
S T A T U T O R Y I N S T R U M E N T S

201[] No. []

INFRASTRUCTURE PLANNING, ENGLAND

**NORTH LONDON HEAT AND
POWER GENERATING STATION
ORDER 201[]**

Made - - - - - ***
Laid before Parliament ***
Coming into force - - - ***

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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") and in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(b) for an Order under sections 114, 115, 120, 122, 123 and 140 of the 2008 Act.

The application was examined by [a Panel (appointed by the Secretary of State)]/[a single appointed person (appointed by the Secretary of State)] in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(c).

[The Panel]/[The single appointed person], having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section [104] of the 2008 Act, has submitted a report to the Secretary of State.

The Secretary of State, having considered the report and recommendation of the [single appointed person] / [Panel], has taken into account the environmental information in accordance with regulation 3 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009(d), and decided the application, and has determined to make this Order giving effect to the proposals comprised in the application with modifications which in the opinion of the Secretary of State do not make any substantial change to the proposals.

The Secretary of State is satisfied that the special category land (as identified in the book of reference), when burdened with the order rights, will be no less advantageous than it was before to persons in whom it is vested, other persons, if any, entitled to rights of common or other rights, and the public, and that accordingly, section 132(3) of the 2008 Act applies.

Accordingly, in exercise of the powers conferred by sections 37, 114, 115, 120, 122, 123 and 140 of the 2008 Act, the Secretary of State makes the following Order:

Citation and commencement

1. This Order may be cited as the North London Heat and Power Generating Station Order 201[] and shall come into force on [].

Interpretation

2.—(1) In this Order—

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- (a) 2008 c.29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of, and Schedule 13 to, the Localism Act 2011 (c.20), and by sections 22 to 27 of the Growth and Infrastructure Act 2013 (c.27), see S.I. 2013/1124 for transitional provisions
 - (b) S.I. 2009/2264, amended by the Passengers' Council (Non-Railway Functions) Order 2010 (S.I. 2010/439), Local Democracy, Economic Development and Construction Act 2009 (Consequential Amendments) (England) Order 2010 (S.I./2010/602 (E)), Localism Act 2011 (Infrastructure Planning) (Consequential Amendments) Regulations 2012 (S.I. 2012/635), Public Bodies (Abolition of the Commission for Rural Communities) Order 2012 (S.I. 2012/2654), Infrastructure Planning (Prescribed Consultees and Interested Parties etc) (Amendment) Regulations 2013 (S.I. 2013/522), Infrastructure Planning (Applications: Prescribed Forms and Procedure) (Amendment) Regulations 2014 (S.I./2014/2381) and the Infrastructure Act 2015 (Strategic Highways Companies) (Consequential, Transitional and Savings Provisions) Regulations 2015 (S.I. 2015/377) and as modified by the British Waterways Board (Transfer of Functions) Order 2012 (S.I. 2012/1659)
 - (c) S.I. 2010/103, as amended by the Localism Act 2011 (Infrastructure Planning) (Consequential Amendments) Regulations 2012
 - (d) S.I. 2009/2263, as amended by Waste (England and Wales) Regulations 2011 (S.I. 2011/988), Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), Localism Act 2011 (Infrastructure Planning) (Consequential Amendments) Regulations 2012 (S.I. 2012/635) and Infrastructure Planning (Environmental Impact Assessment) (Amendment) Regulations 2012 (S.I. 2012/787).

- “the 1961 Act” means the Land Compensation Act 1961(a);
- “the 1965 Act” means the Compulsory Purchase Act 1965(b);
- “the 1980 Act” means the Highways Act 1980(c);
- “the 1990 Act” means the Town and Country Planning Act 1990(d);
- “the 1991 Act” means the New Roads and Street Works Act 1991(e);

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- (a) 1961 c.33. Section 1 and subsections (A1), (1) and (3)-(6) of section 4 were amended by articles 5(1), (2) (6) of, and paragraphs 31, 37(a), 37(b), 38, 39(a), 39(b), 39 (c), of Schedule 1 and Schedule 5 of Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307). There are other amendments to the 1961 Act which are not relevant to this Order.
- (b) 1965 c.56. Subsections (1)-(3) of section 1 and section 30 were amended by subsections (1) and (3) of section 34 of, and paragraph 14 of Schedule 4 to, and Schedule 6 to, the Acquisition of Land Act 1981 (c.67). Subsection (4) of section 1 was amended by section 4 of and paragraph 13(1)(a) and (b) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11). Subsection (5) of section 1 was amended by section 109 of and paragraph 124 of Schedule 10 to, the Courts Act 2003 (c.39). Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991(c.34). Section 4 and subsection (2) of section 11 were amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 of the Planning and Compensation Act 1991 (c.34). Subsection (2A)(d) and 2(D) of section 5, section 6, subsections (1) and (3) of section 8 and subsection (1) of section 10, subsection (3) of section 11, subsection (1) of section 15, subsection (1) of section 16, subsection (2) of section 17, subsections (1) and (2)(b) of section 18, subsection (2) of section 19 and subsection (3) of section 20 were amended by articles 5(1), (2) and (6) of, and paragraphs 59, 61, 62, 63, 65, 66, 67, 68, 69 ad 70 of Schedule 1 to, and Schedule 5 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307). Subsection (3) of section 10 was amended by section 4 of, and paragraph 13 (2) (a) and (b) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). Subsection (1) of section 11 and sections 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c.67) and by sections 14 and 70 of, and paragraphs 12(1) and 12 (2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c.23). Section 13 was amended by sections 62 and 139 of, and paragraphs 27 and 28(1) and (2) to, the Tribunals, Courts and Enforcement Act 2007 (c.15). Subsection 2 of section 20 was amended by section 70 of, and paragraph 4 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Subsections 3 and 4 of section 23 and subsection (1) of section 25 were amended by section 59 of, and paragraph 4 of part 2 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4), Section 9, subsection (4) of section 25 and section 29 were amended by the Statute Law (Repeals) Act 1973 (c.39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). There are other amendments to the 1965 Act which are not relevant to this Order.
- (c) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2), 1(3) and 1 (4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51); section 1(2A) was inserted, and section 1(3) was amended, by section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1) (2) and (3) of the Transport and Works Act (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.
- (d) 1990 c.8. Subsection (4)(aa) of section 56 was added by Planning and Compensation Act 1991 (c.34). Subsection (5)(a) of section 56 was amended by subsection (2)(a) of section 40 of the Planning and Compulsory Purchase Act 2004 (c. 5) and subsection (1) of section 30 of, and paragraphs 2 and 3 of part 2 of Schedule 4 to, the Infrastructure Act 2015 (c. 7). Subsection (5)(b) of section 56 was amended by subsection (4) of section 31 of, and paragraphs 8 and 10 of Schedule 6 to, Planning and Compensation Act 1991 (c. 34). Subsections (3), (4), (6) and (7) of section 198 were amended by subsection (1) of section 192 and subsection (2)(a) of section 238 of, and paragraphs 7 and 8 of Schedule 8 to, and Schedule 13 to, the 2008 Act. Subsection (4)(a) of section 198 was amended by sections 31, 32, 42 and 84 of, and paragraphs 8 and 20 of Schedule 6 and paragraphs 8 and 34 of Schedule 7 to and Parts 1 and 2 of Schedule 19 to, the Planning and Compensation Act 1991 (c. 34). Subsections (8) and (9) of section 198 were amended by subsection (3) of section 42 to the Planning and Compulsory Purchase Act 2004 (c. 5). There are other amendments to the 1990 Act which are not relevant to this Order.
- (e) 1991 c.22. Sections 48(3A) and 50(1A), were inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 49, subsection (3) of section 63, subsection 7A(a) of section 74, subsections (2) and 10(a) and section 86 were amended by subsection (6) of section 1 of, and paragraphs 113, 117 - 121 of part 2 of Schedule 1 to, the Infrastructure Act 2015 (c.7) Sections 51, 53-60, 65-69, subsections (1A), (4), (4B) and (6) of section 70, 71-72, 73A-73F, subsections (3)(b) and (7B) of section 74, 75, 78A, 39-80, 83, 88, subsection (2) of section 89, 90, 92-93, 95A and 96-97 were amended by sections 40, 42-45, 47-56, 58 and 59 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18). Subsection (5) of section 63 was added by section 32 of, and paragraph 27 of schedule 3 to, the Flood and Water Management Act 2010 (c.29). Subsection (4) of section 64 was added by section 81 of, and paragraph 7 of Schedule 2 to, the Road Traffic Act 1991 (c. 40). Subsections (3) and (4A) of section 70 were amended by regulation 17 (E) of The Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007 (S.I. 2007/1951). Subsections (2A), (3), (3)(b), (4), (5A)-(5C), (7), (7A) and (7B) were amended by sections 256 and 274 of, and part V(2) of Schedule 31 to, the Transport Act 2000 (c.38). Subsection (1)(a) of section 89 was amended by subsection (1) of section 2 of, and paragraph 57(1) of Schedule 1 to,

“the 2008 Act” means the Planning Act 2008;

“authorised development” means the development and associated development described in Schedule 1 (authorised development) and any other works authorised by this Order which are not development within the meaning of section 32 of the 2008 Act;

“the book of reference” means the book of reference certified by the decision-maker 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;

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

"cctv" means closed-circuit television, mounting poles and associated cables;

"commissioning" means the carrying out of cold testing, hot testing, first waste fire, achievement of reliability, the passing of associated tests, acceptance, and handover;

“the code of construction practice” means the code of construction practice certified by the decision-maker as the code of practice for the purposes of this Order;

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

"commence" means begin to carry out any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of site clearance, archaeological investigations, investigations for the purposes of assessing ground conditions, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "commencement" shall be construed accordingly;

“the decision-maker” has the same meaning as in section 103 of the 2008 Act;

“design code principles” means the design code principles certified as the design code principles by the decision-maker for the purposes of this order;

"discharging authority" means the relevant authority responsible under the requirements for approving and discharging any matter;

"EcoPark" means the land at Edmonton EcoPark, Advent Way, London N18 3AG;

"EcoPark House" means a new visitor, community and education centre with offices to be constructed within the EcoPark to the west of the River Lee Navigation as part of the authorised development;

"environmental statement" means the environmental statement [and the consolidated changes and errata document], all certified as the environmental statement by the decision-maker for the purposes of this order;

"environmental commitments and mitigation schedule" means the environmental commitments and mitigation schedule certified as the environmental commitments and mitigation schedule by the decision-maker for the purposes of this order;

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

“the land plan(s)” means the plan(s) certified as the land plan by the decision-maker for the purposes of this order;

“maintain” includes maintain, inspect, repair, landscape planting and re-planting, adjust, alter, remove, clear, refurbish, reconstruct, decommission, demolish, replace and improve, and “maintenance” is to be construed accordingly;

“order land” means the land required for, or affected by, the proposed development shown on the land plans and described in the book of reference;

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

the Water Consolidation (Consequential Provisions) Act 1991 (c.60). There are other amendments to the 1991 Act which are not relevant to this Order.

"operational site" means the area shown edged [] on plan [];

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

"relevant planning authority" means the London Borough of Enfield in relation to the area in which the land to which the provisions of this Order apply is situated;

"stage means stages of the authorised development as approved pursuant to requirement 8 of Schedule 2 and excludes enabling works (as they are defined in Schedule 2);

"statutory undertaker" means any person falling within section 127(8), 128(5) or 129(2) 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 part of a street;

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

"temporary laydown area" means the land within plot numbers 17, 19, 20 and 21 as shown on the land plans;

"the tribunal" means the Lands Chamber of the Upper Tribunal);

"undertaker" means North London Waste Authority or a successor body, or such other person who has the benefit of this Order in accordance with Article 8 or pursuant to section 156(1) of the 2008 Act

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

"the works plan(s)" means the plan(s) certified as the works plans by the decision-maker for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the air-space above its surface.

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

Development consent etc. granted by the Order

3. Subject to the provisions of this Order including Schedule 2 (requirements) and Schedule 16 (protective provisions), the undertaker is granted development consent for the authorised development (as described in Schedule 1) to be constructed, operated and maintained within the order limits. .

Limits of deviation

4.—(1) The development authorised by this Order shall be constructed, operated and maintained in the lines or situations shown on the works plans.

