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STATUTORY INSTRUMENTS

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**2013 No. 1873**

**INFRASTRUCTURE PLANNING, ENGLAND**

**The North Blyth Biomass Power Station Order 2013**

*Made* - - - - *24th July 2013*

*Coming into force* - - *15th August 2013*

An application has been made to the Infrastructure Planning Commission in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(1) for an Order under sections 37, 114, 115, 120 and 149(A) of the Planning Act 2008(2) (“the 2008 Act”).

The application was examined by a single appointed person appointed by the Secretary of State pursuant to Chapter 3 of Part 6 of the 2008 Act(3) and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010(4).

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examined the application with the documents that accompanied the application, and the representations made and not withdrawn, has, in accordance with section 83(1) of the 2008 Act, made a report and recommendation to the Secretary of State.

The Secretary of State, having considered the report and recommendation of the single appointed person, and decided the application, has determined to make an 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, in exercise of the powers conferred by sections 114, 115, 120 and 149A of the 2008 Act, makes the following Order:

**Citation and commencement**

**1.** This Order may be cited as the North Blyth Biomass Power Station Order 2013 and shall come into force on 15th August 2013.

**Interpretation**

**2.—(1)** Except for Schedule 4, which is subject to the definitions provided in that Schedule, in this Order—

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

“the 1961 Act” means the Land Compensation Act 1961(5);

“the 1965 Act” means the Compulsory Purchase Act 1965(6);

“the 1980 Act” means the Highways Act 1980(7);

“the 1990 Act” means the Town and Country Planning Act 1990(8);

“the 1991 Act” means the New Roads and Street Works Act 1991(9);

“the 2008 Act” means the Planning Act 2008(10);

“the 2009 Act” means the Marine and Coastal Access Act 2009(11);

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

“the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

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

“carriageway”, “highway” and “highway authority” have the same meanings as in the 1980 Act;

“Commission” means the Blyth Harbour Commission;

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

“the deemed Marine Licence” means the marine licence set out in Schedule 4 and deemed by article 27 to have been granted under Part 4 of the 2009 Act, by virtue of section 149A of the 2008 Act;

“design and access statement” means the design and access statement certified by the Secretary of State as the design and access statement for the purposes of this Order;

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- (5) 1961 c.33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 3 to, the Local Government, Planning and Land Act 1985 (c.65). There are other amendments to the 1961 Act which are not relevant to this Order.
- (6) 1965 c.56. 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, as 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 section 67 and 80 of, and Part 2 of Schedule 10 to, the Planning and Compensation Act 1991 (c.34). Subsection (1) of section 11 and section 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1968 (c.67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1). Subsection 11(3) was amended by article 5 of, and Schedule 1 to, the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307). Section 12 was amended by section 56(2) of and Part 1 to Schedule 92 to, the Courts Act 1981 (c.23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c.15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c.39) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1). There are other amendments to the 1965 Act which are not relevant to this Order.
- (7) 1980 c.66. Section 1(1) as 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 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 1975 (c.71), by the Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006 (S.I. 2006/177), 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 1992 (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).
- (8) 1990 c.8. Section 206(1) as amended by section 192(8) of, and paragraph 7 and 11 of Schedule 8 to, the Planning Act 2008 (c.29). Relevant amendments have been made by section 406 of, and Schedule 17 to, the Communications Act 2003. There are other amendments to the 1990 Act which are not relevant to this Order.
- (9) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Section 79(4), 80(4) and 83(4) are amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).
- (10) 2008 c.29. Section 149A was inserted by section 112(1) of, and paragraph 4 of Schedule 8 to, the Marine and Coastal Access Act 2009 (c.23).
- (11) 2009 c.23.

“elevations plan” means the elevations plan certified by the Secretary of State as the elevations plan for the purposes of this Order;

“the Environment Agency” means the body established under the Environment Act 1995<sup>(12)</sup> or any successor to its statutory functions;

“the environmental statement” means the environmental statement certified by the Secretary of State as the environmental statement for the purposes of this Order;

“the heat radiation contour plan” means the heat radiation contour plan certified by the Secretary of State as the heat radiation contour plan for the purposes of this Order;

“the land plan” means the land plan certified by the Secretary of State as the land plan for the purposes of this Order;

“maintain” includes inspect, maintain, and repair the authorised development; and “maintenance” shall be construed accordingly;

“massing plan” means the massing plan certified as such by the Secretary of State for the purposes of this Order;

“the Marine Management Organisation” or “MMO” means the body of that name created under the 2009 Act or any successor to its statutory functions;

“Order land” means the land shown on the land plan which is within the boundary of land required for or affected by the proposed development, 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;

“Owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981<sup>(13)</sup>;

“relevant planning authority” means Northumberland County Council as planning authority for the area in which the land to which the provisions of this Order apply is situated and any successor to its statutory function as planning authority for the area in which the authorised development is located;

“the Requirements” means the requirements set out in Schedule 2 (Requirements) to this Order;

“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 III of the 1991 Act;

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

“the undertaker” means, subject to article 7(2) of this Order, North Blyth Energy Limited (company number 7595351);

“vessel” means a ship, boat, raft or water craft of any description and includes non-displacement craft, seaplanes and any other thing constructed or adapted for floating on or being submersed in water (whether permanently or temporarily) and a hovercraft or other amphibious vehicle;

“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

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(12) 1995 c.25.

(13) 1981 c.67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). There are other amendments to the 1981 Act which, except where otherwise provided herein, are not relevant to this Order.

“the works plan” means the works plan certified by the Secretary of State as the works plan 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 and distances between points on a work comprised in the authorised development shall be taken to be measured along that work.

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

(5) References in this Order to numbered “Works” or “Work No(s).” are to the works of the authorised development with those numbers in Schedule 1 (authorised development) and shown on the works plan.

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

3.—(1) Subject to the other terms of this Order, including the Requirements and the provisions and conditions of the deemed Marine Licence, the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) The authorised development may be constructed in the lines or situations shown on the works plan and, subject to the provisions of the Requirements, in accordance with the drawings specified in the Requirements.

(3) In constructing or maintaining Work Nos. 1(v), 1(w), 3A to D, 4, 5 and 9 the undertaker may deviate laterally from the lines or situations shown on the works plan within the limits of deviation.

### **Procedure in relation to approvals etc under the Requirements**

4. Where an application is made to the relevant planning authority for any consent, agreement or approval required by any of the Requirements, the following provisions apply in respect of that application as they would apply if the consent, agreement or approval so required was required by a condition imposed on a grant of planning permission—

- (a) sections 78 and 79 of the 1990 Act (right of appeal in relation to planning decisions);
- (b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission.

### **Maintenance of authorised development**

5. Subject to—

- (a) the other terms of this Order, including the Requirements and the provisions and conditions of the deemed Marine Licence; and
- (b) any contrary provision in an agreement made under this Order,

the undertaker may at any time maintain the authorised development.

### **Operation of generating station**

6.—(1) The undertaker is authorised to operate the generating station comprised in the authorised development for the purpose of generating electricity.

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

### **Benefit of Order**

7.—(1) Subject to the terms of this article, the provisions of this Order shall have effect solely for the benefit of the undertaker.

- (2) Subject to paragraph (5), 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.

(3) Where an agreement has been made in accordance with paragraph (2) references in this Order to the undertaker, except in paragraph (4), shall include references to the transferee or lessee.

(4) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (2) 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.

(5) The provisions of articles 13(1), 16(1), 19(1) and 22 shall have effect only for the benefit of the named undertaker and a person who is a transferee or lessee as is referred to in paragraph (2) and is also—

- (a) the transferee or lessee of the land occupied by Work No. 1, and
- (b) a person who holds a licence under the Electricity Act 1989(14).

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

8.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(15) (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(16); 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—

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(14) 1989 c.29. Relevant amendments have been made by section 30 of the Utilities Act 2000 (c.27) and section 89 of the Energy Act 2004 (c.20).

(15) 1990 c.43. There are amendments to this Act which are not relevant to this Order.

(16) 1974 c.40. Section 61(9) and section 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 (c.25). There are other amendments to the 1974 Act which are not relevant to this Order.

- (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 planning authority as described in Requirement 36; 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**

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

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

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

(3) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1); and all such other provisions as apply for the purpose of the provisions mentioned above.

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

### **Agreements with street authorities**

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

- (a) any alteration or diversion of a street authorised by this Order; or
  - (b) the carrying out in the street of any of the works referred to in article 9(1) (street works).
- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
  - (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
  - (c) contain such terms as to payment and otherwise as the parties consider appropriate.

### Discharge of water

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

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991<sup>(17)</sup> (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; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but shall not be unreasonably withheld.

(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, but such approval shall not be unreasonably withheld; 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.

(6) 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.

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by regulation 38 of the Environmental Permitting Regulations (England and Wales) 2010<sup>(18)</sup> (offences).

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964<sup>(19)</sup> (interpretation), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991<sup>(20)</sup> have the same meaning as in that Act.

### Authority to survey and investigate the land

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

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

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<sup>(17)</sup> 1991 c.56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c.37). There are other amendments to this section which are not relevant to this Order.

<sup>(18)</sup> S.I. 2010/675.

<sup>(19)</sup> 1964 c.40. Paragraph 9B was inserted into Schedule 2 by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 9(1) and (5). There are other amendments to the 1964 Act which are not relevant to this Order.

<sup>(20)</sup> 1991 c.57.

- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
  - (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.
- (2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.
- (3) Any person entering land under this article on behalf of the undertaker—
- (a) 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;
  - (b) in a private street without the consent of the street authority, but such consent shall not be unreasonably withheld; or
  - (c) in any coal seam without the consent of the Coal Authority.
- (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, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

### **Compulsory acquisition of land**

- 13.**—(1) Subject to the provisions of article 16, 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) As from 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, whichever is the later, that land or that part of it which is vested (as the case may be) shall be discharged from all rights, trusts and incidents to which it was previously subject.
- (3) 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.

### **Compulsory acquisition of land – incorporation of the minerals code**

- 14.** Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981(21) (minerals) are incorporated in this Order subject to the modifications that—
- (a) paragraph 8(3) is not incorporated; and
  - (b) for “the acquiring authority” substitute “the undertaker”.

### **Time limit for exercise of authority to acquire land compulsorily**

- 15.** After the end of the period of 5 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

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(21) 1981 c.67. Relevant amendments were made by article 5 of, and Schedule 1 to, the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307).



- (b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981(22) as applied by article 18 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

### **Compulsory acquisition of rights**

**16.**—(1) The undertaker may only acquire compulsorily the existing rights and create and acquire compulsorily the new rights described in plots 2 to 15 of the book of reference and shown coloured blue on the land plan.

(2) As from the date on which a compulsory acquisition notice is served or the date on which any new right is vested in the undertaker, whichever is the later, the land over which any new rights is 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, as substituted by article 20 (acquisition of part of certain properties), where the undertaker acquires an existing right over land under 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 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.

