101(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 46 (arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Engineering and Technology.

103. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

104. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

105. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

106.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (subject to article 45 (no double recovery)) which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction, maintenance or operation of a specified work or the failure thereof; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;
- (c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development;
- (d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;
- (e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development;

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must—

- (a) give the undertaker reasonable written notice of any such claims or demands;
- (b) not make any settlement or compromise of such a claim or demand without the prior consent of the undertaker; and
- (c) take such steps as are within its control and are reasonable in the circumstances to mitigate any liabilities relating to such claims or demands.

(3) The sums payable by the undertaker under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

107. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 106) and with such information

as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

108. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

109. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

110. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

111. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 8 (consent to transfer benefit of the Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

112. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 42 (certification of plans etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.

113. In relation to any dispute arising under this part of this Part of this Schedule (except for those disputes referred to in paragraph 102) the provisions of article 46 (arbitration) shall not apply and any such dispute, unless otherwise provided for, must be referred to and settled by a single arbitrator in accordance with the rules at Schedule 15 to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) to the President of the Institution of Civil Engineers.

PART 9

FOR THE PROTECTION OF CAMBRIDGESHIRE COUNTY COUNCIL AS HIGHWAY AUTHORITY

114.—(1) The following provisions of this Part of this Schedule, unless otherwise agreed in writing between the undertaker and Cambridgeshire County Council, have effect.

(2) In this Part of this Schedule—

“highway” means any highway of which Cambridgeshire County Council is the highway authority;

“plans” includes sections, designs, drawings, specifications, soil reports, staging proposals, programmes, calculations, methods of construction, risk assessments and details of the extent, timing and duration of any proposed occupation of any highway and “approved plans” means

plans approved or deemed to be approved or settled by arbitration in accordance with the provisions of this Part of this Schedule; and

“property of Cambridgeshire County Council” means any apparatus or street furniture of the highway authority affixed to or placed under any highway.

“works” means so much of any part of the authorised development as forms part of or is intended to become a highway, or part of any such highway, or any work which could introduce water onto the highway or any work which is underneath or over the highway.

(3) Wherever in this Part of this Schedule provision is made with respect to the approval or consent of Cambridgeshire County Council, that approval or consent must be in writing and subject to such reasonable terms and conditions as Cambridgeshire County Council may require.

(4) In exercising the powers conferred by this Order in relation to any highway the undertaker must have regard to the potential disruption of traffic which may be caused and must seek to minimise such disruption so far as is reasonably practicable.

115.—(1) Before commencing the construction of, or the carrying out of any work which involves interference with a highway, the undertaker must submit to Cambridgeshire County Council for its approval plans relating thereto, and the works must not be carried out except in accordance with the plans submitted to, and approved by, Cambridgeshire County Council.

(2) If within 28 days after the plans have been submitted Cambridgeshire County Council has not approved or disapproved them, it is deemed to have approved the plans as submitted provided that this sub-paragraph does not apply to any plans submitted for approval pursuant to requirement 5 of Schedule 2 where the time periods set out in Schedule 12 apply.

(3) In the event of any disapproval of plans by Cambridgeshire County Council under sub-paragraph (2), the undertaker shall re-submit the plans with modifications and, in that event, if Cambridgeshire County Council has not intimated its disapproval and the grounds of disapproval within 28 days of the plans being re-submitted, it is deemed to have approved them.

(4) The undertaker must include in any submission made to Cambridgeshire County Council under sub-paragraph (1) or any re-submission under sub-paragraph (3), a statement that the deemed approval provisions of sub-paragraph (2) or sub-paragraph (3) apply, as the case may be, and if the submission fails to do so, the deemed approval provision is null and void.

(5) Any officer of Cambridgeshire County Council duly appointed for the purpose of inspecting the works may at all reasonable times during the carrying out of work and following completion of the works, on giving to the undertaker such notice as may in the circumstances be reasonable, enter upon and inspect any part of the works authorised by this Order (and such inspection may include works to be uncovered as reasonably required by the officer at the cost of the undertaker) which—

(a) is in, over or under any highway; or

(b) which may affect any highway or any property of Cambridgeshire County Council,

during the carrying out of the work, and the undertaker must give to such officer all reasonable facilities for such inspection and shall ensure that the officer is accompanied by one of its contractors, agents or employees familiar with the works, if the officer is of the opinion that the construction of the work is attended with danger to any highway or to any property of Cambridgeshire County Council on or under any highway, the undertaker must adopt such measures and precautions as may be reasonably practicable for the purpose of preventing any damage or injury to the highway.