(2) In constructing, operating and maintaining the authorised development, the undertaker may—

(a) deviate laterally from the lines or situations shown on the works plans to the extent of the limits of deviation shown on the works plans; and

(b) deviate vertically from the levels shown for those works on the works plans –

(a) (c. 67). Section 4 was amended by articles 5(1), (2) and (6) of, paragraphs 149 and 150 of Schedule 1 to, and Schedule 5 to, the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307). Section 7 was amended by article 8 of, and paragraph 23 of part 1 of Schedule 3 to, (S.I. 1990/776), sections 70 and subsections (1), (3) and (8) of, and paragraph 9 of part 1 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34), section 328 of, and paragraphs 34(1) and (2) of part 1 of Schedule 29 to, the Greater London Authority Act 1999 (c.), article 3(1) and subparagraphs (1) and (2) of paragraph 54 of Schedule 1 to, the Local Government Finance (Repeals, Savings and Consequential Amendments) Order 1990 (S.I.2001/1149), section 53(1) of, and paragraph 53 of Schedule 1 to, the Fire and Rescue Services Act 2004 (c.21), and section 91 of, and paragraph 110 of part 3 of Schedule 12 to, the Postal Services Act 2011 (c.5). There are other amendments to this Act which are not relevant to this Order.

- (i) to any extent upwards within the limits of deviation as is shown on the works plans; and
- (ii) to any extent downwards as may be necessary, convenient or expedient

Maintenance of authorised development

5.—(1) Subject to paragraph (3) and the other terms of this Order, including Schedule 2 (requirements), the undertaker may at any time maintain the authorised development, except as far as this Order or an agreement made under this Order, provides otherwise.

(2) Subject to paragraph (3) and Schedule 2 (requirements), the power to maintain the authorised development includes the power to carry out and maintain any of the following as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction or operation of the authorised development, namely –

- (a) works to alter the position of apparatus below ground level –
 - (i) including mains, sewers, drains and cables; and
 - (ii) including below ground structures associated with that apparatus within the order limits;
- (b) decommissioning and demolition works;
- (c) works to maintain the proposed new eastern access route that is included in the description of Works 4 in Schedule 1; and
- (d) works to maintain the landscaping that is included in the description of Works 4 in Schedule 1.

(3) This article only authorises the carrying out of maintenance of works within the order limits and does not apply to the following:

- (a) the decommissioning and demolition works as included in the description of Works 7 in Schedule 1;
- (b) the creation of a temporary construction laydown area as included in the description of Works 5 in Schedule 1; and
- (c) resurfacing works to the relevant section of Ardra Road, as included in the description of Works 4 in Schedule 1.

Operation of the authorised development

6.—(1) The undertaker (and any person to whom the undertaker grants a contract to operate the authorised development) is authorised to operate the authorised development.

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

Benefit of Order

7. Subject to article 8 (consent to transfer benefit of Order), this Order is for the benefit of the undertaker.

Consent to transfer benefit of Order

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

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

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

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), shall 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) shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

[Application and modification of legislative provisions]

9.—(1) The following provisions of the [insert short title of the relevant Act] shall be incorporated in this Order—

(a) section[s] X [specify relevant section(s)],
as modified by paragraph (2) of this Order.

(2) The modifications are: [insert relevant modifications].

(3) In construing the [insert short title of the relevant Act] as incorporated the following expressions shall have the following meanings: [insert relevant expressions and definitions]

[Note to PINS: we do not think there is a need to modify other pieces of legislation at present, but we are keeping this in at this stage, just in case]

Defence to proceedings in respect of statutory nuisance

10.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order shall be made, and no fine may be imposed, under section 82(2) of that Act if—

(a) the defendant shows that the nuisance—

(i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(b); or

(ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or

(b) the defendant shows that the nuisance—

(i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and that the nuisance is attributable to the use of the authorised development which is being used in accordance with a scheme of monitoring and attenuation of noise agreed with the relevant

(a) 1990 c.43. Subsection (1) of section 79 was amended by the section 24 of the London Local Authorities Act 1996 (c.), section 120 of, paragraphs 1 and 2 (a) of Schedule 17 to, paragraph 89 of Schedule 22 to, and Schedule 24 to the Environment Act 2005 (c.25), section 101 of the Clean Neighbourhoods and Environment Act 2005 (c.16) and section 2 of the Noise and Statutory Nuisance Act 1993 (c.40). Section 82 was amended by section 107 of and paragraphs 1 and 6 of Schedule 17 to, the Environment Act 1995 (c.25), section 5 of the Noise and Statutory Nuisance Act 1993 (c.40), and section 103 of the Clean Neighbourhoods and Environment Act 2005 (c.16) There are other amendments to this Act which are not relevant to this Order..

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

planning authority as described in requirement 8 (control of noise during operational stage) or in accordance with noise levels set out in an environmental permit relating to the operation of the authorised development ; or

- (ii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), shall not apply where 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.

Street works

11.—(1) The undertaker may, for the purposes of the authorised development, enter on the parts of any of the streets specified in Schedule 4 (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) tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street or change its position;
- (e) resurface the street;
- (f) execute any works to provide hard or soft landscaping; and
- (g) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (f).

(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) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

(4) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

Alteration of street layout

12. The undertaker may for the purposes of constructing the authorised development, alter the layout of each of the streets specified in column 2 of Schedule 5 (streets subject to alteration of layout) (and carry out works ancillary to such alteration) in the way specified in relation to that street in column 2 of Schedule 5.

Public rights of way

13.—(1) The undertaker may, in connection with the carrying out of the authorised development, temporarily suspend the sections of the public rights of way that are footpaths and cycleways specified in columns (2) and (3) of Schedule 6 (public rights of way to be temporarily stopped up) to the extent specified in column (3) for the duration of the construction of the authorised development.

(2) The public rights of way specified in columns (2) and (3) of Schedule 6 (public rights of way to be temporarily stopped up) shall not be temporarily suspended under this article unless the alternative temporary footpaths and temporary cycleways specified in column (4) of Schedule 6 are first provided by the undertaker.

(3) The temporary footpaths and cycleways referred to in paragraph (2) shall be provided for the duration of the construction of the authorised development.

(4) With effect from the commencement of the authorised development the section of public right of way along Lee Park Way as referred to in column (2) of Schedule 7 (public rights of way to be extinguished) shall be extinguished to the extent specified in column (3) of Schedule 7.

(5) The public right of way specified in paragraph (4) must not be extinguished under this article unless the alternative rights of way shown in column (4) of Schedule 7 (public rights of way to be extinguished) are first provided, to the reasonable satisfaction of the relevant planning authority

(6) In this article, "local highway authority" has the same meaning as in section 329(1) of the 1980 Act.

Temporary stopping up of streets

14.—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter or divert any street (or part of it) and may for any reasonable time—

- (a) divert the traffic from the street (or the relevant part of it); and
- (b) subject to paragraph (2), prevent all persons from passing along the street (or the relevant part of it).

(2) The undertaker shall provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street (or relevant part of it) if there would otherwise be no such access.

(3) The undertaker may temporarily stop up, alter or divert the streets specified in Schedule 8 (streets to be temporarily stopped up) to the extent specified, in that Schedule. This paragraph does not restrict what may otherwise be done under paragraph (1),

(4) The undertaker shall not temporarily stop up, alter or divert –

- (a) any street specified as mentioned in paragraph (3) 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 consent.

(5) Any person who suffers loss by the suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) If the relevant street authority fails to notify the undertaker of its decision within 28 days beginning with the receipt of an application for consent under paragraph (4) that street authority will be deemed to have granted consent.

Access to works

15. For the purposes of the authorised development, the undertaker may —

- (a) form and lay out means of access, or improve existing means of access, in the locations specified in Schedule 9 (access to works); and
- (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.

Agreements with street authorities

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

- (a) the construction or demolition of any structure carrying a street over a body of water;
- (b) the maintenance of the structure of any bridge carrying a street over a body of water;
- (c) the construction or alteration of any new or existing access to the authorised development;
- (d) any temporary stopping up, alteration or diversion of a street authorised by this Order; or

- (e) the carrying out in the street of any of the works referred to in article 11 (street works) or any of works referred to in article 12 (alteration of street layout).
- (2) Without limiting subsection (1), such an agreement may—
 - (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.

Discharge of water

17.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) shall 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 shall not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs, such consent not to be unreasonably withheld or delayed but may be given subject to such terms and conditions as that person may reasonably impose.

(4) The undertaker shall 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 and such approval shall not be unreasonably withheld or delayed; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker shall 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, subject to the works that are authorised under this order. The undertaker shall 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) This article does not authorise a groundwater activity or a water discharge activity within the meaning of the Environmental Permitting (England and Wales) Regulations 2010(b).

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Environment Agency, an internal drainage board, a local 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.

(8) This article does not relieve the undertaker of any obligation to obtain from the Environment Agency any permit, licence or any other obligation under any other legislation that may be required to authorise the making of a connection to or the use of a public sewer or drain by the

(a) (c.56). Section 106 has been amended by sections 35, 43 and 56 of the Competition and Service (Utilities) Act 1992(c.43), sections 36 and 99 of the Water Act 2003 (c.37) and section 32 of, and paragraph 16(1) of Schedule 3 to, the Flood and Water Management Act 2010 (c.29). There are other amendments to that Act that are not relevant to this Order.

(b) (S.I. 2010/675). Schedule 21 has been amended by regulations 3 and 14 of the Environmental Permitting (England and Wales) (Amendment) Regulations 2011 (S.I. 2011/2043). Schedule 22 has been amended by regulation 48(2) of, and paragraphs 1 and 13 of Schedule 3 to, the Waste (England and Wales) Regulations 2011 (S.I. 2011/988). There are other amendments to that Act that are not relevant to this Order.

(c) (c.57). There are other amendments to that Act that are not relevant to this Order.

undertaker pursuant to paragraph (1) or the discharge of any water into any watercourse, sewer or drain pursuant to paragraph (3).

Protective work to buildings

18.—(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) at any time before or during the carrying out 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 5 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 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 shall, 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 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)(a), paragraph (5)(c) or paragraph (5)(d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 7 days beginning with the day on which the notice was served, require the question 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 35 (arbitration).

(7) The undertaker shall 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 to a building under this article; and
- (b) within 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first opened for use 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 shall compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article shall relieve the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act (compensation for injurious affection).

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

(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.

Authority to survey and investigate

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

- (a) survey or investigate the land;
- (b) without limiting 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 limiting 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.

(2) A notice must be served on every owner and occupier of the land at least 14 days before any land may be entered or equipment placed or left on or removed from the land under paragraph (1).

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

- (a) shall, 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 shall 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 shall not be unreasonably withheld or delayed.

(5) The undertaker shall 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, Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Compulsory acquisition of land

20.—(1) The undertaker may acquire compulsorily so much of the order land as is required for the authorised development or to facilitate, or is incidental to, it.

(2) From the later of the date on which a compulsory acquisition notice under section 134(3) of the 2008 Act is served or the date on which the order land, or any part of it, is vested in the undertaker, that land or that part of it which is vested (as the case may be) shall be discharged from all rights, easements, liberties, privileges, advantages, restrictions, covenants, trusts and incidents to which it was previously subject.

(3) Any person who suffers loss by the extinguishment of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) This article is subject to articles 23 (compulsory acquisition of rights) and 27 (temporary use of land for carrying out the authorised development).

Time limit for exercise of authority to acquire land compulsorily or use land temporarily

21.—(1) After the end of 7 years beginning on the day on which this Order is made—

- (a) no notice to treat shall be served under Part 1 of the 1965 Act; and
- (b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 25 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 27 (temporary use of land for carrying out the authorised development) shall cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph shall 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.

Power to override easements and other rights

22.—(1) Any authorised activity which takes place on land within the order limits (whether the activity is undertaken by the undertaker, by its successor pursuant to a transfer or lease under article 8 (consent to transfer benefit of Order) of this Order, by any person deriving title under them or by any of their servants or agents) is authorised by this Order if it is done in accordance with the terms of this Order, even if it involves—

- (a) a temporary suspension of an interest or right (including rights belonging to statutory undertakers) in land set out in column (1) of Schedule 11 (land in which private rights may be temporarily suspended) to which this article applies;
- (b) extinguishment of an interest or right in land (excluding rights held as a statutory undertaker) set out in column (1) of Schedule 12 (land in which private rights (not rights held as a statutory undertaker) may be extinguished) to which this article applies; or
- (c) a breach of a restriction arising by a contract.