### **Private rights of way**

**17.**—(1) Subject to the 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).

(2) Subject to the 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, is required for the purposes of this Order shall be extinguished on the appropriation of the land by the undertaker for any of those purposes.

(3) 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.

(4) 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 22 (statutory undertakers) applies.

(5) 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.
- (6) If any such agreement as is referred to in paragraph (5)(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**

**18.**—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(**23**) shall apply as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, shall have effect with the following modifications.

(3) 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.”.

(4) In that section, in subsection (2), for “(1)(b)” there shall be substituted “(1)” and after “given” there shall be inserted “and published”.

(5) 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.”.

(6) 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.

(7) 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.

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(23) Sections 2(3), 6(2) and 11(6) were amended by section 4 of and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c.17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c.50); section 161(4) of, and Schedule 19 to, the Leasehold Reform Housing and Urban Development Act 1993 (c.28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c.51). There are other amendments to the 1981 Act which are not relevant to this Order.

(8) 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.

#### **Acquisition of subsoil only**

**19.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 13 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of land under paragraph (1), the undertaker shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) shall not prevent article 20 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

#### **Acquisition of part of certain properties**

**20.**—(1) This article shall apply instead of section 8(1) of the 1965 Act (other provisions as to divided land) (as applied by section 125 of the 2008 Act) where—

- (a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner shall be required to sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner shall be required to sell only the land subject to the notice to treat shall, unless the undertaker agrees to take the land subject to the counter-notice, be referred to the Tribunal.

(5) If on such a reference the Tribunal determines that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house, the owner shall be required to sell the land subject to the notice to treat.

(6) If on such a reference the Tribunal determines that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house, the notice to treat shall be deemed to be a notice to treat for that part.

(7) If on such a reference the Tribunal determines that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
  - (b) the material detriment is confined to a part of the land subject to the counter-notice, the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.
- (8) If the undertaker agrees to take the land subject to the counter-notice, or if the Tribunal determines that—
- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
  - (b) the material detriment is not confined to a part of the land subject to the counter-notice, the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.
- (9) Where, by reason of a determination by the Tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, shall pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the Tribunal.
- (10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker shall pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

### **Rights under or over streets**

- 21.—**(1) The undertaker may enter on and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.
- (2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.
- (3) Paragraph (2) 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.

### **Statutory undertakers**

**22.**—(1) The undertaker may—

- (a) acquire compulsorily the land belonging to statutory undertakers shown on the land plan within the limits of the land to be acquired and described in the book of reference; and
- (b) acquire compulsorily the new rights over land belonging to statutory undertakers shown on the land plan and described in the book of reference.

(2) Nothing in this Order shall authorise the undertaker to—

- (a) extinguish the rights of statutory undertakers in connection with their apparatus; or
- (b) remove or reposition apparatus belonging to statutory undertakers.

### **Recovery of costs of new connections**

**23.**—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 22 (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 22, any person who is—

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

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003<sup>(24)</sup>; and

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

### **Railway and navigation undertakings**

**24.**—(1) Subject to the following provisions of this article, the undertaker may not under article 9 (street works) break up or open a street where the street, not being a highway maintainable at public expense (within the meaning of the 1980 Act)—

- (a) is under the control or management of, or is maintainable by, railway or tramway undertakers or a navigation authority; or
- (b) forms part of a level crossing belonging to any such undertakers or to such an authority or to any other person,

except with the consent of the undertakers or authority or, as the case may be, of the person to whom the level crossing belongs.

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(24) 2003 c.21. There are amendments to this Act which are not relevant to this Order.

(2) Paragraph (1) shall not apply to the carrying out under this Order of emergency works, within the meaning of Part 3 of the 1991 Act.

(3) A consent given for the purpose of paragraph (1) may be made subject to such reasonable conditions as may be specified by the person giving it but shall not be unreasonably withheld.

(4) In this article “navigation authority” means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary or harbour.

### **Application of landlord and tenant law**

**25.**—(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**

**26.** 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).

### **Deemed licence for purposes of the 2009 Act**

**27.** The undertaker is deemed to have been granted a licence under Part 4 Chapter 1 of the 2009 Act to carry out the works described in Schedule 4, subject to the provisions set out in that Schedule, which are deemed to have been attached to the licence by the Secretary of State under Part 4 of the 2009 Act.

### **Certification of plans etc**

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

- (a) the book of reference;
- (b) the design and access statement;

- (c) the elevations plan;
- (d) the environmental statement;
- (e) the heat radiation contour plan;
- (f) the land plan;
- (g) the massing plan; and
- (h) the works plan

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**

**29.** Any difference under any provision of this Order, unless otherwise provided for other than a difference which falls to be determined by the Tribunal, 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 from time to time of the Law Society of England and Wales.

### **Crown rights**

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

- (a) Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners, without the consent in writing of those Commissioners; or
- (b) a government department or held in trust for Her Majesty for the purposes of a government department, without the consent in writing of that government department.

(2) No interest in Crown land may be acquired compulsorily under this Order unless the appropriate Crown authority consents to the acquisition.

(3) A consent under paragraph (1) or (2) may be given unconditionally or subject to such conditions or upon such terms as may be considered necessary or appropriate.

### **Protective provisions**

**31.** Schedule 5 (protective provisions) shall have effect.

Signed by authority of the Secretary of State for Energy and Climate Change

24th July 2013

*Giles Scott*  
Head of National Infrastructure Consents  
Department of Energy and Climate Change

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## SCHEDULE 1

Article 3

### Authorised development

1. In Northumberland the construction use and maintenance of a nationally significant infrastructure project as defined in sections 14(1)(a) and 15 of the 2008 Act comprising—

*Work No. 1* — an electricity generating station located on the eastern side of Battleship Wharf, Port of Blyth with a nominal gross electrical output capacity of up to 99.9 MWe fuelled by biomass and including—

- (a) boiler house;
- (b) main stack;
- (c) turbine hall;
- (d) workshop and maintenance building;
- (e) pump house and associated equipment for steam cycle systems;
- (f) two fuel storage sheds located to the north and the south of the turbine hall and boiler house;
- (g) day fuel storage shed located to the east of the turbine hall;
- (h) road vehicle discharge facility;
- (i) railway discharge and reception facility;
- (j) control room and administration buildings (with provision for visitor facility);
- (k) supplementary liquid fuel storage facility and associated distribution system;
- (l) bottom ash and fly ash handling and storage facility together with lorry transshipment and discharge facility;
- (m) processing plant including—
  - (i) flue gas treatment facility;
  - (ii) water treatment plant;
  - (iii) raw water storage facility;
  - (iv) demineralised water storage facility;
- (n) storage facilities for chemicals and sand for use in combustion and gas clean-up;
- (o) substation;
- (p) conveyor system attached to and connecting with buildings (a), (f), (g), (h), and (i);
- (q) internal site roads, footways and vehicle parking facilities;
- (r) weighbridge;
- (s) security building and gatehouse;
- (t) external enclosed conveyor and mobile hopper system including transfer points leading from Berth 4 Battleship Wharf at ordnance survey national grid reference point NZ 30834 82861 to Work No. 1(p);
- (u) water intake system from the estuary of the River Blyth under Berth 4 of the Commission's Battleship Wharf at ordnance survey national grid reference point NZ 30836 82822 consisting of a screened intake, underground pumping chamber, above ground access and pump house building and underground pipe running east from the estuary of the River Blyth and leading to a condenser within Work No. 1(c);
- (v) up to two water outfall pipes running underground from Work No. 1(c) at ordnance survey national grid reference point NZ 31068 82736 in an easterly direction and under the



railway of the Port of Blyth, then the highway of North Blyth Road, the railway from North Blyth to Bedlington then under the foreshore and the North Sea and the rock outcrop known as the Rockers to a diffuser on the sea bed referred to in sub-paragraph (w);

- (w) a diffuser and foundation on the sea bed of the North Sea at ordnance survey national grid reference point NZ 32025 83375.

2. Associated development within the meaning of section 115(2) of the 2008 Act comprising—

*Work No. 2* — modifications to access to the highway of North Blyth Road at the existing entrance to the Commission’s Battleship Wharf at grid reference NZ 31146 82436 including modification to the roundabout in the highway of North Blyth Road at ordnance survey national grid reference point NZ 31192 82447 and work to repair the adjacent river wall in the estuary of the River Blyth and strengthen it by way of a new bored pile wall on the landward side of the existing river wall;

*Work No. 3A* — a grid connection consisting of a 66 kV underground circuit and associated telemetry cables commencing at Work No. 1 in an easterly direction for 35 metres under the Commission’s railway and bund to the western verge of North Blyth Road;

*Work No. 3B* — a grid connection consisting of a 66 kV underground circuit and associated telemetry cables laid in a trench commencing at Work No. 3A and then in a north westerly direction parallel to the carriageway of North Blyth Road for 520 metres to the Commission’s railway where it crosses North Blyth Road by a level crossing at ordnance survey national grid reference point NZ 30842 83263;

*Work No. 3C* — a grid connection consisting of a 66 kV underground circuit and associated telemetry cables laid by directional drilling from Work No. 3B under the Commission’s railway where it crosses the highway of North Blyth Road by a level crossing for 85 metres at ordnance survey national grid reference point NZ 30793 83334;

*Work No. 3D* — a 66 kV underground circuit and associated telemetry cables laid in a trench connecting with Work No. 3C and then in a north westerly direction parallel to the carriageway of North Blyth Road for 100 metres to Cambois roundabout at ordnance survey national grid reference point NZ 30717 83397 and connecting with Work No. 4;

*Work No. 4* — a grid connection consisting of a 66 kV underground circuit and associated telemetry cables laid in a trench connecting with Work No. 3D at ordnance survey national grid reference point NZ 30717 83397 under the unnamed highway classified as C415 and running west under the said highway for 406 metres to a point immediately north of the access from the former Blyth Generating Station site to the highway of North Blyth Road at ordnance survey national grid reference point NZ 30317 83371;

*Work No. 5* — a grid connection consisting of a 66 kV underground circuit and associated telemetry cables laid in a trench connecting with Work No. 4 at ordnance survey national grid reference point NZ 30317 83371 underneath the highway of North Blyth Road and running south under the internal access road of the former Blyth Generating Station site from the highway of North Blyth Road to the substation owned by Northern Powergrid Limited on the former Blyth Generating Station Site at ordnance survey national grid reference point NZ 30297 83086;

*Work No. 6* — an emergency access and egress route from Work No. 1 connecting to the highway of North Blyth Road at ordnance survey national grid reference point NZ 31202 82556;

*Work No. 7* — removal of existing railway transit shed over the Commission’s railway to the west of the highway known as North Blyth Road and its resiting over the said railway at ordnance survey national grid reference point NZ 31026 82919;

*Work No. 8* — demolition of the Commission’s existing security cabin located to the north of the entrance to the Port of Blyth’s Battleship Wharf from the highway of North Blyth Road;

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*Work No. 9* — construction of a new security cabin for the Commission to the north of the entrance to the Commission’s Battleship Wharf from the highway of North Blyth Road at ordnance survey national grid reference point NZ 31123 82483;

and in connection with such works further associated development comprising—

- (a) landscaping, fencing and boundary treatments;
- (b) metal mesh screening;
- (c) connection to the electricity network for the purpose of supply to the authorised development;
- (d) connection to the telecommunications network for the purpose of supply to the authorised development;
- (e) temporary construction site offices;
- (f) hardstandings on site for the parking of construction vehicles plant and machinery or for the vehicles of construction workers;
- (g) water supply works, foul drainage provision and surface water management systems;
- (h) raw water fire fighting tank and associated pipe network; and
- (i) installation and maintenance of an aid to navigation at ordnance survey national grid reference point NZ 32025 83375 marking the location of the water outfall pipe at its seaward end.