(6) In the construction of any part of the said works under a highway no part of it shall, except with the consent of Cambridgeshire County Council, be so constructed as to interfere with the provision of proper means of drainage of the surface of the highway.

116.—(1) The undertaker must not alter, disturb or in any way interfere with any property of Cambridgeshire County Council on or under any highway, or the access thereto, without the consent of the Cambridgeshire County Council, and any alteration, diversion, replacement or reconstruction of any such property which may be necessary may be made by Cambridgeshire County Council or the undertaker as the Cambridgeshire County Council thinks fit, and the expense reasonably

incurred by Cambridgeshire County Council in so doing must be repaid to Cambridgeshire County Council by the undertaker.

(2) The undertaker must not under the powers conferred by or under this Order without the consent of Cambridgeshire County Council, acquire or enter upon, take or use whether temporarily or permanently or acquire any new rights over any part of any highway, including subsoil beneath the surface of any highway.

(3) If within 28 days after a request for consent has been submitted Cambridgeshire County Council has not given or refused such consent, it is deemed to have consented to the request as submitted provided that the undertaker includes in any such request for consent a statement confirming that the deemed consent provisions this paragraph apply to such request and if such request fails to do so, the deemed consent provision of this paragraph is null and void.

117.—(1) Where any part of any highway has been broken up or disturbed by the undertaker, the undertaker must make good the subsoil, foundations and surface of that part of the highway to the reasonable satisfaction of Cambridgeshire County Council and must maintain the same to the reasonable satisfaction of Cambridgeshire County Council for such time as may reasonably be required for the permanent reinstatement of the highway.

(2) The reinstatement of that part of the highway must be carried out by the undertaker to the reasonable satisfaction of Cambridgeshire County Council in accordance with such requirements as to specification of material and standards of workmanship as may be prescribed for equivalent reinstatement work by regulations made under section 71 of the 1991 Act.

118. If any damage to any highway or any property of Cambridgeshire County Council on or under any highway is caused by, or results from, the construction of any work authorised by this Order or any act or omission of the undertaker, its contractors, agents or employees whilst engaged upon such work, the undertaker must, in the case of damage to a highway, make good such damage to the reasonable satisfaction of Cambridgeshire County Council and, where the undertaker does not make good, or in the case of damage to property of Cambridgeshire County Council, the undertaker must pay reasonable compensation to Cambridgeshire County Council for such damage.

119. The fact that any act or thing may have been done in accordance with plans approved by Cambridgeshire County Council does not (if it was not attributable to the act, neglect or default of Cambridgeshire County Council or of any person in its employment or its contractors or agents) exonerate the undertaker from any liability, or affect any claim for damages, under this Part or otherwise.

120. Cambridgeshire County Council must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which paragraph 118 applies. If requested to do so by the undertaker, Cambridgeshire County Council must provide an explanation of how the claim has been minimised. The undertaker is only liable under paragraph 118 for claims reasonably incurred by Cambridgeshire County Council.

121. On completion of the works the undertaker must seek written certification from Cambridgeshire County Council that the works are acceptable and relevant drawings and new highway asset information shall be provided to Cambridgeshire County Council as part of the undertaker's request for certification. Cambridgeshire County Council shall only resume its maintenance responsibilities for the affected highways once certification under this paragraph has been issued.

122.—(1) Cambridgeshire County Council must not unreasonably withhold or delay the issue of a written certification under paragraph 121. Subject to sub-paragraphs (2) and (3), if Cambridgeshire County Council has not given or refused such written certification within 28 days, it is deemed to have issued a written certification provided that the undertaker includes in any such request for certification a statement confirming that the deemed certification provisions this paragraph apply to such request and if such request fails to do so, the deemed certification provision of this paragraph is null and void.

(2) Any officer of Cambridgeshire County Council duly appointed for the purpose of issuing a written certification under sub-paragraph (1) may at all reasonable times and on reasonable notice during the 28 day period enter upon and inspect any part of the completed works.

(3) If further information is requested by Cambridgeshire County Council, the 28 day period to issue a written certificate in accordance with sub-paragraph (1) will recommence starting on the date that such further information has been submitted by the undertaker to Cambridgeshire County Council.