(2) In this article “authorised activity” means—

- (a) the erection, construction, operation or maintenance of the authorised development;
- (b) the exercise of any power authorised by this Order; or
- (c) the use of any land (including the temporary use of land).

(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, right to light, and the restrictions to which this article applies are restrictions arising by virtue of a contract.

(4) Where any interest or right to which this article applies is interfered with (either extinguished or temporarily suspended) in accordance with the terms of this article, the interest, right or restriction is extinguished, suspended, abrogated or discharged at the time that the interference or breach commences in respect of the authorised activity in question, to the extent required for or necessary or incidental to the authorised development.

(5) In respect of any extinguishment, temporary suspension, breach, abrogation or discharge in pursuance of this article, compensation—

- (a) is payable under section 7 or 10 of the 1965 Act; and
- (b) is to be assessed in the same way 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.

(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 extinguishment, temporary suspension or breach as is mentioned in paragraph 23(1).

Compulsory acquisition of rights

23.—(1) The undertaker may acquire compulsorily the existing rights and create and acquire compulsorily the new rights described in the book of reference, set out in Schedule 13 (land in which new rights etc., may be acquired) and shown on the land plans.

(2) From the later of—

(a) the date on which a compulsory acquisition notice is served, or

(b) the date on which any new right is vested in the undertaker,

the land over which any new rights are acquired shall be discharged from all rights, trusts and incidents to which it was previously subject so far as their continuance would be inconsistent with the exercise of that new right.

(3) Subject to section 8 of the 1965 Act, where the undertaker acquires an existing right over land in paragraph (1), the undertaker shall not be required to acquire a greater interest in that land.

(4) Any person who suffers loss as a result of the extinguishment of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Schedule 14 (modification of compensation and compulsory purchase enactments for the creation of new rights) has effect for the purpose of modifying the enactments relating to compensation and the provision 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.

Private rights of way

24.—(1) Subject to the other provisions of this article, all private rights of way over land subject to compulsory acquisition under this Order shall be extinguished—

(a) as from the date of acquisition of the land 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),

whichever is the earlier.

(2) Subject to the other provisions of this article, all private rights of way over land owned by the undertaker which, being within the limits of land which may be acquired shown on the land plan, are required for the purposes of the Order shall be extinguished on the appropriation of the land by the undertaker for any of those purposes.

(3) Subject to the other provisions of this article, all private rights of way over land of which the undertaker takes temporary possession under this Order shall be suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

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

(5) This article does not apply in relation to any right of way 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.

(6) Paragraphs (1) to (3) shall have effect subject to—

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of 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 shall not apply to any right of way specified in the notice; and
- (b) any agreement made at any time between the undertaker and the person in or to whom the right of way in question is vested or belongs.
- (7) If any such agreement as is referred to in paragraph (6)(6)(b)—
 - (a) is made with a person in or to whom the right of way 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 shall be 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 Compulsory Purchase (Vesting Declarations) Act 1981

- 25.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(a) –
- (a) shall apply as if this Order were a compulsory purchase order.
 - (b) as so applied, shall have effect with the following modifications.
- (2) In section 3 (preliminary notices), for subsection (1) there shall be substituted—
- “(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order, the acquiring authority shall include the particulars specified in subsection (3) in a notice which is—
- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
 - (b) published in a local newspaper circulating in the area in which the land is situated.”
- (3) In that section, in subsection (2), for “(1)(b)” there shall be substituted “(1)” and after “given” there shall be inserted “and published”.
- (4) In that section, for subsections (5) and (6) there shall be substituted—
- “(5) For the purposes of this section, a person has a relevant interest in land if—
- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
 - (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”
- (5) In section 5 (earliest date for execution of declaration)—
- (a) in subsection (1), after “publication” there shall be inserted “in a local newspaper circulating in the area in which the land is situated”; and
 - (b) subsection (2) shall be omitted.
- (6) In section 7 (constructive notice to treat), in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” shall be omitted.

(a)(c.66) Sections 2 and 6 and subsection (6) of section 11 have been amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). Section 3 had been amended by section 34 of, and paragraph 37 of part 3 of Schedule 5 to, the Infrastructure Act 2015 (c.7). Section 10, subsection (4) of section 11 and paragraphs 4, 8 and 9 of Schedule 1 have been amended by article 5 of, paragraphs 145 – 148 of Schedule 1 to, and Schedule 5 to, the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307). Section 15 and Schedule 2 have been amended by section 161 of, and paragraphs 6 and 7 of Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c.28) and sections 56 and 321 of, paragraphs 33 of Schedule 8 to, and Schedule 16 to the Housing Regeneration Act 2008 (c.17). Paragraphs 1 and 3 have also been amended by section 76 of, and paragraph 12 of part II of Schedule 9 to, the Housing Act 1988 (c.50). Schedule 3 was amended by s.277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c.51)] There are other amendments to that Act that are not relevant to this Order.

(7) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 shall be construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land under this Order.

Rights under or over streets

26.—(1) The undertaker may enter on and appropriate so much of the subsoil of, or air-space over, any street and air space over any building 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) shall 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 appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation shall not be 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) enter on and take temporary possession of the land specified in Schedule 15 (land of which temporary possession may be taken) for the purpose specified in relation to that land in that Schedule relating to the part of the authorised development specified in that Schedule;
- (b) remove any buildings and vegetation from that land; and
- (c) construct temporary works (including the provision of means of access) and buildings on that land.

(2) The undertaker shall service notice of its intended entry on the owners and occupiers of the land at least [14] days before entering on and taking temporary possession of the land under this article.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of two years beginning with the date of completion of the part of the authorised development specified in relation to that land in Schedule 15 (land of which temporary possession may be taken).

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the relevant land to the reasonable satisfaction of the owners of the land; but the undertaker shall not be required to replace a building removed under this article.

(5) The undertaker shall not be required to replace a building removed under this article.

(6) The undertaker shall produce a written record of the condition of the relevant land prior to taking possession (such record to be agreed by the owner);

(7) The undertaker shall 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 any power conferred by this article.

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

(9) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) 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 (7).

(10) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1) except that the undertaker shall not be precluded from acquiring new rights over any part of that land under article 23 (compulsory acquisition of rights).

(11) Where the undertaker takes possession of land under this article, the undertaker shall not 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) shall apply 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).

Temporary use of land for maintaining 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 limits if such possession is reasonably required for the purpose of maintaining the authorised development;
- (b) enter on and take temporary possession at any time during the maintenance period the land delineated in [red] shown on plan number [] 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) shall 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) The undertaker shall serve notice on the owners and occupiers of the land at least 14 days before entering on and taking temporary possession of the land under this article. There are separate requirements in paragraph (13).

(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 shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker shall 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, shall be determined under Part 1 of the 1961 Act.

(8) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) 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 shall not 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) shall apply 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”, in relation to any part of the authorised development with the exception of the development described in paragraph (12), means the period of 5 years beginning with the date on which that part of the authorised development is first opened for use.

(12) In this article, “the maintenance period” in relation to:

- (a) the landscaping over plots [22, 23, 24, 25, 26, 27, 28, 29, 30,] [111 –] shown on the land plans;
- (b) Lee Park Way (including the bridge over the River Lee Navigation);
- (c) the land immediately to the east of Deephams Farm Road as shown delineated in [red] on plan number [],

means the lifetime of the authorised development beginning with the date on which those parts of the authorised development are first opened for use.

(13) The requirement to serve at least 28 days’ notice under paragraph (3) does not apply where the undertaker has identified a potential risk to the safety of:

- (a) the authorised development or any of its parts;
- (b) the public; or
- (c) the surrounding environment,

and the undertaker may enter the land pursuant to paragraph (1) subject to giving such period of notice (if any) as is reasonably practicable in all the circumstances.

Statutory undertakers

29. The undertaker may—

(1) temporarily suspend the rights of statutory undertakers shown on the land plan within the limits of the Order limits and described in the book of reference;

(2) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers shown on the land plans and described in the book of reference; and

(3) acquire compulsorily new rights over land belonging to statutory undertakers shown on the land plans and described in the book of reference.

Recovery of costs of new connections

30.—(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 shall be 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) shall not apply in the case of the removal of a public sewer but where such a sewer is removed under article 29, any person who is—

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

shall be 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 shall not have effect in relation to apparatus to which Part 3 of the 1991 Act applies.

(4) In this paragraph—

- (a) “public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(a); and
- (b) “public utility undertaker” has the same meaning as in the 1980 Act.

Application of landlord and tenant law

31.—(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 shall prejudice the operation of any agreement to which this article applies.

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

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

Operational land for purposes of the 1990 Act

32. Development consent granted by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Felling or lopping of trees

33.—(1) The undertaker may fell or lop any tree or shrub near any part of 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—

- (a) obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity.

(a) (c.21) There are other amendments to that Act that are not relevant to this Order.

(3) The undertaker may remove any hedgerows within the order limits that may be required to be removed for the purposes of carrying out the authorised development.

(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

Certification of documents and plans

34.—(1) The undertaker shall, as soon as practicable after the making of this Order, submit to the decision-maker copies of—

- (a) the works plans
- (b) the land plans;
- (c) the book of reference;
- (d) the environmental statement;
- (e) the environmental commitments and mitigation ;
- (f) the code of construction practice; and
- (g) the design code principles,

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

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

Arbitration

35. Any difference or dispute under any provision of this Order (other than a difference or dispute that falls to be determined by the tribunal) shall, unless otherwise provided for in this Order or unless otherwise agreed between the parties, shall 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 [President of the Institution of Civil Engineers / the President from time to time of the Law Society of England and Wales].

No double recovery

36. Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

Protective provisions for specified undertakers

37. Schedule 16 (protective provisions) shall have effect.

Decommissioning and transitional arrangements

38. The decommissioning of the existing energy from waste facility and the commissioning of the proposed electricity and heat shall be carried out in accordance with the details approved pursuant to requirement 21.

Discharge of requirements

39.—(1) Save as provided otherwise by this Order, Schedule 3 (procedure for discharge of requirements etc. and appeals) shall have effect in relation to all consents, agreements, approvals or notices granted, refused or withheld in relation to—

- (a) the requirements set out in Schedule 2 (requirements);
- (b) any document referred to in any requirement set out in Schedule 2 (requirements); and

(c) [the functions of the local authority set out in sections 60 and 61 of the Control of Pollution Act 1974(a).]

(2) Save as provided otherwise under this Order, paragraphs 1, 2 and 3 of Schedule 3 (procedure for discharge of requirements etc. and appeals) shall have effect in relation to applications made pursuant to the requirements set out in Schedule 2 (requirements).

(3) If within 28 days (unless another period is provided for under this Order) after the application or request required or contemplated by any of the provisions of this Order has been submitted to the discharging authority or the owner, the discharging authority or the owner (as the case may be) has not notified the undertaker of its disapproval and the grounds of disapproval, the discharging authority or the owner (as the case may be) shall (unless the parties have agreed otherwise) be deemed to have accepted the application or request.

(4) Where an application is made to or request is made of the relevant planning authority, a highway authority, a street authority or the owner of a watercourse, sewer or drain, for any consent, agreement, approval or notice required or contemplated by any of the provisions of this Order, such consent, agreement or approval shall, if given, be given in writing and shall not be unreasonably withheld or delayed.