## SCHEDULE 2

Article 3

### Requirements

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Explanatory Note

## Interpretation

### 1.—(1) In this Schedule—

“applicable mandatory sustainability criteria” means—

- (a) the mandatory sustainability criteria which the undertaker must comply with from time to time as a condition of eligibility of the authorised development for financial assistance under a relevant assistance regime; or
- (b) if financial assistance has been granted under a relevant assistance regime in respect of the authorised development for a limited period of time and that period has elapsed so that the authorised development is no longer eligible for financial assistance under any relevant assistance regime, those criteria by compliance with which the operation of the authorised development was most recently eligible for such assistance,

and biomass fuel feedstocks shall be taken to comply with the applicable mandatory sustainability criteria if, at that time, the undertaker has reason to believe that they comply with the applicable mandatory sustainability criteria;

“biomass fuel feedstocks” means—

- (a) wood fuel, in the form of virgin wood fibre (chipped roundwood, slabwood, offcuts, peelings, butt reducing chips and bark), recycled wood chips, wood pellets and wood briquettes; or
- (b) energy crops; or
- (c) other biomass material, including residues from processing cereals (wheat, barley and maize) and oilseeds (rapeseed, sunflower and other oilseeds), that qualify as biomass as

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defined under the provisions of the Renewables Obligation Order 2009<sup>(25)</sup> (as amended from time to time by other subsequent legislation relevant to power generation);

“CEMP” means a construction and environmental management plan relating to the construction of the authorised development;

“code of construction practice” means a code of construction practice agreed by the relevant planning authority prior to commencement of the authorised development;

“commence” means the first carrying out of a material operation for the construction of the authorised development and commencement and commenced shall be defined accordingly;

“commissioning” means the testing of the authorised development prior to its first operation for commercial export of electricity and the phrase “first brought in to use” shall not apply to commissioning;

“construction site” means the area of onshore works of the authorised development;

“construction work” means operations to build the authorised development but does not include any internal fitting out or commissioning activities;

“European protected species” has the same meaning as in regulations 40 and 44 of the Conservation (Natural Habitats, &c.) Regulations 2010<sup>(26)</sup>;

“first commercial use” means the first export of electricity from the authorised development for commercial purposes;

“heavy commercial vehicles” means any vehicles exceeding 3 tonnes in weight employed by the undertaker or its contractors or their subcontractors for the purpose of movement of aggregates plant and materials to and from the construction site during the construction period or employed for the purposes of delivering fuel stock during the operation of the authorised development as the case may be;

“mandatory sustainability criteria” means criteria relating to the sustainability of biomass for energy use (other than biofuels and bioliquids) which are prescribed in a relevant assistance regime;

“material operation” has the same meaning as section 155 of the 2008 Act;

“Natural England” means the body established by section 1 of the Natural Environment and Rural Communities Act 2006<sup>(27)</sup> and includes any successor to its statutory functions;

“relevant assistance regime” means the provisions of any legislation or other legally binding arrangements established or approved by Government under or by virtue of which the generation of electricity from biomass fuel feedstocks on a commercial basis qualifies for financial assistance by reason of the burning of biomass fuel feedstocks which comply with prescribed mandatory sustainability criteria; and

“site” shall mean that part of the land within Order limits shown on 02377 D 2521-02 and titled “North Blyth Site Plan”.

(2) References to any statutory body shall include that body’s successor bodies having jurisdiction over the authorised development.

### **Time limits**

2. The authorised development shall not be commenced after the expiration of five years of the date this Order comes into force.

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<sup>(25)</sup> S.I. 2009/785.

<sup>(26)</sup> S.I. 2010/490.

<sup>(27)</sup> 2006 c.16. Section 1 was amended by section 311(2) and (3) of the Marine and Coastal Access Act 2009 (c.23).

### **Detailed design**

3.—(1) No part of the authorised development may commence until details of the following (which must accord with the principles of the design and access statement) have been submitted to and approved by the relevant planning authority—

- (a) details of the external appearance (including materials which are proposed to be used and proposed finishes) of Work Nos. 1(a) to (d), (f) to (j), (l), (m), (o), (p) and (s) comprised in the authorised development;
- (b) details of the architectural feature comprising translucent cladding shown on the elevations plan and forming part of Work No. 1(a) which must not emit light at a level greater than 60 lux when measured at any point within 20 metres of Work No. 1(a) at ground level between dusk and dawn in any 24 hour period;
- (c) details of vehicular access and circulation roads, drainage, parking, cycle parking, hardstanding, storage tanks and silos, loading and unloading facilities and turning facilities;
- (d) details for the minimisation of operational dust emitted by the authorised development prepared in accordance with the principles in paragraphs 7.1.6 and 7.8.6 of the environmental statement;
- (e) details for the minimisation of operational noise emitted by the authorised development prepared in accordance with the principles in paragraph 8.8.18 of the environmental statement; and
- (f) details of the metal mesh screens to be provided on the north east elevation of the authorised development more particularly shown on the elevations plan.

The development shall thereafter be carried out fully in accordance with the approved details.

(2) The details submitted to the relevant planning authority in accordance with sub-paragraph (1) shall demonstrate that—

- (a) in respect of Work No. 1(a) excluding the architectural feature comprising translucent cladding shown on the elevations plan; Work Nos. 1(c) to 1(s) and Work No. 7 the heights of the buildings must not exceed the heights from existing ground level shown on the massing plan;
- (b) in respect of Work No. 1(a), the architectural feature comprising translucent cladding shown on the elevations plan must be no greater than 4.5 metres in height when measured from the roof level of Work No. 1(a) and no greater than 10 metres in width; and
- (c) Work Nos. 1(a) to (d), (f) to (j), (l), (p) and (s) comprised in the authorised development must comply with the principles contained in numbers 1 to 8 of the elevational treatment list (including references to proposed colours) at paragraph 4.21 of the design and access statement.

(3) Work No. 1(b) must be finished in a light grey colour and must not be less than 100 metres in height measured from existing ground level, nor exceed 105 metres in height measured from existing ground level and its diameter must not exceed 5 metres.

(4) Save in relation to Work No. 1(l), for which micro-siting within a distance of 10 metres from its position shown on the elevations plan is permitted, Work Nos. 1(a) to (d), (f) to (j), (p) and (s) comprised in the authorised development must accord with the elevations plan.

### **Highway accesses**

4.—(1) No part of the authorised development may commence until written details of the siting, design and layout of any new permanent or temporary means of access to a highway to be used by vehicular traffic, or any alteration to an existing means of access to a highway used by vehicular

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traffic, has, after consultation with the relevant planning authority and highway authority, been submitted to and approved by the relevant planning authority.

(2) The highway accesses must be constructed in accordance with the approved details prior to first commercial use of the authorised development.

#### **Fencing and other means of enclosure**

5.—(1) No part of the authorised development may commence until written details of all proposed permanent fences, walls or other means of enclosure have, following consultation with Northumbria Police, been submitted to and approved by the relevant planning authority.

(2) The authorised development, and any construction sites, must remain securely fenced at all times during construction of the authorised development.

(3) Any temporary fencing must be removed within a period of twelve calendar months following the first commercial use of the authorised development.

(4) Any approved permanent fencing of the authorised development must be completed before first commercial use of the authorised development.

#### **Surface and foul water drainage**

6.—(1) No part of the authorised development may commence until written details of the surface and foul water drainage systems (including means of pollution control and the principles set out in 14.7.12 of the environmental statement) have been submitted to and approved by the relevant planning authority and the sewerage and drainage authority.

(2) The surface and foul water drainage system must thereafter be constructed in accordance with the approved details and operational before first commercial use of the authorised development.

#### **Surface water drainage – contamination**

7.—(1) Any surface water contaminated with hydrocarbons or silt must be treated to remove contamination in a manner previously approved in writing by the relevant planning authority in consultation with the Environment Agency prior to any discharge to any public sewer or water course.

(2) Appropriate interceptors (including oil interceptors) must be fitted to all appropriate drainage systems in accordance with a scheme to be submitted to and approved in writing by the relevant planning authority prior to commencement of the authorised development.

(3) The approved details must thereafter be maintained for the lifetime of the authorised development to the reasonable satisfaction of the relevant planning authority.

(4) A scheme for the prevention of contamination of controlled waters by cementitious materials must be prepared in accordance with paragraphs 15.6.23 to 15.6.26 of the environmental statement and submitted to and approved in writing by the relevant planning authority prior to commencement of the authorised development. The authorised development shall be carried out in accordance with the approved scheme. All concrete and cement mixing and washing areas must be bunded and sited at least 10 metres from any watercourse or surface water drain to minimise the risk of runoff entering a watercourse.

(5) Prior to any concrete being sprayed or poured in an area that may give rise to concrete entering the marine environment, the undertaker must ensure that suitable protective sheeting is first provided in that area to prevent rebound or windblown concrete from entering the marine environment. Thereafter any rebounded or windblown material must be cleared away before the sheeting is removed.

### **Contaminated land and groundwater**

8.—(1) No part of the authorised development may commence until a written scheme (which may be included in the CEMP) has been prepared (including those measures proposed in paragraph 15.6.13 of the environmental statement) to deal with the contamination of any land, including groundwater, within the Order limits which is likely to cause significant harm to persons or pollution of controlled waters or ground 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 approved by the relevant planning authority, 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 site.

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

(4) If during the construction of the authorised development further contamination not previously identified is found to be present then no further work may be carried out on that part of the authorised development until a risk assessment has been carried out and the results of that risk assessment have been provided to the relevant planning authority.

### **Disposal of contaminated materials**

9.—(1) No part of the authorised development may commence until a scheme for the disposal of contaminated material (including contaminated water) arising from the construction of the authorised development has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency.