123. On receipt of certification that completed works are acceptable under paragraph 121 above unlocking devices for the new bollards on New Bridge Lane shall be provided by the undertaker to Cambridgeshire County Council.

124. Any difference arising between the undertaker and the Cambridgeshire County Council under this part of this Schedule (other than in difference as to the meaning or construction of this Part of this Schedule) shall be resolved by arbitration under article 46 (arbitration).

125.—(1) Subject to sub-paragraphs (2) and (3), the undertaker must indemnify Cambridgeshire County Council from and against all costs, expenses, damages, losses and liabilities suffered by Cambridgeshire County Council arising from or in connection with any claim, demand, action or proceedings resulting from damage caused by the construction, maintenance or use of the specified works.

(2) Sub-paragraph (1) does not apply if the costs, expenses, liabilities and damages were caused by or arose out of the neglect or default of Cambridgeshire County Council or its officers, servants, agents or contractors or any person or body for whom it is responsible.

(3) If any person makes a claim or notifies an intention to make a claim against Cambridgeshire County Council which may reasonably be considered likely to give rise to a liability under this paragraph then Cambridgeshire County Council must—

- (a) as soon as reasonably practicable give the undertaker reasonable notice of any such third party claim or demand, specifying the nature of the indemnity liability in reasonable detail; and
- (b) not make any admission of liability, agreement or compromise in relation to the indemnity liability without first consulting the undertaker and considering their representations.

(4) The undertaker acknowledges that Cambridgeshire County Council may receive statutory compensation claims and that Cambridgeshire County Council may not be able to comply with sub-paragraph (3) in respect of such claims.

(5) Where Cambridgeshire County Council considers that sub-paragraph (4) applies to any claim or demand it must give notice of that view as part of the relevant notice provided pursuant to sub-paragraph (3)(a).

(6) Cambridgeshire County Council must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands and penalties to which the indemnity under this paragraph applies where it is within Cambridgeshire County Council's reasonable gift and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of Cambridgeshire County Council's control. If reasonably requested to do so by the undertaker, Cambridgeshire County Council must provide an explanation of how any claim has been mitigated or minimised or where mitigation or minimisation is not possible an explanation as to why.

126. All reasonable costs incurred by Cambridgeshire County Council under this part of this Schedule shall be paid in full by the undertaker on written demand by Cambridgeshire County Council.

PROCEDURE FOR THE DISCHARGE OF REQUIREMENTS

Interpretation**1.** In this Schedule—

“relevant authority” means the relevant planning authority, relevant highway authority, traffic authority, street authority, or the owner of a watercourse, sewer or drain as may be appropriate to the consent, agreement or approval sought; and

“requirement consultee” means any body named in a requirement as a body required to be consulted by the relevant authority in discharging that requirement.

Applications made under requirements

2.—(1) Where an application has been made to the relevant authority for any consent, agreement or approval required by a requirement (including consent, agreement or approval in respect of part of a requirement) the relevant authority must give notice to the undertaker of their decision on the application within a period of 12 weeks beginning with—

- (a) the day immediately following that on which the application is received by the authority;
- (b) the day immediately following that on which further information has been supplied by the undertaker under sub-paragraph (2); or
- (c) such longer period as may be agreed in writing by the undertaker and the relevant authority,

whichever is the latest.

(2) Subject to paragraph (4), in the event that the relevant authority does not determine an application within the period set out in sub-paragraph (1), the relevant authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Any application made to the relevant planning authority pursuant to sub-paragraph (1) must:

- (a) include a statement to confirm whether it is likely that the subject matter of the application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement and if it will then it must be accompanied by information setting out what those effects are; and
- (b) include confirmation that the application has been notified and provided to the requirement consultees in accordance with sub-paragraph (5), if the provision governing or requiring the application specifies that consultation with a requirement consultee is required. Such confirmation to include contact details for the requirement consultees.

(4) Where an application has been made to the relevant authority for any consent, agreement or approval required by a requirement included in this Order, and—

- (a) the relevant authority does not determine the application within the period set out in sub-paragraph (1) and such application is accompanied by a report pursuant to subparagraph (3) which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects compared to those in the environmental statement; or
- (b) the relevant planning authority determines during the period set out in sub-paragraph (1) that it considers that the subject matter of such application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement,

then the application is to be taken to have been refused by the relevant authority at the end of that period.