Signed by authority of the Secretary of State

[]

(a) (c.40) Section 61 has been amended by section 133(2) of, and Schedule 7 to, the Building Act 1984 (c.55), section 162(1) of, and paragraph 15 of Schedule 15 to, the Environmental Protection Act 1990 (c.43) and section 120(3) of, and Schedule 24 to, the Environment Act 1995 (c.25)

SCHEDULE 1

AUTHORISED DEVELOPMENT

Article 3

Authorised development

1. A nationally significant infrastructure project as defined in sections 14 and 15 of Part 3 of the 2008 Act in the London Borough of Enfield comprising –

(a) *Works No. 1a* — the construction of an electricity and heat generating station located at the EcoPark, fuelled by residual waste and capable of an electrical output of around 70 mega watts of electricity (W_e) (gross), comprising the following buildings, structures and plant, as shown on Works Plan []—

- (i) a main building housing:
 - (a) a tipping hall;
 - (b) waste bunker and waste handling equipment;
 - (c) two process lines (with each line having a capacity of 350,000 tonnes of waste per annum), consisting of a moving grate, furnace, boiler and a flue gas treatment plant;
 - (d) facilities for the recovery of incinerator bottom ash and air pollution control residue;
 - (e) steam turbine(s) for electricity generation including equipment for heat off-take;
 - (f) control room containing the operational and environmental control and monitoring systems, and offices;
- (ii) Entry and exit ramps to the electricity and heat generating station;
- (iii) A stack containing flues for flue gas exhaust;
- (iv) Cooling equipment; and
- (v) an observation platform enclosure.

2. Associated development within the meaning of section 115(2) of the 2008 Act in connection with the Nationally Significant Infrastructure Project referred to in Works No. 1a as follows:

(a) *Works No. 1b* – works required to provide buildings, structures, plant and equipment needed for the operation of the electricity and heat generating station as follows—

- (i) wastewater treatment facility;
- (ii) a water pre-treatment plant;
- (iii) external stores and workshops;
- (iv) a fuelling area and fuel storage, vehicle wash, transport offices and staff facilities, toilets, natural gas intake and management compound, and fire control water tank(s); and
- (v) electrical substation(s).

- (b) *Works No. 2* – The construction of a resource recovery facility comprising the following building, structures and plant as follows: —
- (i) a recycling and fuel preparation facility ;
 - (ii) a reuse and recycling centre ;
 - (iii) offices, and staff and visitor welfare facilities;
 - (iv) odour abatement and dust suppression plant and equipment ; and
 - (v) fire control water tank(s) and pump house and equipment
- (c) *Works No. 3* — the construction of a building to provide visitor, community and education facilities, office accommodation, and a boat canopy.
- (d) *Works No. 4* – access, landscape, lighting, security, weighbridges and utilities works as follows—
- (i) the diversion of sewers and the creation of connections to sewers;
 - (ii) the decommissioning of existing and the laying of new pipes, cables and systems for:
 - (a) potable water ;
 - (b) wastewater);
 - (c) surface water (d) foul water; and
 - (e) process water)
 - (f) electricity;
 - (g) gas; and
 - (h) CCTV, telecoms and data
 - (iii) the erection of a water pumping station ;
 - (iv) the laying of a raw water pipe from and outflow channel from Ardra Road to the EcoPark;
 - (v) stabilisation works to the eastern bank of Salmon's Brook ;
 - (vi) the construction of surface water pumps, pipework and attenuation tanks);
 - (vii) landscaping works,
 - (viii) the installation of areas of green roof and/or brown roof ;
 - (ix) the widening of the existing entrance into the EcoPark from Advent Way, including modification or replacement of the bridge over Enfield Ditch;
 - (x) construction within the EcoPark of vehicle and cycle parking, vehicle, cycle and pedestrian routes, and weighbridges;
 - (xi) construction of an access into the EcoPark from Lee Park Way, including bridging over Enfield Ditch;#
 - (xii) improvements to Lee Park Way including vehicle barriers and the creation of segregated pedestrian and cycle paths ;
 - (xiii) improvements to Deephams Farm Road and use of Deephams Farm Road as an access to the EcoPark;
 - (xiv) the resurfacing of Ardra Road (if required);
 - (xv) CCTV, security, fencing, and lighting works and equipment;

- (xvi) the erection of security facilities and equipment and gatehouses within the operational site at access points from Advent Way, Ardra Road, and Lee Park Way; and
 - (ii) the upgrade and maintenance of the existing bridge over the River Lee Navigation
- (e) *Works No. 5* –works for the creation of the temporary laydown area and its temporary use as follows:
- (i) areas of hardstanding;
 - (ii) the erection of fencing, hoarding or any other means of enclosure;
 - (iii) the erection of security facilities and equipment and gatehouses;
 - (iv) vehicle parking ;
 - (v) office and staff welfare accommodation;
 - (vi) storage, fabrication, laydown area;
 - (vii) foul water storage and surface water attenuation storage;
 - (viii) utility works including electricity, water, and telecoms;;
 - (ix) the creation of vehicular, cycle and pedestrian access from Lee Park Way to the temporary laydown area; and
 - (x) restoration of the temporary laydown area.
- (f) *Works No. 6* – site preparation and demolition works within the area shown on works plan XXXX comprising—
- (i) demolition of existing buildings, structures and plant excluding demolition of the existing energy from waste facility;;
 - (ii) construction of a temporary ash storage building;
 - (iii) realignment of the exit ramp from the existing energy from waste facility;
 - (iv) works to prepare the land shown on works plan XXXXX for the construction of works numbers 1a, 1b, 2, 3, 4 [and 5]; and
- (g) *Works No. 7* – decommissioning, demolition and removal of the existing energy from waste facility and demolition and removal of:
-
- (i) the existing stack;
 - (ii) demolition of the existing water pumping station on Ardra Road; and
 - (iii) making good the cleared areas.

3. In connection with Works No. 1 to (and including) No. 7, to the extent that they do not otherwise form part of any such work, being associated development within the meaning of section 115(2) of the 2008 Act, such other works as may be necessary or expedient for the purposes of or in connection with the construction, operation and maintenance of the authorised development which do not give rise to any materially new or materially different environmental effects from those assessed and set out in the environmental statement.

SCHEDULE 2 REQUIREMENTS

Article 3

[PINS, please note that these draft requirements may be amended further as they are still being discussed in detail with the London Borough of Enfield]

Interpretation

1.—(1) Where any requirement provides that the authorised development is to be carried out in accordance with a document or the details approved by the discharging authority, the document or approved details shall be taken to include any amendments or revised documents or plans that may subsequently be approved or agreed by the discharging authority, or other consent, agreement or approval of the discharging authority.

(2) Where an approval is required under the terms of any requirement or a document referred to in a requirement and that requirement or document contains the wording “unless otherwise approved” or “unless otherwise agreed” by the discharging authority, such approval by the discharging authority shall not be given except in relation to minor or immaterial changes where it has been demonstrated to the satisfaction of the discharging 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 [and does not depart from the design code principles].

(3) Subject to the paragraph above, where any requirement refers to a document or plan, that document or plan shall (if applicable) be taken to be the version certified by the Secretary of State pursuant to the provisions of this Order.

(4) In this schedule –

"constituent boroughs" means the seven north London boroughs that make up the undertaker, being the London borough of Barnet, London borough of Camden, London borough of Enfield, London borough of Hackney, London borough of Haringey, London borough of Islington, and the London borough of Waltham Forest;

“controlled waste” has the meaning given in section 75 (4) Environmental Protection Act 1990.

"the electricity and heat generating station" means Works No. 1a in Schedule 1 (authorised development);

"the environmental commitments and mitigation schedule" means [*]

"enabling works" includes surveying, land clearance, geometrical testing and sampling, environmental and hazardous substance testing and sampling (including the making of trial boreholes, window sampling and test pits in connection with such testing and sampling), soil tests, pegging out, tree protection, ecological survey and mitigation works, archaeological investigation, contaminated land remediation, ground improvement works, demolition of buildings and structures (other than the demolition and decommissioning of the existing energy from waste facility), creation of enabling works access (other than the creation of the new accesses to the north and east of the EcoPark and the widening of the existing access to the south of the EcoPark) or similar related works;

“hazardous waste” has the meaning given in section 75 (8A) Environmental Protection Act 1990

"stage" shall mean any identifiable stage of the authorised development as approved pursuant to requirement 8 of this Schedule 2 but shall exclude enabling works

Time limits

2. The authorised development must not be commenced after the expiration of 5 years from the date this Order comes into force.

Detailed design approval

3.—(1) No stage shall be commenced until plans and written details of the external appearance of all new buildings and structures proposed within such stage (including details of the colour, materials and samples where relevant) have been submitted to and approved in writing by the relevant planning authority.

(2) The details submitted under sub-paragraph (1) must be in accordance with the design code principles.

(3) The authorised development must be carried out in accordance with the details approved under sub-paragraph (1) unless otherwise approved by the relevant planning authority.

Parameters

4. The authorised development must be constructed within with the following parameters

[]

Mitigation measures in the environmental statement

5. The undertaker shall in relation to each stage, implement the measures set out in the environmental commitments and mitigation schedule

Type of waste to be treated

6. The waste permitted to be managed and / or treated at the authorised development must be limited to

(1) the management and/or treatment of:

(a) local authority collected waste;

(b) other controlled waste;

(c) any materials derived from the waste referred to at (a) and (b) above; and

(2) the management of hazardous waste delivered to the operational site.

Notices

7. Notice of the following events must be given to the relevant planning authority where practicable prior to the date on which the relevant event is intended to first occur and in any event within seven (7) days of the first occurrence of such event:

(1) the commencement of the authorised development;

(2) the commissioning of the electricity and heat generating station ; and

(3) the commencement of the full operation of the electricity and heat generating station (following the completion of any period of testing and commissioning)

Stages of the authorised development

8. No authorised development shall commence until a written scheme setting out all the stages of the authorised development has been submitted to and approved by the relevant planning authority. Nothing in this requirement 8 shall prevent the undertaker from submitting further written schemes revising the approved stages of development for the approval of the relevant planning authority.

BREEAM Rating

9.—(1) No stage shall be commenced until, in relation to any new buildings within that stage (excluding temporary structures and temporary buildings):

(a) a pre-construction stage consultation with the Building Research Establishment (BRE) (in accordance with the BRE's requirements for such construction) has been carried out; and

- (b) proposals identifying the range of options to achieve the British Research Establishment Environmental Assessment Methodology (BREEAM) rating of no less than "very good" have been submitted to and approved in writing by the relevant planning authority.

(2) The relevant stage must be carried out in accordance with the details approved pursuant to requirement 9 **Error! Reference source not found.**

Provision of landscaping

10.—(1) No development within any stage shall commence until a landscaping scheme for that stage has been submitted to and approved by the relevant planning authority. The landscaping scheme submitted for approval must include details of all proposed hard and soft landscaping works in the relevant stage including –

- (a) location, number, species, size and planting density of any proposed planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) details of permanent boundary fencing or other means of permanent enclosure;
- (d) details of expected finished ground levels;
- (e) vehicular and pedestrian access, parking and circulation areas and hard surfacing materials
- (f) wayfinding signage outside the operational site, external operational lighting and CCTV on the boundary of the operational site;
- (g) details of any trees proposed to be retained, with measures for their protection during the construction period of the relevant stages; and
- (h) implementation timetable.

(2) The authorised development must be carried out in accordance with the details approved under sub-paragraph (1) above, unless otherwise approved by the relevant planning authority.

Implementation and maintenance of landscaping

11.—(1) All landscaping works must be carried out in accordance with the landscaping scheme and implementation timetable approved under requirement **Error! Reference source not found.**

(2) Any tree or shrub planted as part of an approved landscaping scheme that, within a period of 5 years after planting, is removed, dies or becomes, in the reasonable opinion of the relevant planning authority seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted.

Access and Roads

12.—(1) No stage shall commence until written details of –

- (a) the design and layout of any relevant new permanent or temporary means of access from the order land to a public highway to be used by vehicular traffic; or
- (b) any alteration to an existing means of access to a public highway used by vehicular traffic; and
- (c) the taking of any necessary traffic management and control measures as to such stage have been submitted to and approved by the relevant planning authority in consultation with Transport for London

(2) The accesses must be constructed in accordance with the approved details.

(3) No stage shall be begun until a written access management scheme about such stage has been submitted to and approved by the relevant planning authority.

(4) The construction or alteration of the street or the taking of traffic management and control measures shall be carried out in accordance with the approved details.

Operational Surface and Foul Water Drainage

13.—(1) No stage shall commence until written details of the operational surface and foul water drainage system (including means of pollution control) applicable to that stage have been submitted to and approved by the relevant planning authority in consultation with the relevant sewerage and drainage authority.