(2) Thereafter all contaminated material must be disposed of to licensed disposal facilities or treated where found in accordance with that scheme and to the reasonable satisfaction of the relevant planning authority. All reasonably required details of such disposal must be provided to the relevant planning authority on request.

### **Earthworks and remediation**

10.—(1) The CEMP must include details of the processes for dealing with remediation specified in paragraphs 4.5.53, 4.5.54 and 15.6.5 of the environmental statement. The CEMP must address, where necessary, detailed processes for dealing with the identified risks of harm or pollution from contaminant sources and will include procedures for the validation and auditing of the earthworks and any required remediation to ensure compliance with the CEMP.

(2) All earthworks must be carried out in accordance with the CEMP.

### **Ecological management**

11.—(1) The CEMP must include a written ecological management plan reflecting the ecological mitigation and enhancement measures included in the environmental statement and in particular the mitigation measures proposed for Grayling Butterflies, Common Lizards and Otters referred to at section 10.7 of the environmental statement.

(2) The written ecological management plan must include—

- (a) proposals for the timing of any works which may impact on ecological receptors;
- (b) appropriate working practices to be adopted to mitigate impacts on ecological receptors, including fencing to exclude workmen from potential nesting areas;
- (c) in relation to Common Lizards, a strategy for their protection and translocation if encountered which shall include identification of proposed receptor sites;

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- (d) proposals for the creation, management and monitoring of habitat; and
- (e) proposals for record taking and reporting to the relevant planning authority.

(3) No on-site vegetation clearance or demolition works may occur within the period March to August (inclusive) of any year unless a suitably qualified ecologist has first undertaken a checking survey immediately prior to clearance or demolition and confirms that no active wild bird nests are present and a report of his findings has been provided to and agreed with the relevant planning authority. The authorised development must thereafter be carried out fully in accordance with the recommendations of the submitted report.

(4) The CEMP must include an implementation timetable for the ecological mitigation and enhancement measures and must be carried out as approved.

### **Code of construction practice and CEMP**

**12.—**(1) No part of the authorised development may commence until a code of construction practice has been submitted to and approved by the relevant planning authority.

(2) No part of the authorised development may commence until a CEMP drafted in accordance with the principles set out in paragraphs 4.5.6 to 4.5.10 of the environmental statement and the code of construction practice has, after consultation with the relevant planning authority, been submitted to and approved by the relevant planning authority. The CEMP must deal in particular with—

- (a) lighting during construction;
- (b) construction noise and vibration management;
- (c) air quality including dust management;
- (d) sustainable waste management in a site waste management plan;
- (e) traffic management and materials storage on site;
- (f) water management (surface water and groundwater) including consideration of the principles in paragraphs 15.6.16 to 15.6.18 and 15.6.27 of the environmental statement;
- (g) the identification of commissioning operations which may generate noise and how they will be notified to the relevant planning authority and to local residents;
- (h) maintenance of relevant equipment in good working order and its being fitted with the appropriate silencers, mufflers or acoustic covers where applicable so as to reduce noise;
- (i) the location of and screening of stationary noise sources (including demonstrating their location being as far away as reasonably possible from nearby residential properties) and where necessary the location of acoustic barriers to shield such noise sources;
- (j) the movement of vehicles to and from the construction site so as to minimise noise;
- (k) the supervision of employees to secure compliance with the noise control measures adopted;
- (l) procedures and activities to prevent and control spillage of oil, chemicals and other potentially harmful liquids in accordance with paragraphs 11.6.2 and 15.6.19 of the environmental statement;
- (m) storage of materials in accordance with paragraphs 14.7.13 to 14.7.17 and 15.6.17 of the environmental statement;
- (n) health and safety procedures in accordance with paragraphs 15.6.7 to 15.6.9 and 15.6.19 of the environmental statement; and
- (o) the location, design and timing for erecting a board fence to reduce the potential for visual impacts during construction.



(3) All remediation, construction and commissioning works shall be undertaken in accordance with the code of construction practice and the CEMP.

(4) The operation and maintenance of the authorised development must be undertaken in accordance with the CEMP or any variation or replacement thereof previously approved by the relevant planning authority.

### **Suppression of dust and dirt during construction**

**13.**—(1) No part of the authorised development may commence until there has been submitted to and approved in writing by the relevant planning authority a scheme for the provision of wheel cleansing facilities for any heavy commercial vehicles or mobile plant which has an operating weight exceeding 3 tonnes and is associated with construction of the authorised development.

(2) Such facilities approved under sub-paragraph (1) must be installed in accordance with a timescale to be approved in writing by the relevant planning authority and must be maintained throughout the period of construction of the authorised development.

(3) Any heavy commercial vehicle or mobile plant which has an operating weight exceeding 3 tonnes and is associated with the construction of the authorised development, other than those vehicles or mobile plant exclusively using tarmac and concrete roads, must whenever it leaves the construction site, pass through wheel cleansing facilities provided pursuant to sub-paragraph (1) above prior to entering the highway.

(4) No part of the authorised development may commence until there has been submitted to and approved in writing by the relevant planning authority a scheme employing reasonably practicable measures for the suppression of dust during the period of construction of the authorised development in accordance with paragraphs 7.8.4 and 7.8.5 of the environmental statement. The measures approved in the scheme for dust suppression must be employed throughout the period of the construction of the authorised development.

(5) Any open bodied heavy commercial vehicle carrying dry loose aggregate, cement or soil into and out of the construction site must be sheeted.

### **Construction traffic routing and management plan**

**14.**—(1) No part of the authorised development may commence until written details of a construction phase traffic management plan (TMP) to be used for the management of construction traffic is, after consultation with the local highway authority and the Highways Agency, submitted to and approved by the relevant planning authority.

(2) The TMP must include details of the routing strategy and procedures of the notification and conveyance of any abnormal indivisible loads (AIL). It must also include agreed routes, number of abnormal loads to be delivered by road and identification for AILs that will be delivered by road. The details thereafter approved must be adhered to at all times when AILs are to be transported to or from the authorised development by road.

(3) The TMP shall also include details of the following—

- (a) identification of the construction programme and start and finish time of all personnel working on the construction site;
- (b) identification of the times when major items of plant and equipment are to be transported to and from the construction site by road;
- (c) any necessary measures for the temporary protection of carriageway surfaces; for the protection of statutory undertakers' plant and equipment and for the temporary removal of street furniture;
- (d) measures to mitigate the traffic impact of AILs;

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- (e) description of the methods of transport to be used by construction personnel to minimise overall traffic impact;
  - (f) description of monitoring procedures; and
  - (g) proposals for communicating information to the relevant planning authority, the local highway authority and the Highways Agency.
- (4) Notices must be erected and maintained throughout the period of construction at every construction site exit, in accordance with the TMP, indicating to drivers the route agreed by the relevant planning authority for traffic entering and leaving the construction site.

### **Control of noise during construction and commissioning**

**15.**—(1) No part of the authorised development may commence until a written scheme for noise management during construction in accordance with the provisions of paragraph 8.8.4 of the environmental statement has been submitted to and approved by the relevant planning authority.

(2) The scheme must set out the particulars of—

- (a) the works, and the methods by which they are to be carried out;
- (b) the noise attenuation measures to be taken to minimise noise resulting from the works, including any noise limits;
- (c) locations for noise measuring equipment for the monitoring requirements imposed by sub-paragraph (4) and the times such monitoring will be undertaken;
- (d) a scheme for monitoring the noise from the construction of the authorised development during the times identified to monitor compliance with the noise limits referred to in paragraph (b) and the effectiveness of the associated noise attenuation measures;
- (e) how the undertaker will ensure that all works will be completed in accordance with the guidelines provided in BS 5228 parts 1 and 2 (2009) (Code of practice for noise and vibration control on construction and open sites); and
- (f) a scheme for mitigating the emission of noise during the commissioning phase of the authorised development including measures for mitigating the noise arising from steam purging during commissioning reflecting the provisions of paragraph 8.8.4 of the environmental statement.

(3) Any equipment requiring overnight operations such as pumps, generators and compressors will be adequately silenced to ensure that noise from such equipment will not exceed the night time limits in annex E of BS 5228 part 1 (2009) (45 LAeq).

(4) During the construction and commissioning of the authorised development during the months of August to March (inclusive) in any year the noise levels measured at Cambois coal staithes (national grid reference point NZ 30679 82815) and on Cambois Beach (national grid reference point NZ 31204 82857) will not exceed 55 dB(A) LA Max unless previously agreed with the relevant planning authority following consultation with Natural England.

(5) The approved noise management scheme must be implemented before and maintained during the construction of the authorised development.

### **External lighting during construction**

**16.** No part of the authorised development may commence until written details of any external lighting to be installed at any of the construction sites, including measures to prevent light spillage, have been submitted to and approved by the relevant planning authority, and any approved means of lighting must subsequently be installed and maintained as approved for the duration of the construction period.

### **Unexploded ordnance (UXO) survey**

**17.**—(1) No part of the authorised development may commence until a survey to ascertain UXO risk on the construction site is carried out and submitted to the relevant planning authority and the MMO together with (if required) any proposals of the undertaker to mitigate the risks and to adhere to the recommendations included in the UXO report.

(2) The authorised development must thereafter be carried out fully in accordance with such recommendations of the UXO report as are agreed by the undertaker and the relevant planning authority.

### **Travel plan – construction**

**18.**—(1) No part of the authorised development may commence until, after consultation with the local highway authority and the Highways Agency, a travel plan for the construction workforce of the authorised development has been submitted to and approved by the relevant planning authority.

(2) The plan approved under sub-paragraph (1) shall include details of—

- (a) expected means of travel to and from the construction site and any parking to be provided on site;
- (b) numbers of construction staff, working hours and modal split;
- (c) work start and finish times for construction staff;
- (d) details of the number of car parking spaces to be provided on site and if appropriate a car park management plan;
- (e) commitment to measures that will encourage sustainable travel to and from the construction site for construction staff including the use of minibuses to carry workers to and from the construction site;
- (f) responsibility and timescales for implementing proposed measures;
- (g) targets for vehicle trips and modal splits;
- (h) formal monitoring regime for those targets;
- (i) provision for mess/canteen facilities for staff; and
- (j) consideration of offsite parking provision and a strategy for both car sharing and use of minibuses for the transportation of construction workers.

(3) The plan approved under sub-paragraph (1) must be implemented and observed during the construction of the authorised development.

### **Flooding – mitigation**

**19.**—(1) No part of the authorised development may commence until there has been submitted to and approved in writing by and deposited with the relevant planning authority, in consultation with the Environment Agency, a scheme for mitigation of flood risk during the construction and operation of the authorised development prepared in accordance with the principles set out in section 14.7 of the environmental statement and the flood risk assessment annexed to the environmental statement. In particular it must include details of construction compounds and storage of materials to be located in areas of low flood risk and for access and egress from the construction or operational site of the authorised development to land above flood levels in the event of inundation.