(5) At the same time as submitting an application to the relevant planning authority for any consent, agreement or approval required by a requirement, the undertaker must also give notice of

such application, and provide a copy of the application, to any requirement consultee, if the provision governing or requiring the application specifies that consultation with a requirement consultee is required. As part of the notification to any requirement consultee, the undertaker must include a statement that refers to:

- (a) the timeframes in which the requirement consultee can request any further information from the undertaker (via the relevant planning authority) as prescribed in paragraph 3(6)(a) and the consequences of the failure to meet those timescales as prescribed in paragraph 3(6)(b); and
- (b) the timeframes in which the requirement consultee must give notice to the relevant planning authority of its comments on the application as prescribed in paragraph 3(6)(d) and the consequences of the failure to meet those timescales as prescribed in paragraph 3(6)(e).

Further information and consultation

3.—(1) In relation to any application to which this Schedule applies, the relevant authority may request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) In the event that the relevant authority considers such further information to be necessary and the provision governing or requiring the application does not specify that consultation with a requirement consultee is required the relevant authority must, within 14 working days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant authority must notify the undertaker in writing specifying any further information requested by the requirement consultee within 15 working days of receipt of such a request and in any event within 35 working days of receipt of the application or such longer period as may be agreed in writing by the undertaker and the relevant authority.

(4) In the event that the relevant authority does not give notification as specified in sub-paragraph (2) or (3) it is to be deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

(5) Where further information is requested under this paragraph 3 in relation to part only of an application, that part is to be treated as separate from the remainder of the application for the purposes of calculating time periods in paragraph 2(1)(b), paragraph 2(4) and paragraph 3.

(6) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required:

- (a) A requirement consultee is required to notify the relevant planning authority in writing specifying any further information it considers necessary in order to comment on the application within 10 working days of receipt of the application pursuant to paragraph 2(5);
- (b) If a requirement consultee does not give notification as specified in sub-paragraph (a) it is deemed to have sufficient information to comment on the application and is not thereafter entitled to request further information without the prior agreement of the undertaker and relevant planning authority;
- (c) At the same time as providing any further information to the relevant planning authority pursuant to a request under paragraph (2), if the undertaker has been notified of further information requested by a requirement consultee, the undertaker must also give any further information to the requirement consultee;
- (d) A requirement consultee is required to notify the relevant planning authority in writing of any comments on the application within 15 working days of receipt of the application from the undertaker pursuant to paragraph 2(5), or the receipt of any further information pursuant to sub-paragraph (c) (where further information has been requested); and
- (e) If a requirement consultee does not give notification as specified in sub-paragraph (d) it is deemed to have no comments on the application.

Appeals

4.—(1) The undertaker may appeal in the event that—

- (a) the relevant authority refuses (including a deemed refusal pursuant to paragraph 2(4)) an application for any consent, agreement or approval required by an article or requirement included in this Order or grants it subject to conditions;
- (b) on receipt of a request for further information pursuant to paragraph 3 the undertaker considers that either the whole or part of the specified information requested by the relevant authority is not necessary for consideration of the application; or
- (c) on receipt of any further information requested, the relevant authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process is to be as follows—

- (a) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant authority and any requirement consultee required to be consulted pursuant to the article or requirement which is the subject of the appeal (together with the undertaker, these are the “appeal parties”);
- (b) the Secretary of State is to appoint a person within 20 working days of receiving the appeal documentation and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for his attention should be sent, the date of such notification being the “start date” for the purposes of this sub-paragraph (2);
- (c) the relevant authority and any consultee required to be consulted pursuant to the article or requirement which is the subject of the appeal must submit written representations to the appointed person in respect of the appeal within 10 working days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (d) the appeal parties must make any counter-submissions to the appointed person within 10 working days of receipt of written representations pursuant to paragraph (c) above;
- (e) the appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within 30 working days of the deadline for the receipt of counter-submissions pursuant to paragraph (d); and
- (f) the appointment of the person pursuant to paragraph (b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(3) In the event that the appointed person considers that further information is necessary to enable him to consider the appeal he must, within five working days of his appointment, notify the appeal parties in writing specifying the further information required.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the undertaker to the appointed person, the relevant authority and any consultee required to be consulted pursuant to the article or requirement the subject of the appeal on the date specified by the appointed person (the “specified date”), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within 10 working days of the specified date but otherwise is to be in accordance with the process and time limits set out in paragraphs (2)(c) to (2)(e).