(2) The operational surface and foul water drainage system must be constructed in accordance with the approved details before the commencement of full operations of the electricity and heat generating station

Contaminated land and groundwater

14.—(1) No stage shall commence until a written scheme applicable to that stage to deal with any pre-existing contamination of land, including groundwater, within the order limits applicable to such stage which is likely to cause significant harm to persons or pollution of controlled waters or the environment has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency.

(2) The scheme shall include an investigation and assessment report, prepared by a specialist consultant to identify the extent of any contamination and the 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 order land.

(3) Remediation must be carried out in accordance with the approved scheme.

Ecological management plan

15.—(1) Full operation of the electricity and heat generating station shall not commence until a written ecological management plan and ecological mitigation and enhancement measures included in the environmental statement has been submitted to and approved by the relevant planning authority in consultation with Natural England. The ecological management plan shall include details of monitoring and management of landscaping and bat and bird boxes to be undertaken for maintenance purposes and to monitor their effectiveness.

(2) The ecological management plan shall include an implementation timetable and must be implemented as approved.

Code of Construction Practice

16. Each stage of the authorised development must be undertaken in accordance with the code of construction practice, unless otherwise agreed by the relevant planning authority.

Control of noise during operational stage

17.—(1) Full operation of the electricity and heat generating station shall not commence until a written scheme for noise management, including monitoring and attenuation in relation to the authorised development has been submitted to and approved by the relevant planning authority.

(2) The noise management scheme must be implemented and maintained as approved in accordance with sub-paragraph (1).

Requirement for written approval

18. Where the approval or agreement of the relevant planning authority or another person is required under any of the requirements in this part, that approval or agreement must be given in writing.

Combined Heat and Power

19. The authorised development must be provided and maintained within Work No. 1a to enable steam pass-outs and/or hot water pass-outs and reserve space for the provision of water pressurisation, heating and pumping systems for users of process and space heating located outside the order limits, and its later connection to such systems should a commercial arrangement be identified for combined heat and power which is economically viable.

Decommissioning

20. (1) The authorised development shall not be commenced until a plan for the decommissioning and demolition of the existing energy from waste facility has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency.

(2) The decommissioning and demolition plan shall include details of the following:

(a) The expected length of time during which the existing energy from waste facility and the electricity and heat generating station will be operating at the same time; and

(b) the [methods and timing] for the decommissioning of the existing energy from waste facility;

(c) the removal of the existing bunker;

(3) The period between decommissioning the existing energy from waste facility and the full operation of the electricity and heat generating station will be for as long as this period does not give rise to any materially new or materially different environmental effects from those assessed and set out in the environmental statement and shall be no longer than a period of [36] months.

(4) The maximum amount of waste that is managed and / or treated by the energy from waste facility or the electricity and heat generating station, or both, during the transitional period shall be no more than 700,000 tonnes.

SCHEDULE 3
PROCEDURE FOR DISCHARGE OF REQUIREMENTS ETC. AND
APPEALS

Article 39

Applications made under requirements

1.—(1) Where the undertaker proposes to make an application to a discharging authority for any consent, agreement or approval required by a requirement, it shall no later than 28 days prior to submitting such application provide a draft of the proposed application to the discharging authority, unless otherwise agreed by the discharging authority. It shall on the same date provide a complete draft of the proposed application to any requirement consultee.

(2) Where an application has been made to a discharging authority for any consent, agreement or approval required by a requirement included in this Order, the discharging authority shall give notice to the undertaker of their decision on the application within a period of 8 weeks beginning with—

- (a) the working day immediately following that on which the application is received by the discharging authority;
- (b) ; or
- (c) [such longer period as may be agreed by the undertaker and the discharging authority in writing][keep in only if we get the 8 week period down, otherwise delete].

(3) In determining any application under this paragraph the discharging authority may either grant or refuse consent, and where consent is refused the discharging authority must provide its reasons for the refusal with the notice of refusal.

Further information regarding requirements

2.—(1) In relation to any application further to a requirement, the discharging authority shall have the right to request such further information from the undertaker as is necessary to enable it to consider the application,

(2) In the event that such further information is necessary and the requirement does not specify that consultation with a statutory consultee is required, it shall, within 7 days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) In the event that the requirement specifies that consultation with a requirement consultee is required, the discharging authority shall issue the consultation to the requirement consultee within 3 business days of receipt of the application, and shall notify the undertaker in writing specifying any further information requested by the requirement consultee within 1 business day of receipt of such a request and in any event within 14 days of receipt of the application

(4) In the event that the discharging authority does not give such notification within this 7 day period as referred to in paragraph 2(2) it shall be deemed to have sufficient information to consider the application and shall not thereafter be entitled to request further information without the prior agreement of the undertaker

Fees further to requirements

3.—(1) Where an application is made to the discharging authority for written consent, agreement or approval in respect of a requirement, a fee shall be paid to that authority as follows—

- (a) fees shall be calculated in accordance with the following table—

<i>Category 1</i>	<i>Category 2</i>
<p>The erection of buildings—</p> <ul style="list-style-type: none"> (i) where no floor space is to be created by the development, £170; (ii) where the area of gross floor space to be created by the development does not exceed 40 metres, £170; (iii) where the area of the gross floor space to be created by the development exceeds 40 square metres, but does not exceed 75 square metres, £335; (iv) where the area of the gross floor space to be created by the development exceeds 75 square metres, but does not exceed 3750 square metres, £335 for each 75 square metres of that area; (v) where the area of gross floor space to be created by the development exceeds 3750 square metres, £16,565; and an additional £100 for each 75 square metres 	<p>The carrying out of any operations not coming within Category 1, £170 for each 0.1 hectare of the site area, subject to a maximum £1,690</p>

(b) where an application is made for discharge of a requirement ("current application") in respect of which an application has been made previously, the fee payable in respect of the current application shall be £335.

(2) [For the purpose of the calculation of fees pursuant to sub-paragraph 3(1)(a)—

- (a) the area shall be taken as consisting of the area of land or floorspace (as the case may be) to which the application relates;
- (b) where the application relates to development within Category 1, the area of gross floor space created by the development shall be ascertained by external measurement of the floor space, whether or not it is bounded (wholly or partly) by external walls of a building;
- (c) where the application relates to development within Category 1 and the gross floor space to be created by the development exceeds 75 square metres and is not an exact multiple of 75 square metres, the area remaining after division of the total number of square metres of gross floorspace by the figure of 75 shall be treated as being 75 metres, and
- (d) where the application relates to development within Category 2 and the site area exceeds 0.1 hectares and is not an exact multiple of 0.1 hectares, the area remaining after division of the total number of hectares by the figure of 0.1 hectares shall be treated as being 0.1 hectares.

Appeals

4.—(1) Save as otherwise provided in this Order, the undertaker may appeal in the event that—

- (a) the discharging authority refuses an application for any consent, agreement or approval required or permitted by—

- (i) a requirement included in this Order; or
- (ii) a document referred to in any requirement included in this Order (unless such consent, agreement or approval has to be obtained by virtue of any other legal requirement), or
- (iii) any other provision of this Order;

;

or grants it subject to conditions;

- (b) the discharging authority issues a notice further to sections 60 and or 61 of the Control of Pollution Act 1974(a);
- (c) on receipt of a request for further information pursuant to paragraph 2 of this Schedule, the undertaker considers that either the whole or part of the specified information requested by the discharging authority is not necessary for consideration of the application; or
- (d) on receipt of any further information requested, the discharging 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 shall be as follows—

- (a) any appeal by the undertaker must be made within forty two days of the date of the notice of the decision or determination, , giving rise to the appeal as referred to in sub-paragraph (1);
- (b) the undertaker shall submit the appeal documentation to the Secretary of State and shall on the same day provide copies of the appeal documentation to the discharging authority and any requirement consultee and shall on the same date affix a notice to a conspicuous object or objects on or near the site of the works which are the subject of such appeal which shall give details of the decision of the discharging authority and of the application and notice that an appeal has been made together with the address within the locality where appeal documents may be inspected;
- (c) as soon as is practicable after receiving the appeal documentation, the Secretary of State shall appoint a person to consider the appeal ("the appointed person") and shall notify the appeal parties of the identity of the appointed person and the address to which all correspondence for their attention should be sent;
- (d) the discharging authority and any requirement consultee (if applicable) shall submit their written representations together with any other representations received by them pursuant to the notice of application referred to in sub-paragraph I(I) or the notice of appeal referred to in sub-paragraph 1(2)(b) to the appointed person in respect of the appeal within 10 business days of the start date and shall ensure that copies of their written representations and any other representations as sent to the appointed person are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (e) the appeal parties shall make any counter-submissions to the appointed person within 10 business days of receipt of written representations pursuant to sub-paragraph (c) above; and
- (f) the appointed person shall make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.

(3) The appointment of the person pursuant to sub-paragraph (2)(c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal they shall as soon as practicable notify the

(a) [to be confirmed]

appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(5) Any further information required pursuant to sub-paragraph (4) shall be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person. The appointed person shall notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal shall require submission of written representations to the appointed person within 10 business days of the agreed date but shall otherwise be in accordance with the process and time limits set out in sub-paragraph (2)(c)-(e).

(6) 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 discharging 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.

(7) The appointed person may proceed to a decision on an appeal taking into account such written representations as have been sent within the relevant time limits and in its sole discretion such written representations as have been sent out with the relevant time limits.

(8) 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.

(9) The decision of the appointed person on an appeal shall 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.

(10) If an approval is given by the appointed person pursuant to this Schedule, it shall be treated as an approval for the purpose of Schedule 2 (requirements) of this Order as if it had been given by the discharging authority. The discharging authority shall 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) shall not be taken to affect or invalidate the effect of the appointed person's determination.

(11) Save where a direction is given pursuant to sub-paragraph (12) requiring the costs of the appointed person to be paid by the discharging authority, the reasonable costs of the appointed person shall be met by the undertaker.

(12) On application by the discharging 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 shall be made, the appointed person shall have regard to Communities and Local Government Circular 03/2009 or any circular or guidance which may from time to time replace it.

SCHEDULE 4

STREETS SUBJECT TO STREET WORKS

Article 11

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Streets subject to Street Works</i>
In the London Borough of Enfield	The section of Lee Park Way starting from the junction with Advent Way, to the new access on the eastern edge of the EcoPark from Lee Park Way. This section is within plots [] on the land plans.
In the London Borough of Enfield	Lee Park Way to north of the new

In the London Borough of Enfield	access on be created on the eastern edge of the EcoPark. This section is within plots [] on the land plans.
In the London Borough of Enfield	Ardra Road, from its junction with Deephams Farm Road, to its junction with Meridian Way. This section is within plots [] on the land plans.
In the London Borough of Enfield	Ardra Road and Meridian Way at their junction
In the London Borough of Enfield	Lower Hall Lane at the junction with Walthamstow Avenue leading to the access to the temporary laydown area. This section is within plots [] on the land plans.
In the London Borough of Enfield	Advent Way at the entrance to the south of the EcoPark, This section is within plots [] on the land plans.
In the London Borough of Enfield	All cycle ways within plots [] on the land plans
In the London Borough of Enfield	All footpaths within plots [] on the land plans
In the London Borough of Enfield	The tow path running along the eastern side of the River Lee Navigation, within plots [] on the plans

SCHEDULE 5

STREETS SUBJECT TO ALTERATION OF LAYOUT

Article 12

<i>(1) Borough</i>	<i>(2) Street to be altered</i>	<i>(3) Description of alteration</i>
London Borough of Enfield	Advent Way (plot [32] on land plan number [])	[Junction of Advent Way and the southern entrance to the Edmonton EcoPark. Works to provide site access, modification to kerb line and pavement]
London Borough of Enfield	Lee Park Way (plots [] on land plan number [])	Works to reposition footpaths and cycle ways