(2) The approved scheme must thereafter be fully implemented and adhered to throughout the period of the construction and operation of the authorised development.

### **Flooding – warning and evacuation plan**

**20.**—(1) No part of the authorised development may commence until there has been submitted to and approved in writing and deposited with the relevant planning authority, following consultation with the Environment Agency, a flood warning and evacuation plan (FEP). The FEP shall address and include at least the following—

- (a) command and control procedures (to include a procedure for dealing with flooding incidents);
- (b) training and exercising of personnel on site (including records of such activities) must be maintained;
- (c) flood warning procedures (in terms of receipt and transmission of information and to whom notification must be provided for the implementation of the FEP); and
- (d) site evacuation procedures and routes; provision of the identified safe refuges and their continuing maintenance.

(2) Full details of the emergency flood access route from the authorised development to North Blyth Road shall be included in the FEP. The FEP must be reviewed at intervals not exceeding three years from first approval. The FEP must thereafter form part of the health and safety at work procedures applicable to the authorised development and must be adhered to throughout the operational phase of the authorised development.

### **Fire prevention**

**21.**—(1) No part of the authorised development may commence until, following consultation with the Northumberland Fire and Rescue Service and the Blyth Harbour Commissioners, there has been submitted to and approved in writing by the relevant planning authority a fire prevention method statement, incorporating a fire risk assessment, which must accord with the details specified in paragraphs 4.4.29 to 4.4.37 of the environmental statement and must also contain details of—

- (a) automatic fire detection and suppression measures and access of fire appliances to all major buildings, structures and storage areas, including measures proposed to contain and treat water used to suppress any fire;
- (b) physical separation of fuel stores, subdivision of fuel stores and proposals for segregation of fuel types within each fuel store;
- (c) additional fire prevention measures to be incorporated into the design of the authorised development to safeguard existing buildings or structures shown on the heat radiation contour plan as being situated within the heat radiation contour;
- (d) safe working practices to be employed in the management of fuel stores and the removal of wood dust discharged from ash handling and storage facilities;
- (e) requirements for operational staff to log all fire incidents including false alarms; and
- (f) the content, and timing for dissemination to local residents, of a summary of the safety procedures to be followed in the event of fire or similar emergency at the authorised development.

(2) The approved fire prevention method statement must be deposited with the relevant planning authority, the Northumberland Fire and Rescue Service and the Blyth Harbour Commissioners.

(3) The authorised development must be carried out fully in accordance with the approved fire prevention method statement and all the relevant fire suppression and detection measures and fire appliances must be maintained in working order at all times when the authorised development is operational.

### **Otter mitigation strategy**

**22.**—(1) No part of the authorised development may commence until full details of a scheme for minimising the risk of entrapment of otters has been submitted to and approved by the relevant planning authority. The scheme must include consideration of suitable boarding or covers to be used to prevent otters from accessing any deep and steep sided excavations near to the River Blyth, such as the water intake structure and cooling water intake pipe trenches. Where so required by the approved scheme, suitable means of escape will be provided, to enable otters to climb out of excavated areas and, where specified, excavations will be covered or means of escape provided at the end of each working day.

(2) The authorised development must be carried out fully in accordance with the approved details.

### **Asbestos**

**23.**—(1) No part of the authorised development may commence until a scheme is submitted to and approved in writing by the relevant planning authority for the mitigation of any risk of release of asbestos from the areas of asbestos encapsulation. All soils contaminated by asbestos and removed from the construction site will be removed under controlled conditions by a specialist contractor and disposed of off-site at a suitably licensed landfill.

(2) No works within areas that may affect the area of asbestos encapsulation may commence until the relevant planning authority is satisfied that all risk assessments and detailed method statements have been agreed and approved by all relevant regulatory authorities.

### **Storage of liquids on site**

**24.**—(1) No part of the authorised development may commence until the relevant planning authority has received and approved in writing a method statement for the storage of process chemicals, fuels and lubricants on site which includes the intended location of such storage and a pollution incident response plan. The details must be prepared in accordance with paragraphs 15.6.19 to 15.6.22 and 15.6.44 to 15.6.47 of the environmental statement.

(2) The authorised development must thereafter be carried out fully in accordance with the approved details, and the methods of storage of such process chemicals, fuels and lubricants must continue fully in accordance with the details approved by the relevant planning authority. Full records of the maintenance of the storage measures and the use of potentially contaminating substances must be made available to the relevant planning authority on request.

(3) No potentially contaminating liquid may be stored except in an area that has an impermeable bund of at least 110% of the storage capacity of the relevant container.

(4) The pollution incident response plan approved pursuant to sub-paragraph (1) must be reviewed by the undertaker at the expiry of each five year period from the commencement of the authorised development and the results of such review must be submitted to the relevant planning authority for its approval.

### **Database of tall structures**

**25.** The authorised development must not be commenced until the undertaker has provided to the relevant planning authority confirmation that details of the anticipated height of the chimney stack and boiler house comprising part of Work No. 1 have been provided to the Defence Geographic Agency for inclusion in its database of tall structures.

### **Aviation safety**

**26.** That part of the authorised development comprising the main stack may not commence until there has been submitted to and approved in writing by the relevant planning authority following consultation with the Civil Aviation Authority a scheme for the provision of safety lighting on the stack forming part of the authorised development. The authorised development must be carried out in accordance with the approved scheme and the lighting required by such scheme must at all times be maintained to the reasonable satisfaction of the relevant planning authority.

### **European protected species**

**27.—(1)** Immediately prior to the commencement of the authorised development the undertaker shall carry out survey work to establish whether European protected species are present on any of the land affected, or likely to be affected, by the authorised development.

(2) Where a European protected species is shown to be present, no part of the authorised development may commence until, after consultation with the relevant planning authority, Natural England and the Secretary of State for the Environment, Food and Rural Affairs, a scheme of protection and mitigation measures in respect of such species has been submitted to and approved by the relevant planning authority; and the authorised development must be carried out in accordance with the approved scheme.

### **Construction hours**

**28.** Construction work must not take place other than between 0700 and 1800 hours on weekdays and 0700 and 1300 hours on Saturdays, excluding public holidays, unless alternative times are proposed to and previously agreed by the relevant planning authority.

### **Piling and vibration**

**29.—(1)** No piling works may be commenced until a piling method statement (which may form part of the CEMP) has been submitted to and approved by the relevant planning authority following consultation with Natural England, the Environment Agency and the MMO regarding the mitigation of the impact of piling and other construction works that are significant in terms of noise generation likely to impact on ornithology and aquatic and marine animals. The piling method statement must—

- (a) conform with the provisions set out in paragraphs 4.5.80 and 4.5.81 of the environmental statement and the letter from the undertaker to Natural England dated 26 June 2012;
- (b) fully reflect paragraphs 11.6.5 to 11.6.19 of the environmental statement and include provision ensuring that noise levels will be monitored during the construction phase to ensure levels are as predicted;
- (c) include details of mitigation to be employed to ensure that the noise from piling activities does not exceed 55 dB(A) LA Max at the locations of the agreed measurement points during the months of August to March inclusive (unless otherwise previously agreed with the relevant planning authority in consultation with Natural England, the Environment Agency and the MMO);
- (d) stipulate that any percussive piling may only be undertaken if the volume emissions of such works are to be increased on a gradual basis;
- (e) demonstrate that piling activities will not have a resultant unacceptable impact on groundwater;
- (f) include provision that no piling shall be undertaken in connection with Work Nos. 1(u) to (w) (inclusive) during the months of October to March inclusive; and

- (g) include a programme for reporting noise measurements and proposals for reporting on the effectiveness of the mitigation contained within the method statement including, in the event that predicted noise levels during the construction phase are exceeded, a process for any necessary remedial action being approved by the relevant planning authority and thereafter implemented within a stated timescale following such approval.

(2) Notwithstanding any measures approved pursuant to sub-paragraph (1), no pile driving shall take between the hours of 17.30 and 07.00 on any day.

(3) The authorised development must be carried out in accordance with the provisions of the approved piling method statement and this Order.

(4) No piling works may commence as part of the construction of the authorised development until steps have been taken to ensure that vibration monitoring will be carried out (including for test piling) in accordance with details which have been submitted to and approved by the relevant planning authority. Thereafter details of monitoring must be submitted to and approved by the relevant planning authority in writing prior to commencement of any piling works for the authorised development and a record of vibration must be maintained at all times during the construction works and made available to the relevant planning authority on request.

#### **Control of artificial light emissions**

**30.**—(1) The authorised development may not be brought into first commercial use until a written scheme for the management and mitigation of artificial light emissions (which must be in accordance with the principles of paragraph 9.10.53 and Appendix 4.6 of the environmental statement) has been submitted to and approved by the relevant planning authority.

(2) The approved scheme for the management and mitigation of artificial light emissions must be implemented and maintained during the construction and operation of the authorised development.

(3) No internal lighting of Work No. 1(a) shall be by way of uplighting.

#### **Control of dust emissions**

**31.**—(1) The authorised development may not be brought in to first commercial use until a written scheme for the management and mitigation of dust emissions including—

- (a) the use of hoppers with integrated dust suppression for unloading fuel stock from vessels;
- (b) the storage, management and handling of fuel and fly ash;
- (c) the unloading of fuel from rail vehicles or heavy commercial vehicles; and
- (d) the details, including locations, of dust level monitors

has been submitted to and approved by the relevant planning authority.

(2) The approved scheme for the management and mitigation of dust emissions must be implemented and maintained during the operation and decommissioning of the authorised development.

#### **Waste management on site**

**32.**—(1) The authorised development may not be brought in to first commercial use until the relevant planning authority has received and approved in writing a site waste management plan for the operational phases of the authorised development incorporating the principles in paragraphs 4.4.23 to 4.4.26 of the environmental statement. The site waste management plan must address and include at least the following—

- (a) the storage of waste materials on site;

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- (b) removal of waste materials from the site for recovery/disposal at appropriately licensed sites; and
  - (c) the return/disposal of general engineering wastes (such as spent filters and used parts).
- (2) The authorised development must thereafter be operated fully in accordance with the approved details.

### **Travel plan and traffic management plan – operational period**

**33.**—(1) No part of the authorised development may be brought into first commercial use until, after consultation with the local highway authority and Highways Agency, a framework travel plan, which must include details of the expected means of travel to and from the authorised development and any parking to be provided, has been submitted to and approved by the relevant planning authority.