(5) On an appeal under this paragraph, the appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the relevant authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to him in the first instance.

(6) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits.

(7) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to him that there is sufficient material to enable a decision to be made on the merits of the case.

(8) The decision of the appointed person on an appeal is to be final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(9) If an approval is given by the appointed person pursuant to this Schedule, it is to be deemed to be an approval for the purpose of Schedule 2 (requirements) as if it had been given by the relevant authority. The relevant authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person's determination.

(10) Save where a direction is given pursuant to sub-paragraph (11) requiring the costs of the appointed person to be paid by the relevant authority, the reasonable costs of the appointed person must be met by the undertaker.

(11) On application by the relevant authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to Planning Practice Guidance: Appeals (March 2014) or any circular or guidance which may from time to time replace it.

SCHEDULE 13

Article 42

DOCUMENTS AND PLANS TO BE CERTIFIED

Table 10

(1) <i>Document name</i>	(2) <i>Document reference</i>	(3) <i>Revision number</i>	(4) <i>Date</i>
access and public rights of way plans	2.4	7	August 2023
book of reference	4.1	6	August 2023
carbon capture and export embedded design measures	14.7 (Appendix B)	1	June 2023
carbon capture and export readiness reserve space plan	10.7	1	March 2023
combined heat and power embedded design measures	14.7 (Appendix A)	1	June 2023
combined heat and power assessment	7.6	1	June 2022
design and access statement	7.5	1	June 2022
environmental statement	6.1, 6.2	1	June 2022
environmental statement figures	6.3	2	March 2023
environmental statement appendices	6.4	2	March 2023
flood risk assessment	6.4 (ES Appendix 12A)	1	June 2022
land plans	2.2	5	August 2023
outline biodiversity net gain strategy	6.4 (ES Appendix 11M)	5	July 2023
outline construction environmental management plan	7.12	6	July 2023
outline construction traffic management plan	6.4 (ES Appendix 6A)	7	August 2023
outline decommissioning plan	12.4	1	May 2023
outline drainage strategy	6.4 (ES Appendix 12F)	4	August 2023
outline employment and skills strategy	7.8	1	June 2022
outline fire prevention plan	7.10	3	August 2023
outline flood emergency management plan	7.9	2	March 2023
outline landscape and ecology strategy	6.3 (ES Figure 3.14)	2	March 2023

outline landscape and ecology management plan	7.7	2	April 2023
outline lighting strategy	6.4 (ES Appendix 3B)	3	June 2023
outline local air quality monitoring strategy	9.21	3	May 2023
outline odour management plan	7.11	3	August 2023
outline operational noise management plan	6.4 (ES Appendix 7D)	4	June 2023
outline operational traffic management plan	7.15	4	July 2023
outline operational travel plan	6.4 (ES Appendix 6C)	1	June 2022
waste area plan	15.9	1	July 2023
works plans	2.3	4	August 2023

SCHEDULE 14

Article 3

MAXIMUM AND MINIMUM DESIGN PARAMETERS

Table 11

(1) <i>Element of authorised development</i>	(2) <i>Work No.</i>	(3) <i>Maximum length (metres)</i>	(4) <i>Maximum width (metres)</i>	(5) <i>Maximum height (metres) (above finished floor level of 3.0m AOD)</i>	(6) <i>Minimum height (metres) (above finished floor level of 3.0m AOD)</i>
Gatehouse / weighbridge	2A	9.5	2.4	3	
Tipping hall	1	58.5	38	18.5	
Fire water tank	2A		16	10	
Fire water pump building	2A	12.5	9.5	5.5	
Waste bunker building	1	102	37	38.5	
Tipping bunker	1	–	–	-14	
Main waste bunker	1	–	–	-14	
Boiler house building	1	55	47.6	52	
Loading area (a)	1	12.2	12.2	12	
APCr silos	1	33.3	12.2	37	
Loading area (b)	1	12.2	12.2	12	
Air pollution control building	1	33.2	28.6	37	
Induced draft fans building	1	10	10	12	
Chimneys	1A	–	3.2	90	84
CEMS platform	1A	–	–	18	
Switchgear building north	1	35.2	10	35	
Switchgear building south	1	12.4	10	18	
IBA enclosure east	1	14	11	12	
IBA enclosure west	1	11	6	12	