SCHEDULE 6

PUBLIC RIGHTS OF WAY TO BE TEMPORARILY SUSPENDED

Article 13

<i>(1) Area</i>	<i>(2) Footpath to be temporarily</i>	<i>(3) to be Extent of temporary suspension</i>	<i>(4) New footpath to be substituted</i>

suspended

In London Borough Enfield	the of	Pavement on the north side of Advent Way and the south of the EcoPark	For approximately [NEED TO CONFIRM DISTANCE] metres at the southern entrance to the EcoPark from Advent Way	Approximatel y [] metres of temporary footpath in the area shown with purple dots at the southern exit entrance to the EcoPark leading to Advent Way on plan 00_0003g
In London Borough Enfield	the of	Pavement on the north side of Advent Way and south of Lee Park Way	For approximately [NEED TO CONFIRM DISTANCE] metres at the junction of Lee Park Way and Advent Way to the west side of the bridge over the River Lee Navigation forming part of Advent Way	Approximatel y [] metres of temporary footpath in the area shown with purple dots to the north of Advent Way and the east of the EcoPark on plan 00_0003g
In London Borough Enfield	the of	Footpath leading from Lee Park Way to the tow path on the River Lee Navigation	For approximately [NEED TO CONFIRM DISTANCE] metres at the point of the access to be constructed the temporary laydown area from Lee Park Way to the eastern bank of the River Lee Navigation (north of the bridge over the River Lee Navigation which forms part of Lee Park Way)	Approximatel y [] metres of temporary footpath in the area shown with purple dots to the north of Lee Park Way and the east of the River Lee Navigation on plan 00_0003g
[In London Borough Enfield	the of	Towpath and cycleway on the eastern bank of the	For approximately [NEED TO CONFIRM	Approximatel y [] metres of temporary footpath in the

		River Lee Navigation	DISTANCE] metres under the bridge over the River Lee Navigation forming part of Lee Park Way	area shown [] on plan 00_0003g] [TO BE CONFIRMED WHETHER REQUIRED (I.E. IF BRIDGE WORKS ARE REQUIRED)]
In the London Borough of Enfield	the of	Cycleway on Lower Hall Lane	For approximately [NEED TO CONFIRM DISTANCE] metres across the part of Lower Hall Lane bordering the access from Lower Hall Lane to the temporary laydown area.	Approximately [] metres of temporary footpath in the area shown with purple dots across Lower Hall Lane leading to the junction with Walthamstow Avenue on plan 00_0003g

SCHEDULE 7

PUBLIC RIGHTS OF WAY TO BE EXTINGUISHED

Article 13			
(1) Area	(2) <i>Footpath to be extinguished</i>	(3) <i>Extent of public right of way to be extinguished</i>	(4) <i>New footpath to be substituted</i>
In the London Borough of Enfield	Footpath and cycleway on Lee Park Way.	For approximately [NEED TO CONFIRM DISTANCE] metres from the junction of Advent Way and Lee Park Way leading north as shown by a green and purple line on Lee Park Way as far as that footpath and cycleway is within the red line boundary	Approximately [] metres of footpath on the west side of Lee Park Way and approximately [] metres of cyclepath on the west and east sides of Lee Park Way

SCHEDULE 8
STREETS TO BE TEMPORARILY STOPPED UP

Article 14

<i>(1) Area</i>	<i>(2) Street to be temporarily stopped up</i>	<i>(3) Extent of temporary stopping up</i>
In the London Borough of Enfield	Advent Way	For approximately [NEED TO CONFIRM DISTANCE] metres at the entrance to the south of the EcoPark
In the London Borough of Enfield	Lee Park Way	For approximately [NEED TO CONFIRM DISTANCE] at the junction of Advent Way and Lee Park Way
In the London Borough of Enfield	Lower Hall Lane	For approximately [NEED TO CONFIRM DISTANCE] from the junction of Lower Hall Lane and Walthamstow Avenue to the entrance to the EcoPark from Lower Hall Lane
In the London Borough of Enfield	Ardra Road	For approximately [NEED TO CONFIRM DISTANCE] metres between the junction of Ardra Road and Meridian Way and the entrance to Deephams Farm Road from Meridian Way
In the London Borough of Enfield	Tow path	For approximately [NEED TO CONFIRM DISTANCE] metres between [] and []
In the London Borough of Enfield	Cycle ways	For approximately [NEED TO CONFIRM DISTANCE] metres between [] and []
In the London Borough of Enfield	Footpaths	For approximately [NEED TO CONFIRM DISTANCE] metres between [] and []

SCHEDULE 9
ACCESS TO WORKS

Article 15

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Description of Access</i>
In the London Borough of Enfield	Vehicular access from Advent Way at the south of the EcoPark shown on plan 00_0021
In the London Borough of Enfield	Vehicular access from Meridian Way to Ardra Road shown on plan []
In the London Borough of Enfield	Vehicular access from Walthamstow Avenue to the south of Lower Hall Lane shown on plan 00_0021
In the London Borough of Enfield	Vehicular access from Advent Way to south of Lee Park Way shown on plan 00_0021
In the London Borough of Enfield	Vehicular access from Lee Park Way at the south of the temporary laydown area shown on plan 00_0021
In the London Borough of Enfield	Vehicular access from Lee Park Way at the east of the EcoPark shown on plan 00_0021

SCHEDULE 10
LAND TO BE COMPULSORILY ACQUIRED

Article 20

<i>(1)</i> <i>Number of land shown on land plans</i>	<i>(2)</i> <i>Land interest to be compulsorily acquired</i>
3	Ballast Phoenix Limited's leasehold interest in part of the EcoPark forming part of the land registered at the Land Registry with title number [SH to insert]
6	Edmonton Sea Cadet Corps' leasehold interest in part of the EcoPark (forming part of the land registered at the Land Registry with title number [SH to insert])
7	Kennet Properties Limited's freehold interest in Deephams Farm Road (forming part of the land registered at the Land Registry with title number MX500102)
11	Kennet Properties Limited's freehold interest (registered at the Land Registry with title number AGL99057)
34	A parcel of unregistered land at the north west corner of the Edmonton EcoPark and to the south of [] being [] square 532.15 metres or thereabouts

SCHEDULE 11
LAND IN WHICH PRIVATE RIGHTS MAY BE TEMPORARILY
SUSPENDED

Article 22

(1)	(2)
<i>Number of land shown on land plans</i>	<i>Purpose for which private rights may be temporarily suspended</i>
1	To construct the authorised development on the EcoPark, to carry out junction improvement works at the southern access point to the EcoPark from Advent Way and to carry out improvement/strengthening/demolition/construction works to the bridges over the Enfield Ditch.
2	To construct the authorised development on the EcoPark
3	To construct the authorised development on the EcoPark
4	To construct the authorised development on the EcoPark
5	To carry out improvement works at the southern access point to the EcoPark from Advent Way
7	To create a northern access into the EcoPark on Deephams Farm Road leading from Ardra Road and Meridian Way and to carry out road improvement works to Deephams Farm Road
8	To possibly carry out resurfacing works over Ardra Road.
9	To possibly carry out resurfacing works over Ardra Road
10	To possibly carry out resurfacing works over Ardra Road, and to carry out demolition works to the water pumping station on plot 11, to possibly construct a new water pumping station on plot 11, to lay new pipe connecting to any new water pumping station constructed on plot 11, to maintain pipes and other utilities connecting to any water pumping station on plot 11 that are not the responsibility of a statutory undertaker.
11	To demolish the existing water pumping station and to erect a replacement water pumping station
12	To locate equipment to be used in relation to the construction of the authorised development.
13	To locate equipment to be used in relation to the construction of the authorised development.
14	To carry out possible improvement / demolition works to the bridge over the River Lee Navigation and/or to construct a new bridge over the River Lee Navigation
15	To carry out any necessary improvement / demolition works to the bridge over the River Lee Navigation and/or to construct any necessary new bridge over the River Lee Navigation, and to construct new footpaths and cycleways.
16	To carry out improvement works to Lee Park Way, to carry out landscaping works, to construct a new access into the EcoPark from Lee Park Way, to install a vehicle barrier, to create new footpaths and cycleways, to divert existing cycleways
17	To use a temporary construction laydown area to the east of the EcoPark and to restrict access to it during the temporary use.

- 18 To carry out soft landscaping and minor hard landscaping works including minor repairs
- 19 To use as an access to the temporary construction laydown area leading from Walthamstow Avenue and Lower Hall Lane and to create a pedestrian and cycle crossing across Lower Hall Lane. [To carry out utility works]
- 20 To use an access to the temporary construction laydown area leading from Walthamstow Avenue and Lower Hall Lane and to create a pedestrian and cycle crossing across Lower Hall Lane. [To carry out utility works]
- 21 To use an access to the temporary construction laydown area leading from Walthamstow Avenue and Lower Hall Lane and to create a pedestrian and cycle crossing across Lower Hall Lane.
- 22 To create a right of way over Lee Park Way, to carry out improvement works to Lee Park Way, to carry out landscaping works, to construct a new access into the Laydown Area from Lee Park Way, to install a vehicle barrier, to divert cycleways and footpaths and to construct a new footpath and cycleway connecting Advent Way to the EcoPark. [To carry out utility works]
- 23 To create a right of way over Lee Park Way, to carry out improvement works to Lee Park Way, to carry out landscaping works, to construct a new access into the Laydown Area from Lee Park Way, to divert cycleways and footpaths and to construct a new footpath and cycleway connecting Advent Way to the EcoPark, to install CCTV and to install a barrier. [To carry out utility works]
- 24 To carry out landscaping.
- 25 To carry out landscaping, installing cctv and diverting cycleways and footpaths. [To carry out utility works – ***Amec to confirm***]
- 26 To carry out landscaping.
- 27 To carry out landscaping.
- 28 To carry out landscaping.
- 29 To carry out landscaping and to divert cycleways and footpaths
- 30 To carry out landscaping. [To carry out utility works – ***Amec to confirm***]
- 31 To construct the Project on the EcoPark, to carry out junction improvement works at the southern access point to the EcoPark from Advent Way, to divert footpaths and either to carry out improvement works to the bridges over the Enfield Ditch or replace the bridges over the Enfield Ditch .
- 32 To carry out junction improvement works at the southern access point to the EcoPark from Advent Way, to divert footpaths and to carry out improvement works to the bridge over the Enfield Ditch.
- 33 To
- 34 To carry out landscaping

SCHEDULE 12

LAND IN WHICH PRIVATE RIGHTS (NOT RIGHTS HELD AS A STATUTORY UNDERTAKER) MAY BE PERMANENTLY EXTINGUISHED

Article 22

<i>(1)</i> <i>Number of land shown on land plans</i>	<i>(2)</i> <i>Purpose for which private rights may be extinguished</i>
1	The relevant areas within plot 1 shown on the land plans are existing rights of way that need to be extinguished to allow for the construction of the authorised development.
4	Rights belonging to National Grid Gas for the purpose of decommissioning and removing its apparatus.
6	Rights belonging to BT for the purpose of decommissioning and removing its apparatus.
7	To create a northern access into the EcoPark on Deephams Farm Road leading from Ardra Road and Meridian Way, to carry out road improvement works to Ardra Road, and to remove a pipe (ownership and function unknown)
8	[Greenstar unilateral notice]
9	Rights belonging to Thames Water and LWL for the purpose of []
10	Rights belonging to Thames Water, LWL and Kennett for the purpose of []
11	Rights belonging to Thames Water for the purpose of []
15	Rights belonging to the London Borough of Enfield should it be necessary to demolish the bridge located within this plot.
16	Rights belonging to London Borough of Enfield and Eastern Power Networks for the purpose of demolishing the bridge over the River Lee Navigation
[17]	Rights belonging to Thames Water for the purpose of []
19	Rights belonging to Transport for London for the purpose of []
20	Rights belonging to Transport for London for the purpose of []
31	Rights belonging to the trustees for the Edmonton Sea Cadets, Thames Water, Ballast Phoenix and Kennett Properties for the purpose of []
32	Rights belonging to Thames Water and Kennett Properties for the purpose of []

33]	Rights belonging to London Borough of Enfield for the purpose of demolishing the bridge over the River Lee Navigation
34		Rights belonging to [unknown persons] for the purpose of []

SCHEDULE 13

LAND IN WHICH RIGHTS ETC., MAY BE ACQUIRED

Article 23

<i>(1)</i> <i>Number of land shown on land plans</i>	<i>(2)</i> <i>Purpose for which rights may be acquired</i>
1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33	(a) (a) Right of access with or without vehicles, plant, apparatus and materials to execute any works for the purposes of or incidental to the operation and maintenance of the authorised development; and (b) (b) right to reposition or remove statutory undertaker apparatus. (c)
8, 9	(d) Right of way over Ardra Road between the junction with Meridian Way and Deephams Farm Road (e) Right of access with or without vehicles, plant, apparatus and materials in connection with the maintenance of Ardra Road and any works ancillary to such maintenance including but without limitation the maintenance of street furniture (f)
10	(g) (h) (a) Right of access with or without vehicles, plant, apparatus and materials in connection with the maintenance of any structures and utilities within plot 11, and any works ancillary to such maintenance (i) (b) right to reposition or remove statutory undertaker apparatus. (j)
15, 16, 22, 23	(k) Right of way with or without vehicles over Lee Park Way (l) Right of access with or without vehicles, plant, apparatus and materials in connection with the maintenance of Lee Park Way and any works ancillary to such maintenance including but

without limitation the maintenance of street furniture

(m) Right of access with or without vehicles to maintain the access way to be constructed into the east of the EcoPark from Lee Park Way;

(n) (right to reposition or remove statutory undertaker apparatus.