- (2) The details referred to in sub-paragraph (1) must include—
- (a) number of operational staff, working hours and modal split for journeys to work;
  - (b) work start and finish times for operational staff;
  - (c) details of the number of car parking spaces to be provided onsite and if appropriate the provision of a car parking management plan;
  - (d) commitment to measures that will encourage sustainable travel to and from the site for operational staff;
  - (e) responsibility and timescales for implementing proposed measures;
  - (f) targets for vehicle trips and modal splits; and
  - (g) a formal monitoring regime for those targets, including— a requirement for an annual review of the performance of the travel plan; submission (and timetable for submission) of the review findings to the relevant planning authority; a process to agree with the relevant planning authority any necessary revisions to the travel plan or its targets following the annual review; and a timetable for any implementation of any agreed revisions.
- (3) The framework travel plan must also include details of—
- (a) cycle parking provision on site;
  - (b) the provision of and location of an electric car charging point; and
  - (c) an agreed number of car share parking spaces.

All measures proposed must be provided from first commercial use of the authorised development and thereafter maintained during the operation of the authorised development, subject to any alterations or variations thereto previously agreed in writing by the relevant planning authority, until replaced by the full travel plan.

(4) The undertaker must submit to the relevant planning authority for approval in consultation with the local highway authority and Highways Agency a full travel plan based on the framework travel plan within three months of the authorised development being brought into first commercial use. Following its approval, the full travel plan must continue to be observed for as long as the authorised development is operational subject to any alterations or variations agreed in writing by the relevant planning authority in consultation with the local highway authority and the Highways Agency.

(5) No part of the authorised development shall be brought into first commercial use until the relevant planning authority, following consultation with the local highway authority and the Highways Agency has approved a traffic management plan (which may form part of the framework travel plan) for both staff and delivery traffic movements for the operation of the authorised development. The traffic management plan must contain details of the route to be followed by



heavy commercial vehicles employed for the purposes of delivering fuel stock and, in the event that the agreed route on the local road network in the vicinity of the site is not available, details of an alternative temporary route together with the conditions under which such temporary route must be used, including maximum speeds of heavy commercial vehicles and any restrictions on use during certain times of the day. Following its approval, the traffic management plan must continue to be observed for as long as the authorised development is operational subject to any alterations or variations thereto previously agreed in writing by the relevant planning authority in consultation with the local highway authority and the Highways Agency.

### **Combined heat and power**

**34.**—(1) The authorised development may not be brought into first commercial use until the relevant planning authority, in consultation with the Environment Agency, has certified that it is satisfied that the undertaker has included in Work No. 1 appropriate connections for the later provision of heat pass-outs for off-site users of process or space heating and its later connection to such systems.

(2) The undertaker shall thereafter maintain such provision for the lifetime of the authorised development.

(3) The undertaker must on the date that is 12 months after the authorised development is first brought into commercial use submit to the relevant planning authority for its approval, in consultation with the Environment Agency, a report it has compiled (CHP Review) in consultation with the relevant planning authority and the Environment Agency, updating the CHP/ District heating feasibility report submitted with the application for development consent regarding the authorised development. The CHP Review must consider the opportunities that reasonably exist for the export of heat from the authorised development at the time of the submission of the CHP Review and must include a list of actions (if any) the undertaker shall reasonably undertake (without material additional cost to the undertaker) to increase the potential for the export of heat from the authorised development. The undertaker must thereafter undertake such actions as are agreed within the timescales specified in the CHP Review.

(4) The CHP Review must be revised and re-submitted by the undertaker to the relevant planning authority, in consultation with the Environment Agency, in accordance with the process and subject to the requirements stated in sub-paragraph (3) on the date that is five years after the date of its previous submission to the relevant planning authority throughout the lifetime of the authorised development and any actions specified in the subsequent CHP Review must be carried out by the undertaker in accordance with the timescales specified in the re-submitted CHP Review.

### **Site safety and signage**

**35.**—(1) The authorised development may not be brought into first commercial use until the relevant planning authority has first approved in writing a scheme for on-site safety, including safe pedestrian and vehicular movements and appropriate signage, in accordance with the principles in paragraphs 4.3.127 and 4.3.129 of the environmental statement.

(2) The approved plan must be adhered to by the undertaker subject to any variation of the scheme previously agreed in writing by the relevant planning authority.

### **Control of noise during operational phase**

**36.**—(1) Specific noise generated following commissioning of the authorised development must not exceed the following levels when measured generally in accordance with BS 4142 1997 at 3.5 metres from the facades of any noise sensitive receptor—

- (a) between 23:00 hours and 07:00 hours: the greater of a level of 5 dB above background or 40 dB LAeq, 5 min; and

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(b) between 07:00 hours and 23:00 hours: the greater of a level of 5 dB above background or 40 dB LAeq, 1 hour.

(2) Sub-paragraph (1) does not apply to any emergency event, or to any steam purging, commissioning or testing event previously notified to the relevant planning authority and Natural England; and any testing of steam valves, or other activities during maintenance causing intermittent noise levels above 55 dB(A) LA Max measured at Cambois coal staithes (national grid reference point NZ 30679 82815) and on Cambois Beach (national grid reference point NZ 31204 82857) shall be restricted to the months of April to July (inclusive) in any calendar year unless otherwise agreed with the relevant planning authority and Natural England.

(3) The authorised development must not be brought into first commercial use until a plan for controlling intermittent noise levels has been submitted to and approved by the relevant planning authority. The submitted plan must deal with—

- (a) design measures including enclosures, atmospheric vent silencers and acoustic lagging of external steam pipes and valves;
- (b) processes for controlling the noise emitted during steam valve testing;
- (c) the identification of other testing processes likely to give rise to high intermittent noise levels and procedures for the control of emitted noise; and
- (d) methods for informing the relevant planning authority in advance of testing events likely to give rise to high intermittent noise levels and for publicising for local residents the intended testing.

The authorised development must thereafter be operated in accordance with the approved plan.

(4) In this Requirement—

“background” means the noise levels recorded in the background noise survey results contained in appendix 8.1 of the environmental statement;

“noise sensitive receptor” means those locations specified in the environmental statement chapter 8 or otherwise previously agreed with the relevant planning authority; and

“relevant activities” means any activities carried out in an area in respect of which the local authority has not exercised its powers under Part III of the Control of Pollution Act 1974.

### **External storage**

**37.**—(1) Unless in the situation of an emergency no biomass fuel feed stocks or post combustion residue may be stored outside of any buildings forming part of Work No. 1 (save during transshipment), but instead must be stored under cover at all times during the operation of the authorised development.

(2) In any situation where such storage cannot be adhered to because of an emergency the undertaker must provide the relevant planning authority with a written statement as soon as reasonably practicable after such emergency storage detailing the nature of the emergency and why this Requirement could not be observed.

### **Deliveries of fuel stock by road**

**38.**—(1) A written record of the numbers of movements of heavy commercial vehicles must be maintained on site by the undertaker from first commercial use and copies of the records maintained in the preceding three month period must be submitted to the relevant planning authority every three months following first commercial operation or within five working days of the relevant planning authority’s written request.

(2) Excluding any period in which flooding has prevented the delivery of fuel stocks by vessel, if more than 276 movements of heavy commercial vehicles employed for the purposes of delivering

fuel stock (including the departures of empty vehicles) to or from the authorised development occur, or are anticipated to occur, in any day (from 0:00 to 23:59) calculated by reference to mean average movements over a period of five continuous working days, then the undertaker must submit for approval to the relevant planning authority (in consultation with the local highway authority and the Highways Agency) a traffic mitigation plan within 28 days of either first occurrence or the date from which the occurrence is first anticipated.

(3) Once approved the traffic mitigation plan must be observed until the relevant planning authority (in consultation with the local highway authority and the Highways Agency) has confirmed in writing that the traffic mitigation plan need no longer apply; and the duration of the period during which the level of movements of heavy commercial vehicles referred to in sub-paragraph (2) to which the traffic mitigation plan applies must not exceed a period of three months unless otherwise previously agreed by the relevant planning authority (in consultation with the local highway authority and the Highways Agency).

### **Biomass fuel sustainability**

**39.**—(1) Excepting fuels used for the purpose of boiler start up or combustion stabilisation, only biomass fuel feedstocks which comply with the applicable mandatory sustainability criteria may be burnt in the main boiler(s) of the authorised development.

(2) The undertaker must submit to the relevant planning authority a report on the sustainability of all biomass fuel feedstocks burnt in the main boiler(s) within twelve calendar months of first commercial use (Fuel Sustainability Report). The Fuel Sustainability Report will provide the same information and level of assurance and verification which the undertaker is required (or would be required, if claiming financial assistance in respect of the electricity generated for such biomass fuel feed stocks) to provide in respect of the sustainability of biomass fuel feedstocks under the applicable mandatory sustainability criteria and will report if the authorised development has been claiming financial support on a month by month basis. Thereafter a further Fuel Sustainability Report must be submitted to the relevant planning authority at the end of each 12 month period from the date of the submission of the first submitted Fuel Sustainability Report throughout the operational life of the authorised development.

### **Decommissioning**

**40.**—(1) There must be submitted to the relevant planning authority within twelve (12) months of the authorised development ceasing to be used for the purposes of electricity generation a site closure and restoration plan for the demolition and removal of the authorised development from the site for approval by the relevant planning authority, in consultation with the Environment Agency. The scheme must include the principles in paragraphs 4.6.9 to 4.6.13 of the environmental statement and also include—

- (a) details of all structures and buildings which are to be demolished;
- (b) consideration of the effects of leaving below-ground structures permanently in-situ in a dynamic coastal and marine environment together with details of consultations undertaken to consider the need to remove any or all of those structures;
- (c) details of the means of removal of the materials resulting from the demolition and measures for the control of dust and noise;
- (d) phasing of the demolition and removal works;
- (e) details of the restoration works to restore the Order land to a condition agreed with the relevant planning authority;
- (f) details of the restoration works and their phasing;

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- (g) details of the temporary lighting scheme (if any) proposed to be used during decommissioning works;
- (h) details of any remediation works required to remove contaminants from the Order land together with details of how such contaminants will be safely disposed of; and
- (i) details of how those mitigation measures implemented for the protection of ornithology and ecology during construction would also be implemented during the decommissioning phase.

(2) The demolition and removal of the authorised development (which must include all building structures, plant, equipment, areas of hard standing and access roads) and subsequent restoration of the site must thereafter be carried out fully in accordance with the approved scheme.

### **Workforce development strategy**

**41.**—(1) No part of the authorised development may commence until a workforce development strategy has been submitted to and approved by the relevant planning authority.