Diesel tanks and urea tanks building	1	25.9	9.1	35
Compressed air station	1	13	8	10
Main transformer	2A	11	6	12
Emergency diesel generator	1	13.5	5.5	12
Air cooled condenser	1	37	37	30
Turbine hall	1	47	34	27
Water treatment plant	1	30	22	18
Workshop and stores	2A	34	15	18
Administration building	1B	34	12	15
132kV switching compound	2A	23	13	6.5
Private wire transformer	2A	11	5	12
Private wire switchgear compound	2A	7	6	12
Water re-cooling system	1	18.5	7.5	27
Steam and condensate pipelines	3	–	–	23

SCHEDULE 15

Article 46

ARBITRATION RULES

Primary objective

1.—(1) The primary objective of these Arbitration Rules is to achieve a fair, impartial, final and binding award on the substantive difference between the parties (save as to costs) within 4 months from the date the arbitrator is appointed pursuant to article 46.

(2) The parties will first use their reasonable endeavours to settle a dispute amicably through negotiations undertaken in good faith by the senior management of the parties. Any dispute which is not resolved amicably by the senior management of the parties within twenty (20) working days of the dispute arising, or such longer period as agreed in writing by the parties, will be subject to arbitration in accordance with the terms of this Schedule.

(3) The Arbitration will be deemed to have commenced when a party (“the Claimant”) serves a written notice of arbitration on the other party (“the Respondent”).

Time periods

2.—(1) All time periods in these Arbitration Rules will be measured in working days and this will exclude weekends, bank and public holidays.

(2) Time periods will be calculated from the day after the arbitrator is appointed which will be either—

- (a) the date the arbitrator notifies the parties in writing of his/her acceptance of an appointment by agreement of the parties; or
- (b) the date the arbitrator is appointed by the Secretary of State.

Timetable

3.—(1) The timetable for the arbitration will be that set out in sub-paragraphs (2) to (4) below unless amended in accordance with paragraph 5(3).

(2) Within 15 days of the arbitrator being appointed, the Claimant will provide both the Respondent and the arbitrator with—

- (a) a written Statement of Claim which describes the nature of the difference between the parties, the legal and factual issues, the Claimant’s contentions as to those issues, and the remedy it is seeking; and
- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports.

(3) Within 15 days of receipt of the Claimant’s statements under sub-paragraph (2) by the arbitrator and Respondent, the Respondent will provide the Claimant and the arbitrator with—

- (a) a written Statement of Defence responding to the Claimant’s Statement of Claim, its statement in respect of the nature of the difference, the legal and factual issues in the Claimant’s claim, its acceptance of any element(s) of the Claimant’s claim, its contentions as to those elements of the Claimant’s claim it does not accept;
- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports; and
- (c) any objections it wishes to make to the Claimant’s statements, comments on the Claimant’s expert report(s) (if submitted by the Claimant) and explanations for the objections.

(4) Within 5 days of the Respondent serving its statements pursuant to sub-paragraph (3), the Claimant may make a Statement of Reply by providing both the Respondent and the arbitrator with—

- (a) a written statement responding to the Respondent's submissions, including its reply in respect of the nature of the difference, the issues (both factual and legal) and its contentions in relation to the issues;
- (b) all statements of evidence and copies of documents in response to the Respondent's submissions;
- (c) any expert report in response to the Respondent's submissions;
- (d) any objections to the statements of evidence, expert reports or other documents submitted by the Respondent; and
- (e) its written submissions in response to the legal and factual issues involved.

Procedure

4.—(1) The arbitrator will make an award on the substantive difference(s) based solely on the written material submitted by the parties unless the arbitrator decides that a hearing is necessary to explain or resolve any matters.

(2) Either party may, within 2 days of delivery of the last submission, request a hearing giving specific reasons why it considers a hearing is required.

(3) Within 5 days of receiving the last submission, the arbitrator will notify the parties whether a hearing is to be held and the length of that hearing.

(4) Within 10 days of the arbitrator advising the parties that he will hold a hearing, the date and venue for the hearing will be fixed by agreement with the parties, save that if there is no agreement the arbitrator will direct a date and venue which he considers is fair and reasonable in all the circumstances. The date for the hearing will not be less than 35 days from the date of the arbitrator's direction confirming the date and venue of the hearing.

(5) A decision will be made by the arbitrator on whether there is any need for expert evidence to be submitted orally at the hearing. If oral expert evidence is required by the arbitrator, then any expert(s) attending the hearing may be asked questions by the arbitrator.