16, 22, 23, 24, 25, 26, 27, 28, 29, 30

(a) Right of access with or without vehicles, plant, apparatus and materials in connection with the maintenance of landscaping works authorised by this Order

(b) right to reposition or remove statutory undertaker apparatus.

SCHEDULE 14

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

Article 23

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as to 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 limiting 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 of the 1965 Act,—

(a) the words “land is acquired or taken” are substituted with the words “a right over land is purchased”; and

(b) the words “acquired or taken from him” are substituted with the words “over which the right is exercisable”.

Application of 1965 Act

3.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are to be read (according to the requirements of the particular context) as referring to, or as including references to,—

(a) (c. 26). Section 44 was amended by paragraph 13(b) of Schedule 24 to the Highways Act 1980, paragraph 14(d) of Schedule 7 to the Gas Act 1986 (c.44) and paragraph 23 of Schedule 1 to the Water Consolidation (Consequential Provisions) Act 1991 (c.60)

- (a) the right acquired or to be acquired; or
- (b) the land over which the right is or is to be exercisable.

(2) Without limiting sub-paragraph (1), Part 1 of the 1965 Act applies to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

4. Section 11 of the 1965 Act (powers of entry) is modified so as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any new right, it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or (which is deemed for this purpose to have been created on the date of service of the notice); and

5. Sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

SCHEDULE 15

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

Articles 27 and 28			
(1) Area	(2) Number of land shown on land plans	(3) Purpose for which temporary possession may be taken	(4) Relevant part of the authorised development
In the London Borough of Enfield	12, 13	to temporarily place equipment in these plots (which are part of the River Lee Navigation). This equipment will be used to construct a new visitor and education centre with offices (EcoPark House) and construction of a boat canopy, each within the EcoPark.	Work no [<i>to be complete d after works plans finalised</i>]
In the Lond on Boro ugh of Enfie ld	17, 19, 20, 21	creation and use of a temporary Laydown Area, creation of vehicular, cycle and pedestrian access from Lee Park Way, restoration works to restore the current landscaping in the area used for the temporary Laydown Area, and utility network connections and supply.	Work no [<i>to be complete d after works plans finalised</i>]

SCHEDULE 16

PROTECTIVE PROVISIONS

Article 37

Note to PINS – these provisions have not been amended to take account of drafting conventions as they are based on statutory undertaker template wording and are currently out for consultation. We will make the requisite amendments in the next round of discussions with the statutory undertakers who have the benefit of these provisions. These provisions are subject to change as the undertaker awaits comments from the relevant statutory undertakers

PART 1

Protection for Operators of Electronic Communications Code Networks

1. The provisions of this Part have effect for the protection of the operators referred to in this Part, unless otherwise agreed in writing between the undertaker and the operator concerned.

2. In this Part—

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

“2003 Act” means the Communications Act 2003;

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system are to be construed in accordance with paragraph 1(3A) of that code;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act as defined in section 106(1) of the 2003 Act;

“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 that 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;

“operator” means the operator of an electronic communications code network.

3. [The exercise of the powers conferred by article 29 (statutory undertakers) is subject to paragraph 23 of Schedule 2 to the Telecommunications Act 1984(a).]

4.—(1) Subject to sub-paragraphs (2) and (3), 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 reasonable and proper cost incurred by the operator in making good such damage or restoring the supply as the case may be and must make proper and reasonable compensation to an operator for any other expenses, loss, damages, penalty or costs incurred by it.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption as far as 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 may be made without the consent of the undertaker which, if it

(a) (c.12). Paragraph 23 of Schedule 2 has been amended by section 106 of, and paragraphs 1 and 5 of Schedule 3 to, the Communications Act 2003 (c.21), section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and section 190 of, paragraph 68 of Schedule 25 to, and part 1 of Schedule 27 to, Water Act 1989 (c.15)

withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

5. This Part 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.

6. [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 2

Protection of Electricity, Gas, Water and Sewerage Undertakers

1. The provisions of this Part have effect for the protection of the statutory undertakers referred to in this Part, unless otherwise agreed in writing between the undertaker and the statutory undertaker concerned.

2. In this Part—

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

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

“apparatus” means any apparatus within the works limits as follows—

- (a) in the case of a statutory undertaker within paragraph (a) of the definition, electric lines or electrical plant (as defined in section 64 of the Electricity Act 1989(a)), belonging to or maintained by the undertaker for the purposes of electricity supply;
- (b) in the case of a statutory undertaker within paragraph (b) of the definition, any gas mains, pipes or other apparatus belonging to or maintained by the undertaker for the purposes of gas supply;
- (c) in the case of a statutory undertaker within paragraph (c) of the definition, water mains, pipes or other apparatus belonging to or maintained by the undertaker for the purposes of water supply; and
- (d) in the case of a statutory undertaker within paragraph (d) of the definition—
 - (i) any drain or works vested in the statutory 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,

(a) (c.29). Section 6(1) has been amended by section 30 of the Utilities Act 2000 (c.27) and sections 136 and 197 of, and part 1 of Schedule 23 to, the Energy Act 2004 (c.20). Section 64 has been amended by article 24(c) of the Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental Provisions Order 1999 (S.I. 1999/506), section 108 of, paragraphs 24 and 38 of part 2 of Schedule 6 to, and Schedule 8 to, the Utilities Act 2000 (c.27), sections 44, 89, 102, 143, 147, 180 and 197 of, paragraphs 3 and 15 of Schedule 19 to, and Part 1 of Schedule 23 to, the Energy Act 2000 (c.20), section 79 of, and paragraph 5 of Schedule 8 to, the Climate Change Act 2008 (c.27), section 72 of, and paragraph 5 of Schedule 8 to, the Energy Act 2011 (c.16), regulation 48 of the Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), articles 2 and 13 of the Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), section 26 of, and paragraphs 30 and 43 of part 1 of Schedule 6 to, the Enterprise and Regulatory Reform Act 2013 (c.24), and regulation 5 of the Electricity and Gas (Internal Markets) Regulations (S.I. 2014/3332).

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;

“statutory undertaker” means—

- (e) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (f) a gas transporter within the meaning of Part 1 of the Gas Act 1986(a);
- (g) a water undertaker within the meaning of Schedule 1 of the Interpretation Act 1978(b);
and
- (h) a sewerage undertaker,

for the area of the authorised development and, in relation to any apparatus, means the statutory undertaker to whom it belongs or by whom it is maintained.

3. This Part does not apply to apparatus in respect of which the relations between the undertaker and the statutory undertaker are regulated by the provisions of Part 3 of the 1991 Act.

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

5.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part and any right of a statutory undertaker to maintain that apparatus in that land must not be extinguished until (if so required by the statutory undertaker) alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the statutory undertaker in question.

(2) If, for the purpose of executing any works in, on, over or under any land purchased, held, appropriated or used under this Order or in, on, over or under any land within the works limits, the undertaker requires the removal of any apparatus placed in that land, it must give to the statutory undertaker in question written notice of that requirement, together with a plan and section of the work proposed.

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

(4) The statutory undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 35 (arbitration), and after the grant to the statutory undertaker of any such facilities and rights as are referred to in sub-paragraph (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.

(5) Despite anything in sub-paragraph (4), if the undertaker gives notice in writing to the statutory undertaker in question that it desires itself to execute any work or part of any work in

(a) (c.44). Section 7 (1) was amended by section 76 of the Utilities Act 2000 (c.27) and section 197 of, and part 1 of Schedule 23 to, the Energy Act 2004 (c.20)

(b)(c.30). The definition of “water undertaker” within that act was amended by sections 2 and 4 of, and paragraph 32 of Schedule 1 to, the Water Consolidation (Consequential Provisions) Act 1991 (c. 60) and sections 58, 101, 141, 160, 163, 189, 190 and 193 of, paragraph 55 of Schedule 25 to, and paragraphs 3, 17, 40, 57 and 58 of Schedule 26 to the Water Act 1989 (c.15)

connection with the construction or removal of apparatus, that work, instead of being executed by the statutory undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if so required by the statutory undertaker, and to the reasonable satisfaction of the statutory undertaker.

(6) [Nothing in sub-paragraph (5) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.]

6.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 5(2) that will or may adversely affect any apparatus the removal of which has not been required by the undertaker under that sub-paragraph, the undertaker must submit to the statutory undertaker in question a plan, section and description of the works to be executed.

(2) Those works are to 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 statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the statutory undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a statutory undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the day on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a statutory 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 6 apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(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 if this is done, 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 statutory 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.

7.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a statutory undertaker the proper and reasonable expenses incurred by that statutory undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus (including the proper and reasonable costs or compensation payable in connection with the acquisition of land for that purpose) which may be required in consequence of the execution of any such works as are referred to in paragraph 5(2).

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

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

(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 undertaker or, in default of agreement, is not determined by arbitration in accordance with article 35 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part exceeding those 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 but for this sub-paragraph would be payable to the statutory 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 must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

(5) An amount which but for this sub-paragraph would be payable to a statutory undertaker in respect of works by virtue of sub-paragraph (1) must, 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 statutory undertaker 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.

8.—(1) Subject to sub-paragraphs (2) and (3), if by reason, or in consequence, of the construction of any such works referred to in paragraph 5(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 statutory undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any statutory undertaker, the undertaker must—

- (a) bear and pay the proper and reasonable cost reasonably incurred by that statutory undertaker in making good such damage or restoring the supply; and
- (b) make proper and reasonable compensation to that statutory undertaker for any other expenses, loss, damages, penalty or costs incurred by the statutory 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 as far as it is attributable to the act, neglect or default of a statutory undertaker, its officers, servants, contractors or agents.

(3) A statutory undertaker must give the undertaker reasonable notice of any such claim or demand, and no settlement or compromise may 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.

PART 3

Protection of Canal and River Trust

1. The provisions of this Part have effect for the protection of Canal & River Trust, unless otherwise agreed in writing between the undertaker and Canal & River Trust.

2. In this Part—

“1965 Act” means the Compulsory Purchase Act 1965;

“construction” includes execution, placing, alteration and reconstruction, and “construct” and “constructed” have corresponding meanings;

“engineer” means an engineer appointed by Canal & River Trust and approved by the undertaker for the purposes of this Order;

“Canal & River Trust” means the Canal & River Trust acting as a trustee of the Waterways Infrastructure Trust or any successor body performing the same functions which holds any waterways within the works limits;

“code of practice” means the code of practice for works affecting British waterways (April 2010) as amended from time to time;

“plans” includes sections, designs, design data, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), programmes and details of the extent, timing and duration of any proposed use or occupation of any Canal & River Trust property;

“specified work” means so much of any of the authorised development to be situated upon, across, under, over or within the waterway or that may in any way adversely affect the waterway;

“Canal & River Trust property” means any land owned by Canal & River Trust within the works limits and includes land covered with water, sub-soil, air space and waterways;

“waterway” means the canal within the works limits and includes any pond or other waterway or course situated on Canal & River Trust property, any works, services, apparatus, equipment, lands (including subsoil) or premises belonging to or under the control of Canal & River Trust and held or used by it in connection with its statutory functions.

3.—(1) Where, under this Part or anywhere else under this Order, Canal & River Trust (or the engineer) is required to give its consent or approval in respect of any matter, that consent or approval must not be unreasonably withheld or delayed.