(2) The strategy approved under sub-paragraph (1) must include details of—

- (a) proposals for local advertising of employment opportunities in the construction of the authorised development;
- (b) proposals for the undertaker to provide outreach employment presentations during the period of construction of the authorised development at appropriate frequencies and locations within the Blyth Estuary area;
- (c) proposals for provision of monthly employee training sessions during the construction period on correct, efficient and safe working practices and for the provision of employee training sessions at reasonable frequencies throughout the operation of the authorised development;
- (d) proposals for local advertising of employment opportunities throughout the operation of the authorised development, which must also include a proposal for local advertising of employment opportunities at least six months prior to the commissioning of the authorised development;
- (e) proposals for offering a minimum of two apprenticeships, each for a period of up to three years, to personnel residing in the Blyth Estuary area and already employed, directly or indirectly, in the construction of the authorised development;
- (f) proposals for offering a minimum of three national vocational qualifications, or equivalent each for a period of up to three years, to personnel residing in the Blyth Estuary area and already employed, directly or indirectly, in the construction of the authorised development; and
- (g) proposals for the undertaker to provide information on the operation of the strategy, once implemented, to any community liaison group created by the undertaker for the purposes of keeping the local community informed of matters relating to the operation of the authorised development.

(3) The approved workforce development strategy must be implemented and maintained during the construction and operation of the authorised development.

### **Requirement for written approval**

**42.** Where under any of the Requirements the approval or agreement of the relevant planning authority or another person is required, that approval or agreement must be given in writing.

## Amendments to approved details

43. With respect to any of the Requirements which require the authorised development to be carried out in accordance with the details approved by the relevant planning authority, the approved details must be taken to include any amendments that may subsequently be approved in writing by the relevant planning authority.

### SCHEDULE 3

Article 9

#### Streets subject to street works

<i>(1)</i>	<i>(2)</i>
<i>Area</i>	<i>Street subject to street works</i>
Northumberland	C403 North Blyth Road from the roundabout south of Battleship Wharf at grid reference point NZ 31192 82447 to the Cambois roundabout at grid reference point NZ 30717 83397
	The C415 unnamed highway from the Cambois roundabout at grid reference NZ 30717 83397 to the entrance to the former Blyth Generating Station site at grid reference NZ 30317 83371

### SCHEDULE 4

Article 27

#### Deemed licence under the Marine and Coastal Access Act 2009

## PART 1

### Licensed marine activities

#### Interpretation

1.—(1) In this Schedule—

“the 2008 Act” means the Planning Act 2008(28);

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

“code of construction practice” means a code of construction practice agreed by the relevant planning authority prior to commencement of the authorised development;

“commence” means the first carrying out of any part of the licensed activities and commencement and commenced shall be defined accordingly;

“Commission” means the Blyth Harbour Commission;

“conditions” means conditions contained in this Schedule;

(28) 2008 c.29. Section 149A was inserted by section 112(1) of, and paragraph 4 of Schedule 8 to, the Marine and Coastal Access Act 2009 (c.23).

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“the Environment Agency” means the body established under the Environment Act 1995<sup>(29)</sup> or any successor to its statutory functions;

“the environmental statement” means the environmental statement submitted by the undertaker with the application and certified as the environmental statement by the Secretary of State for the purposes of the Order;

“the Health and Safety Executive” means the body established under section 10 of the Health and Safety at Work etc. Act 1974<sup>(30)</sup> or any successor to its statutory functions or other authority performing, carrying out or having the same regulatory functions as the HSE at the date of this licence;

“the Hydrographic Office” means the Hydrographic Office of the Ministry of Defence, Taunton, Somerset TA1 2DN;

“licensed activities” means the activities below MHWS forming part of the authorised development and specified in paragraph 2 of Part 1 of this Schedule;

“MHWS” or “mean high water springs” means the average of high water heights occurring at the time of spring tides;

“the Marine Management Organisation” or “MMO” means the body of that name created under the Marine and Coastal Access Act 2009 or any successor to its statutory functions;

“notice to mariners” includes any notice to mariners which may be issued by the Admiralty, Trinity House, Queen’s harbourmasters, government departments and harbour and pilotage authorities;

“the Order” means the North Blyth Biomass Power Station Order 2013;

“relevant planning authority” means Northumberland County Council as planning authority for the area in which the land to which the provisions of the Order apply is situated and any successor to its statutory function as planning authority for the area in which the authorised development is located;

“sea bed” means the ground under the sea;

“Trinity House” means the Corporation of Trinity House of Deptford Strond or any successor to its statutory functions;

“the undertaker” means subject to article 7(2) of the Order, North Blyth Energy Limited;

“the works plan” means the works plan submitted with the application (APP7) and certified as the works plan by the Secretary of State for the purposes of the Order.

(2) A reference to any statute, order, regulation or similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

(3) Unless otherwise indicated—

(a) all times shall be taken to be Greenwich Mean Time (“GMT”); and

(b) all geographical co-ordinates contained within this Schedule shall be taken to be latitude and longitude degrees and minutes to three decimal places unless otherwise stated.

(4) References in this Schedule to numbered “Works” are to the works with those numbers in Schedule 1 to the Order and shown on the works plan.

(5) Except where otherwise notified in writing by the MMO, the primary point of contact with the MMO and the address for email and postal returns and correspondence shall be—

Marine Management Organisation  
Marine Licensing Team

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<sup>(29)</sup> 1995 c.25.

<sup>(30)</sup> 1974 c.37, as amended by S.I. 2008/960.

Lancaster House  
Hampshire Court  
Newcastle upon Tyne  
NE4 7YH  
Tel: 0300 123 1032  
Fax: 0191 376 2681  
Email: infrastructure@marinemanagement.org.uk.

(6) Any references to the local MMO Officer shall mean the relevant officer in the area(s) located at—

Marine Management Organisation  
Neville House  
Central Riverside  
Bell Street  
North Shields  
Tyne and Wear  
NE30 1JL  
Tel: 0191 257 4520  
Fax: 0191 257 1595  
Email: northshields@marinemanagement.org.uk.

(7) To the extent that the licensed activities amount to the construction, improvement or alteration of works, the conditions contained in Part 2 shall bind any other person who for the time being owns, occupies or enjoys the use of the licensed activities so constructed, altered or improved (whether or not this licence is transferred to that other person).

### **Details of licensed activities**

2.—(1) The undertaker is authorised (and any agent, contractor or subcontractor acting on their behalf) to carry out the licensed activities, comprising the construction of works in or over the sea and/or on or under the sea bed specified in sub-paragraph (2) together with the deposit of any substances and objects in or over the sea and/or on or under the sea bed in carrying out such construction of works.

(2) Such activities are authorised in relation to the construction and operation of an electricity generating station located on the eastern side of Battleship Wharf, Port of Blyth with a nominal gross electrical output capacity of 99.9 MWe fuelled by biomass, more fully described in Schedule 1 to the Order.

(3) The construction of works in or over the sea and/or on or under the sea bed authorised are—

- (a) a cooling water intake system in the estuary of the River Blyth under Berth 4 of the Commission's Battleship Wharf at 55°08'19.689"N 001°31'04.197"W as part of Work No. 1(u) described in Schedule 1 to the Order and consisting of a screened water intake, connecting to an underground pumping chamber and underground pipe running east from the estuary of the River Blyth together with associated temporary placement of netting in the intertidal area;
- (b) up to two cooling water outfall pipes running underground under the foreshore and sea bed at 55°08'16.855"N 001°30'51.124"W and under the rock outcrop known as the Rockers and including the construction of a diffuser and foundation on the sea bed at 55°08'37.307"N 001°29'56.825"W all as part of Work Nos. 1(v) and (w) described in Schedule 1 to the Order together with associated removal of silts and other sediments from the sea bed by diver using a mechanical vacuum to remove silt and sediment to a vessel, marine structure or floating container;

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- (c) installation and maintenance of an aid to navigation at 55°08'37.307"N 001°29'56.825"W to indicate the location of the diffuser to vessels as part of the associated development described in Schedule 1 to the Order; and
- (d) works to strengthen the river wall in the estuary of the River Blyth at 55°08'06.712"N 001°30'46.786"W by the installation of a new bored pile wall on the landward side of the existing river wall together with related works as part of Work No. 2 described in Schedule 1 to the Order.

## PART 2

### Conditions applying to licensed activities

#### General conditions

#### **Notification of commencement and completion**

1.—(1) The undertaker shall notify the MMO—

- (a) of its acceptance of the conditions contained in this Part 2 not less than 5 working days prior to commencement of the licensed activities or any part of them;
- (b) of its intention to commence the licensed activities not less than 5 working days prior to commencement of the licensed activities or any part of them; and
- (c) of completion of the authorised development within 10 working days of such completion having occurred.

(2) Not less than 5 working days prior to commencement of the relevant licensed activities the undertaker shall notify the MMO of any agents, contractors or subcontractors proposed to carry out the licensed activities on behalf of the undertaker and those persons notified to the MMO shall provide written confirmation to the MMO confirming their understanding of the terms and requirements of this Schedule and any subsequent amendments or revisions to it issued from time to time.

(3) Not less than 24 hours prior to commencement of the relevant licensed activities the undertaker shall notify the MMO of any vessel (including the vessel type, vessel IMO number and vessel owner or operating company) proposed to be used to carry out the licensed activities on behalf of the undertaker and the Masters of the vessels notified to the MMO shall provide written confirmation to the MMO that a copy of the Order is held upon the vessel and confirming their understanding of the terms and requirements of this Schedule and any subsequent amendments or revisions to it.

#### **Project wide conditions**

2.—(1) The licensed activities shall not commence until a marine pollution contingency plan, including details of how in the case of accidental spillage or other pollution event impacts on the marine environment will be minimised, has been submitted to and approved in writing by the MMO. Following approval, the undertaker shall implement the marine pollution contingency plan as approved. The undertaker shall report as soon as reasonably practicable any oil, fuel or chemical spill within the marine environment to the MMO, Marine Pollution Response Team—

Marine Pollution Response Team  
Lancaster House  
Hampshire Court  
Newcastle Upon Tyne  
NE4 7YH  
Tel: 0191 3762511



Fax: 0191 376 2682

Email: dispersants@marinemanagement.org.uk.

(2) The undertaker shall install bunding and/or storage facilities to contain and prevent the release of fuels, oils and chemicals associated with the plant, refuelling and construction equipment into the marine environment, and any secondary containment used shall have a capacity of not less than 110% of the containers storage capacity.

(3) The undertaker shall ensure that a local notice to mariners is issued at least two weeks prior to the commencement of the licensed activities advising local mariners and fishermen's organisations of the start date and any expected vessel routes to the offshore construction site and shall notify the MMO once issued.

(4) The undertaker shall notify the Source Data Receipt Team, the Hydrographic Office, Taunton, Somerset, TA1 2DN (email: [hdcfiles@ukho.gov.uk](mailto:hdcfiles@ukho.gov.uk); tel: 01823 337900) at least two weeks prior to the commencement of works and of the progress and completion of the authorised development for the promulgation of maritime safety information and for all necessary amendments to nautical charts and publications to be made.