(6) There will be no process of examination and cross-examination of experts, but the arbitrator will invite the parties to ask questions of the experts by way of clarification of any answers given by the expert(s) in response to the arbitrator's questions. Prior to the hearing the procedure for the expert(s) will be that—

- (a) at least 20 days before a hearing, the arbitrator will provide a list of issues to be addressed by the expert(s);
- (b) if more than one expert is called, they will jointly confer and produce a joint report or reports within 10 days of the issues being provided; and
- (c) the form and content of a joint report will be as directed by the arbitrator and must be provided at least 5 days before the hearing.

(7) Within 10 days of a hearing or a decision by the arbitrator that no hearing is to be held the parties may by way of exchange provide the arbitrator with a final submission in connection with the matters in dispute and any submissions on costs. The arbitrator will take these submissions into account in the award.

(8) The arbitrator may make other directions or rulings as considered appropriate in order to ensure that the parties comply with the timetable and procedures to achieve an award on the substantive difference within 4 months of the date on which they are appointed, unless both parties otherwise agree to an extension to the date for the award.

(9) If a party fails to comply with the timetable, procedure or any other direction then the arbitrator may continue in the absence of a party or submission or document, and may make a decision on the information before them attaching the appropriate weight to any evidence submitted beyond any timetable or in breach of any procedure or direction or both.

(10) The arbitrator's award will include reasons. The parties will accept that the extent to which reasons are given will be proportionate to the issues in dispute and the time available to the arbitrator to deliver the award.

Arbitrator's powers

5.—(1) The arbitrator has all the powers of the Arbitration Act 1996(a), including the non-mandatory sections, save where modified by these Rules.

(2) There will be no discovery or disclosure, except that the arbitrator will have the power to order the parties to produce such documents as are reasonably requested by another party no later than the Statement of Reply, or by the arbitrator, where the documents are manifestly relevant, specifically identified and the burden of production is not excessive. Any application and orders should be made by way of a Redfern Schedule without any hearing.

(3) Any time limits fixed in accordance with this procedure or by the arbitrator may be varied by agreement between the parties, subject to any such variation being acceptable to and approved by the arbitrator. In the absence of agreement, the arbitrator may vary the timescales or procedure or both—

- (a) if the arbitrator is satisfied that a variation of any fixed time limit is reasonably necessary to avoid a breach of the rules of natural justice; and
- (b) only for such a period that is necessary to achieve fairness between the parties.

(4) On the date the award is made, the arbitrator will notify the parties that the award is completed, signed and dated, and that it will be issued to the parties on receipt of cleared funds for the arbitrator's fees and expenses.

Costs

6.—(1) The costs of the Arbitration will include the fees and expenses of the arbitrator, the reasonable fees and expenses of any experts and the reasonable legal and other costs incurred by the parties for the Arbitration.

(2) Subject to sub-paragraph (3), the arbitrator will award recoverable costs on the general principle that each party should bear its own costs.

(3) The arbitrator may depart from the general principle in sub-paragraph (2) and make such other costs award as it considers reasonable where a party has behaved unreasonably as defined within the National Planning Practice Guidance or such other guidance as may replace it.

Confidentiality

7.—(1) Subject to sub-paragraphs (2) and (3), any arbitration hearing and documentation will be open to and accessible by the public.

(2) The arbitrator may direct that the whole or part of a hearing is to be private or any documentation to be confidential where it is necessary in order to protect commercially sensitive information.

(3) Nothing in this paragraph will prevent any disclosure of a document by a party pursuant to an order of a court in England and Wales or where disclosure is required under any enactment.

(a) 1996 c. 23.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Medworth CHP Limited (referred to in this Order as the undertaker) to construct, operate and maintain an Energy from Waste Combined Heat and Power Facility. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose. The Order also makes provision in connection with the maintenance of the new section of highway.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 42 (certification of plans etc.) of this Order may be inspected free of charge during working hours at Fenland Hall, County Road, March, Cambridgeshire, PE15 8NQ.

Get in touch

You can contact us by:



Emailing at info@cwwtpr.com



Calling our Freephone information line on **0808 196 1661**



Writing to us at **Freepost: CWWTPR**

You can view all our DCO application documents and updates on the application on The Planning Inspectorate website:

<https://infrastructure.planninginspectorate.gov.uk/projects/eastern/cambridge-waste-water-treatment-plant-relocation/>