(2) In respect of any specified work or the acquisition of rights under or over or use of Canal & River Trust property, Canal & River Trust must co-operate with the undertaker with a view to avoiding undue delay.

4.—(1) The undertaker shall 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 Canal & River Trust.

(2) The undertaker shall not exercise the powers conferred by article 19 (authority to survey and investigate land) or by section 11(3) of the 1965 Act in relation to the waterway unless such exercise is with the consent of Canal & River Trust.

(3) The undertaker must not in the exercise of powers conferred by sections 271 or 272 of the Town and Country Planning Act 1990 as applied by Schedule 8 of this Order (streets to be temporarily stopped up) so as to divert any right of access to the waterway other than with the consent of Canal & River Trust.

5. The undertaker shall not use any land or property of Canal & River Trust forming part of the waterway for the passage or siting of vehicles, plant or machinery employed in the construction of the specified works other than –

(a) with the consent in writing of the engineer whose consent shall not be unreasonably withheld or delayed; and

(b) subject to compliance with such reasonable requirements as the engineer may from time to time specify –

(i) for the prevention of detriment; or

(ii) in order to avoid or reduce any inconvenience to Canal & River Trust, its officers, agents and all other persons lawfully on such land or property, but nothing in this paragraph shall apply in relation to anything done in accordance with any approval given by Canal & River Trust under paragraph 6.

6.—(1) The undertaker must, before commencing construction of any specified work or carrying out any works on Canal & River Trust property, supply to Canal & River Trust proper and sufficient plans of that work for the reasonable approval (having regard to the undertaker’s timetable for the construction of the authorised development) 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 (such approval not to be unreasonably withheld or delayed) or settled by arbitration in accordance with article 35 (arbitration) of this Order.

(2) If by the end of the period of 28 days beginning with the date on which such plans have been supplied to Canal & River Trust the engineer has not intimated disapproval of those plans and the grounds of disapproval the engineer is deemed to have approved the plans as submitted.

(3) When signifying approval of the plans, the engineer may specify any protective works (whether temporary or permanent) that in the engineer's reasonable opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of the waterway or the continued safe and efficient use of the waterway or any Canal & River Trust property, and such protective works (which for the avoidance of doubt may include requirements to fence any proposed works in order to separate the same from the waterways, ponds or watercourses situated on Canal & River Trust property either on a permanent or temporary basis) as may be reasonably necessary for those purposes must be constructed by the undertaker, as agreed between the parties or settled by arbitration in accordance with article 35 (arbitration) of this Order, and such protective works must be carried out at the expense of the undertaker with all reasonable dispatch, 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 the engineer's reasonable satisfaction.

7.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 6(3) must, when commenced, be constructed—

- (a) with all reasonable dispatch (having regard to the undertaker's timetable for construction of the authorised development) in accordance with the plans approved or deemed to have been approved or settled under paragraph 6;
- (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 or disturbance as is possible to the waterway
- (d) in such a manner to ensure that as few materials are discharged or deposited into any stream, watercourse, waterway, pond or any other water feature on or forming part of Canal & River Trust property as reasonable practicable; and
- (e) [so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of the waterway].

(2) If any damage to the waterway is caused by the carrying out of, or in consequence of, the construction of a specified work, the undertaker must make good such damage and must pay to Canal & River Trust all reasonable and proper expenses that Canal & River Trust may incur or may be put to and reasonable and proper compensation for any loss which it may sustain by reason of such damage, interference or obstruction.

(3) Nothing in this Part imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligent act or default of Canal & River Trust or its servants, contractors or agents or any liability on Canal & River Trust with respect to any damage, costs, expenses or loss attributable to the negligent act or default of the undertaker or its servants, contractors or agents.

8. 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 the engineer may reasonably require with regard to a specified work or the method of constructing it.

9. Canal & River Trust must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Canal & River Trust under this Part 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.

10. The undertaker must repay to Canal & River Trust all reasonable and proper fees, costs, charges and expenses reasonably incurred by Canal & River Trust 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

11. If at any time during or after the completion of a specified work, Canal & River Trust 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 the waterway, 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 the operation of the waterway.

12. The undertaker and Canal & River Trust may enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any Canal & River Trust property shown on the works or land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such Canal & River Trust property; and
- (c) any rights and obligations (whether or not statutory) of Canal & River Trust relating to any of Canal & River Trust property or any lands, works or other property referred to in this paragraph.

13. The undertaker shall repay to Canal & River Trust all fees, costs, charges and expenses reasonably and properly incurred by Canal & River Trust –

- (a) in constructing any protective works under the provisions of paragraph 6(3);
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer (if reasonably required) of the construction or repair of a specified work and any protective works;
- (c) in bringing the specified works or any protective works to the notice of users of CRT's network.

14.—(1) If any permanent or temporary alterations or additions to Canal & River Trust 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 Canal & River Trust property or the continued safe operation of the waterway, such alterations and additions may be carried out by Canal & River Trust, and if Canal & 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 Canal & River Trust the proper and reasonable cost of those alterations or additions.

(2) If the cost of maintaining, working or renewing Canal & River Trust 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 Canal & River Trust under this paragraph.

15.—(1) Canal & River Trust 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 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.

(2) In respect of any sums due to the Canal & River Trust from the undertaker referred to in this Part, the Canal & River Trust shall provide such details of the formula by which those sums have been calculated and a breakdown of those sums as the undertaker may reasonably require.

(3) In the assessment of any sums payable to Canal & River Trust under this Part, there must not be taken into account any increase in the sums claimed that are attributable to any action taken by or any agreement entered into by Canal & River Trust 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 or increasing the sums so payable.

16. [This Part does not apply to apparatus in respect of which the relations between the undertaker and the statutory undertaker are regulated by the provisions of Part 3 of the 1991 Act.]

PART 4

Protection of Environment Agency

1.—(1) The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and the Agency.

(2) In this Part—

“1973 Transfer Rights” means a right of way over parts of plots 1, 31 and 32 (as shown on the land plans) pursuant to a transfer dated 19 January 1973 as detailed in registered title number MX410055;

“agency” means the Environment Agency;

“construction” includes execution, placing, altering, replacing, relaying and removal, and “construct” and “constructed” are to be construed accordingly;

“drainage work” means any watercourse and includes any land that provides or is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring and any ancillary works constructed as a consequence of works carried out for drainage purposes;

“fishery” means any watercourse within the limits of deviation containing fish and fish in such waters and the spawn, habitat or food of such fish;

“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 16 metres of a drainage work or is otherwise likely to—

- (a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (b) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;
- (c) cause obstruction to the free passage of fish or damage to any fishery; or
- (d) affect the conservation, distribution or use of water resources;

“watercourse” means all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer.

2.—(1) Before commencing construction of any specified work, the undertaker must submit to the agency plans of the specified work and such further information available to it as the agency may within 28 days of the receipt of the plans reasonably require.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the agency, or determined under paragraph 12.

(3) Any approval of the agency 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 receipt of further information if such information has been required by the agency and, in the case of a refusal, accompanied by a statement of the grounds of refusal; and
- (c) may be given subject to such reasonable requirements as the agency may make for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.

(4) The agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

3. Without limiting paragraph 2 but subject always to the provision of that paragraph as to reasonableness, the requirements that the agency may make 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 (including the provision of 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;
- (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 the specified work.

4.—(1) Subject to sub-paragraph (2), the specified work, and all protective works required by the agency under paragraph 3, must be constructed—

- (a) without unnecessary 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 agency, and an officer of the agency is entitled to watch and inspect the construction of such works.

(2) The undertaker must give to the agency 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 no later than 7 days after the day on which it is completed.

(3) If the agency reasonably requires, the undertaker must construct all or part of the protective works so that they are in place before the construction of any specified work.

(4) If any part of a specified work or any protective work required by the agency is constructed otherwise than in accordance with the requirements of this Part, the agency may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part or (if the undertaker so elects and the agency 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 agency reasonably requires.

(5) Subject to sub-paragraph (6) and paragraph 8, if within a reasonable period of not less than 28 days from the day on which a notice under sub-paragraph (4) is served, 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 agency may execute the works specified in the notice and any expenditure incurred by it in so doing is recoverable from the undertaker.

(6) 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 agency must not except in emergency exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined.

5.—(1) Subject to sub-paragraph (6), the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work that is situated within the limits of deviation and on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work that the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the agency, the agency may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove the work and restore the site to its former condition, to such extent and within such limits as the agency reasonably requires.

(3) Subject to paragraph 8, if, within a reasonable period of not less than 28 days beginning with the day on which a notice in respect of any drainage work is served on the undertaker under sub-paragraph (2), the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress

towards their implementation, the agency may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the undertaker.

(4) If there is any failure by the undertaker to obtain consent or comply with conditions imposed by the agency in accordance with the provisions of this Part, the agency may serve written notice requiring the undertaker to cease all or part of the specified works, and the undertaker must cease the specified works or part of them until it has obtained the consent or complied with the condition unless the cessation of the specified works or part of them would cause greater damage than compliance with the written notice.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the agency must not except in a case of emergency exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined.

(6) This paragraph does not apply to drainage works that are vested in the agency or that the agency or another person is liable to maintain and is not prevented by this Order from so doing.

6. Subject to paragraph 8, 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 that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the agency, and if the undertaker fails to do so, the agency may make good the same and recover from the undertaker the expense reasonably incurred by it in so doing.

7.—(1) The undertaker must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in a fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to the fishery is caused, or the agency has reason to expect that such damage may be caused, the agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) Subject to paragraph 8, if within such time as may be reasonably practicable for that purpose of not less than 28 days beginning with the date on which a notice of any damage or expected damage to a fishery is served on the undertaker under sub-paragraph (2), the undertaker fails to take such steps as are described in sub-paragraph (2), the agency may take those steps and may recover from the undertaker the expense reasonably and properly incurred by it in doing so.

(4) Subject to paragraph 8, in any case where immediate action by the agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the agency may take such steps as are reasonable for the purpose, and may recover from the undertaker the reasonable cost of so doing so long as notice specifying those steps is served on the undertaker as soon as reasonably practicable after the agency has taken, or commenced to take, the steps specified in the notice.

8. Nothing in paragraphs 4(5), 5(3), 6 and 7(3) and (4) authorises the agency to execute works on or affecting the authorised development without the prior consent in writing of the undertaker such consent not be unreasonably withheld or delayed.

9. The undertaker must indemnify the agency in respect of all costs, charges and expenses that the agency may reasonably and properly incur or have to pay or that it may sustain—

- (a) in the examination or approval of plans under this Part; and
- (b) in the inspection of the construction of the specified works or any protective works reasonably required by the agency under this Part; and
- (c) the carrying out of any surveys or tests by the agency that are reasonably required in connection with the construction of the specified works.

10.—(1) Without limiting the other provisions of this Part, the undertaker must indemnify the agency from all proper claims, demands, proceedings, costs, damages, expenses or loss that may be made or taken against, recovered from, or incurred by, the agency by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any damage to a fishery;
- (c) any raising or lowering of the water table in land adjoining the authorised development or any sewers, drains and watercourses;
- (d) any flooding or increased flooding of any such lands; or
- (e) inadequate water quality in any watercourse or in any groundwater that is caused by the construction of any of the specified works or any act or omission of the undertaker, its contractors, agents or employees whilst engaged on the work.

(2) The agency 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.

11. The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or treated as approved by the agency, 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.

12. Any dispute arising between the undertaker and the agency under this Part, if the parties agree, is to be determined by arbitration under article 35 (arbitration), but otherwise is to be determined by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Transport acting jointly on a reference to them by the undertaker or the agency, after notice in writing to the other.

13. The undertaker must not in the exercise of the powers conferred by this Order unreasonably prevent the agency's access to and use of the dosing station adjacent to Salmons Brook in the vicinity of the southern entrance to the Edmonton EcoPark except where construction and operation of the authorised development reasonably requires interference with or obstruction of the free, uninterrupted and safe use of the 1973 Transfer Rights in which case a suitable alternative access shall be provided prior to and for the duration of any such interference.

14. Nothing in this Part imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligent act or default of the agency or its servants, contractors or agents or any liability on the agency with respect to any damage, costs, expenses or loss attributable to the negligent act or default of the undertaker or its servants, contractors or agents.