(5) No chemicals shall be used in the construction of the licensed activities other than those included in the list of notified chemicals assessed for use by the offshore oil and gas industry under the Offshore Chemicals Regulations 2002<sup>(31)</sup> or as may otherwise previously have been certified in writing by the MMO as having been assessed to an equivalent level of toxicological hazard and risk assessment.

(6) All protective coatings/treatments used in the construction of the licensed activities shall be suitable for use in the marine environment and, where necessary, approved by the Health and Safety Executive or in accordance with the Environment Agency Pollution Prevention Control Guidelines. The use of such coatings/treatments shall accord with best environmental practice.

(7) Not less than two months prior to commencement of the relevant licensed activity the undertaker shall submit for approval by the MMO a construction method statement for the relevant activity and the scope of such method statement shall be agreed with the MMO prior to submission and shall fully reflect the construction methods assessed in the environmental statement. The relevant licensed activity shall not commence until the method statement for the relevant activity has been approved in writing by the MMO and following approval, the undertaker shall carry out the relevant licensed activity in accordance with the approved method statement. The method statement shall include provision that the construction of a diffuser and foundation on the sea bed comprising part of the licensed activities described in paragraph 2(2)(b) of Part 1 of this Schedule shall not be carried out during the period 1 April to 30 September in any calendar year.

(8) The undertaker shall ensure that any equipment, temporary structures, waste and/or debris associated with the construction of any licensed activities are removed within six weeks of completion of construction of the licensed activities.

(9) No waste concrete slurry or wash water from concrete or cement works shall be discharged into the marine environment and any concrete and cement mixing and washing areas shall be contained and sited at least 10 metres away from any watercourse or surface water drain.

(10) The licensed activities shall not commence until a marine construction and environmental management plan ("MCEMP") relating to construction of the licensed activities referred to at paragraph 2 of Part 1 of this Schedule, and drafted in accordance with the principles set out in Chapter 4 of the environmental statement and the code of construction practice has been submitted to and approved in writing by the MMO. The MCEMP shall include a written ecological management plan reflecting the ecological mitigation and enhancement measures included in the environmental statement; details regarding construction noise and vibration management; safety measures and

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(31) *S.I. 2002/1355*. Relevant amendments have been made by regulation 4 of the Offshore Chemicals (Amendment) Regulations 2011 (*S.I. 2011/982*).

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details regarding water management (surface water and ground water). The undertaker shall undertake all remediation, construction and commissioning works and all operation and maintenance works of the licensed activities in accordance with the approved MCEMP. During construction of the licensed activities the undertaker shall submit environmental monitoring reports to the MMO in accordance with the approved MCEMP.

(11) No part of the licensed activities shall commence until the undertaker has submitted to the MMO, and the MMO has approved, written details of any external lighting to be installed at any location of the licensed activities, including measures to prevent light spillage. The approved external lighting shall be installed and maintained for the duration of the licensed activities construction period.

### **Activity specific conditions**

**3.—(1)** No part of the licensed activities shall commence until (following consultation with the Environment Agency) full details of a scheme for minimising the impact of the water intake system within the River Blyth Estuary on the aquatic environment have been submitted to and approved in writing by the MMO. The submitted scheme shall include—

- (a) details of how the water intake system will be protected by a wedge-wire screen with a maximum of 3 millimetres spacing or equivalent system;
- (b) details of how the water intake system will minimise the approach velocity of water to the wedge-wired screen or other equivalent system;
- (c) details of the concentration of biocides in the water intake system or other equivalent system and how they will be monitored and controlled;
- (d) proposals for implementing the scheme in advance of the commencement of commercial operations; and
- (e) proposals for monitoring and reporting on the effectiveness of the scheme and, in the event that the scheme does not perform as predicted, a process for any necessary remedial action being approved by the MMO and thereafter implemented within a stated timescale following such approval.

The undertaker shall implement the scheme as approved.

(2) Netting to prevent construction materials/demolition arisings falling into the intertidal mudflats shall be erected prior to and maintained during breaking through of the quay wall into the Blyth Estuary.

(3) The cooling water outfall pipe described as Work No. 1(v) in Schedule 1 to the Order shall only be operated in conjunction with the diffuser described as Work No. 1(w) in Schedule 1 to the Order.

(4) During construction of the cooling water outfall diffuser and foundation spud legs shall be lowered only within the hour before or after the turn of low tide.

(5) The undertaker shall use only marine specification concrete and underwater concreting techniques in the construction of the cooling water outfall diffuser and foundation.

(6) The undertaker shall—

- (a) mark and light the licensed activities (including any temporary construction works comprised in the licensed activities) as required by Trinity House, as the MMO directs;
- (b) mark the diffuser with an aid to navigation comprising of a yellow pile with a yellow ‘X’ shaped topmark and a Fl (2) Y 10s light or as otherwise required by Trinity House, as the MMO directs;
- (c) at all times maintain any aids to navigation to the reasonable satisfaction of Trinity House.

(7) No works for or associated with the construction of the cooling water intake system or with the strengthening of the river wall shall be carried out save in accordance with a silt mitigation scheme which has previously been approved in writing by the MMO. The said scheme shall provide for silt curtains or other effective mechanisms designed to protect the River Blyth Estuary from silt during construction of the said works and for a period of not less than seven days after each of the said works is completed.

## SCHEDULE 5

Article 31

### Protective provisions

#### **For the protection of Network Rail**

1. The following provisions of this Schedule shall have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 15, any other person on whom rights or obligations are conferred by that paragraph.

2. In this Schedule—

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

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of his powers under section 8 of the Railways Act 1993<sup>(32)</sup>;

“Network Rail” means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006<sup>(33)</sup>) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail Infrastructure Limited and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail Infrastructure Limited or connected with any such railway; and

(b) any easement or other property interest held or used by Network Rail Infrastructure Limited for the purposes of such railway or works, apparatus or equipment; and

“specified work” means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

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<sup>(32)</sup> 1993 c.43.

<sup>(33)</sup> 2006 c.46.

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3.—(1) Where, under this Schedule, Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail shall—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

4.—(1) The undertaker shall not exercise the powers conferred by article 12 of this Order (authority to survey and investigate the land) or the powers conferred by section 11(3) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker shall not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker shall not exercise the powers conferred by section 271 or 272 of the 1990 Act, in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker shall not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictions on the use of, any railway property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent shall not be unreasonably withheld but may be given subject to reasonable conditions.

5.—(1) The undertaker shall before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work shall not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 29 of this Order.

(2) The approval of the engineer under sub-paragraph (1) shall not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated his disapproval of those plans and the grounds of his disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate his approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated his approval or disapproval, he shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail shall construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying his approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes shall be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works shall be carried out at the expense of the undertaker in either case with all reasonable dispatch and the undertaker shall not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to his reasonable satisfaction.

**6.—(1)** Any specified work and any protective works to be constructed by virtue of paragraph 5(4) shall, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker shall, notwithstanding any such approval, make good such damage and shall pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Schedule shall impose any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

**7.** The undertaker shall—

- (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 he may reasonably require with regard to a specified work or the method of constructing it.

**8.** Network Rail shall at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Schedule during their construction and shall supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

**9.—(1)** If any permanent or temporary alterations or additions to railway property, or to any protective works under paragraph 5(4) are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which shall be specified in the notice), the undertaker shall pay to Network Rail the reasonable cost of

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those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail shall assume construction of that part of the specified work and the undertaker shall, notwithstanding any such approval of a specified work under paragraph 5(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer shall, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving shall be set off against any sum payable by the undertaker to Network Rail under this paragraph.

**10.** The undertaker shall repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by him of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

**11.—(1)** In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph shall apply to EMI only to the extent that such EMI is not attributable to any change to Network Rail's apparatus carried out after approval of plans under paragraph 5(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker shall in the design and construction of the authorised development take all measures necessary to prevent EMI and shall establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker's compliance with sub-paragraph (3)—

- (a) the undertaker shall consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter shall continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail shall make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to paragraph (a); and
- (c) Network Rail shall allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail shall not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution shall be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) shall have effect subject to this paragraph.

(6) If at any time prior to the commencement of operation of any part of the authorised development and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised development causes EMI then the undertaker shall immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the promoter's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

- (a) the undertaker shall afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail shall afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and
- (c) Network Rail shall make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraph (5) or (6)—

- (a) Network Rail shall allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs shall be carried out and completed by the undertaker in accordance with sub-paragraph (6).

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) shall apply to the costs and expenses reasonably incurred or losses suffered by Network Rail through

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the implementation of the provisions of this sub-paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 10(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 29 of this Order (arbitration) to the Law Society of England and Wales shall be read as a reference to the Institution of Engineering and Technology.

**12.** If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker shall, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

**13.** The undertaker shall not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it shall have first consulted Network Rail and it shall comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

**14.** Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work shall, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

**15.—(1)** The undertaker shall pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Schedule which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction or maintenance of a specified work or the failure thereof; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

and the undertaker shall indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission; and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) shall include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail shall promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.



(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail’s railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

**16.** Network Rail shall, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Schedule (including the amount of the relevant costs mentioned in paragraph 15. and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Schedule (including any claim relating to those relevant costs).

**17.** In the assessment of any sums payable to Network Rail under this Schedule there shall not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Schedule or increasing the sums so payable.

**18.** The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

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

**19.** Nothing in this Order, or in any enactment incorporated with or applied by this Order, shall prejudice or affect the operation of Part I of the Railways Act 1993.

**20.** The undertaker shall give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State’s consent, under article 7 (consent to transfer benefit of Order) of this Order and any such notice shall be given no later than 28 days before any such application is made and shall describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

**21.** The undertaker shall no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 28 (certification of plans) are certified by the Secretary of State, provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

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## EXPLANATORY NOTE

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

This Order authorises the construction and operation of a biomass fuelled electricity generating station and associated works to be situated at the Blyth Harbour Commission's Battleship Wharf, North Blyth, in the County of Northumberland. It also provides for the connection of those works via a cable connection laid underground to the electricity distribution system. For the purposes of the development that it authorises, North Blyth Energy Limited is authorised by the Order to acquire land and rights in land compulsorily or by agreement as well as to override easements and other rights. The Order imposes requirements in connection with the development for which it grants development consent.

The Order also grants a deemed marine licence for the marine licensable activities, being the deposit of substances and articles and the carrying out of works, involved in the construction of associated development comprising a cooling water intake in the estuary of the River Blyth and a cooling water outfall pipe and diffuser from the generating station in the North Sea. The deemed marine licence imposes conditions in connection with the deposits and works for which it grants consent.

A copy of the plans referred to in this Order and certified in accordance with article 28 (certification of plans, etc) of this Order may be inspected free of charge at the offices of Northumberland County Council at County Hall, Morpeth, Northumberland NE61 2EF.