

**2015 No. 680**

**INFRASTRUCTURE PLANNING**

**The Knottingley Power Plant Order 2015**

*Made* - - - -

*10th March 2015*

*Coming into force* - -

*1st April 2015*

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An application has been made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(a) for an Order under sections 114, 115, 120, 140 and 147 of the Planning Act 2008(b) (“the 2008 Act”).

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

The single appointed person, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act, has submitted a report to the Secretary of State.

The Secretary of State, having considered the report and recommendation of the single appointed person, 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 147 of the 2008 Act, makes the following Order—

## PART 1

### PRELIMINARY

#### **Citation and commencement**

1. This Order may be cited as the Knottingley Power Plant Order 2015 and comes into force on 1st April 2015.

#### **Interpretation**

2.—(1) In this Order—

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

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- (a) S.I. 2009/2264 as amended by the Localism Act 2011 (Infrastructure Planning) (Consequential Amendments) Regulations 2012 (S.I. 2012/635) and the Infrastructure Planning (Prescribed Consultees and Interested Parties etc) (Amendment) Regulations 2013 (S.I. 2013/522). There are other amendments to the Regulations which are not relevant to this Order.
  - (b) 2008 c.29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of, and Schedule 13 to, the Localism Act 2011 (c.20), and by sections 22 to 27 of the Growth and Infrastructure Act 2013 (c.27), see S.I. 2013/1124 for transitional provisions.
  - (c) S.I. 2010/103, as amended by S.I. 2012/635.
  - (d) 1961 c.33. There are amendments to the 1961 Act which are not relevant to this Order.

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

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

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

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

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

“the 2008 Act” means the Planning Act 2008;

“access to works plan” means the plan certified as the access to works plan by the Secretary of State for the purposes of the Order and submitted with the application (drawing number KPL-APFP\_5\_2\_K-2.8, sheet 1 revision F, sheet 2 revision E, sheet 3 revision D, sheet 4 revision E, sheet 5 revision E);

“authorised development” means the development and associated development described in Part 1 of Schedule 1 (authorised development), 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” has the same meaning as in the 1980 Act;

“CCS” means carbon capture and storage;

“the Coal Authority” means the Coal Authority established under the Coal Industry Act 1994;

“commence”, unless otherwise provided for, means beginning to carry out any material operation (as defined in section 155 of the 2008 Act) forming the relevant part of the

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- (a) 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 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991. Section 11(1) and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (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). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c.23). Section 13 was amended by 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. Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c.39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006. There are other amendments to the 1965 Act which are not relevant to this Order.
- (b) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2), 1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51); section 1(2A) was inserted, and section 1(3) was amended, by section 259(1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraph 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1), (2) and (3) of the Transport and Works Act 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); section 36(3A) was inserted by section 65(5) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985; and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994. Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.
- (c) 1981 c.66. 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 amendments to the 1981 Act which are not relevant to this Order.
- (d) 1990 c.8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c.29) (date in force in relation to England: 6th April 2012: S.I. 2012/601). There are other amendments to the 1990 Act which are not relevant to this Order.
- (e) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 78(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).

authorised development other than operations consisting of preliminary works, site clearance, demolition work, archaeological investigations, environmental surveys, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “commencement” is construed accordingly;

“commissioning” means the process of assuring that all systems and components of the authorised development (which are installed or installation is near to completion) are tested to verify that they function and are operable in accordance with the design objectives, specifications and operational requirements of the undertaker;

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

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of this Order and submitted with the application together with any supplementary or further environmental information submitted by the undertaker in support of the application;

“flood risk assessment” means section K.1 of the environmental statement’s Appendix 1 (“Flood Risk Assessment”); section 20.8 of the environmental statement (“Assessment of Flood Risk”); and the Flood Risk Assessment Addendum (cooling water pipeline and pump house) (reference JL30840-NHY-RP-001 Rev D dated 4th April 2014);

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

“indicative AGI layout drawings” means the drawings certified as the indicative above ground installation layout drawings by the Secretary of State for the purposes of the Order and submitted with the application (drawing number 3511480B/KN-CDR/2012/401, revision M);

“indicative generating station layout drawings” means the drawings certified as the indicative generating station layout drawings by the Secretary of State for the purposes of the Order and submitted with the application (drawing number ESBI/KPL/PL/01, revision C);

“indicative overhead lines and pylons layout drawings” means the drawings certified as the indicative overhead lines layout drawings by the Secretary of State for the purposes of the Order and submitted with the application (drawing number 90NG475/12/01, revision D, drawing number 90NG475/10/01, revision B, drawing number 90NG475/10/02, revision B);

“indicative pump house layout drawing” means the drawing certified as the indicative pump house layout drawing by the Secretary of State for the purposes of the Order and submitted with the application (drawing number PP-DT-00077-D505-012, revision 1);

“ISO Conditions” means ambient temperature of 15° Celsius, relative humidity 60% and ambient pressure of 1 bar;

“land” includes land covered by water and any interest or right in, to or over land;

“the land plan” means the plan certified as the land plan by the Secretary of State for the purposes of this Order (key plan drawing number Land/001 revision 9, sheet 1 drawing number Land/002 revision 9, sheet 2 drawing number Land/003 revision 9, sheet 3 drawing number Land /004 revision 9, sheet 4 drawing number Land/005 revision 9, sheet 5 drawing number Land/006 revision 9, sheet 6 drawing number Land/007 revision 9, sheet 7 drawing number Land/008 revision 9);

“maintain” includes, to the extent assessed in the environmental statement, inspect, maintain, repair, adjust, alter, refurbish, improve, clear, and remove; and “maintenance” is construed accordingly;

“operational phase” means the period of time that the relevant part of the authorised development is in operation after construction and commissioning is complete, which begins on the date specified in the operational phase notice and “operational” and “operation” should be construed accordingly;

“operational phase notice” means a written notice served by the undertaker on the relevant planning authority and the Environment Agency confirming that the operational phase is about to be begin or has begun, in accordance with Requirement 35 in Part 2 of Schedule 1;

“the Order land” means the land shown on the land plan which is within the limits of land to be acquired 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 (interpretation) of the Acquisition of Land Act 1981(a);

“preliminary works” means landscaping and creative conservation, providing these operations do not require the delivery to or removal from the site of bulk filling materials; surveys, including geotechnical surveys; provision of wheel cleansing facilities; erection of temporary fencing; site security; preparation of contractor’s laydown areas; and any other works agreed in writing with the relevant planning authority to constitute permitted preliminary works;

“public rights of way temporary closures and permanent stopping up plan” means the document certified as the public rights of way temporary closures and permanent stopping up plan by the Secretary of State for the purposes of the Order and submitted with the application (drawing number KPL-APFP\_5\_2\_k-2.9, sheet 1 revision G, sheet 2 revision D, sheet 3 revision D, sheet 4 revision D, sheet 5 revision G);

“relevant highway authority” means the highway authority for the area in which the land to which the relevant provision of this Order applies is situated;

“relevant local authority” means the local authority for the area in which the land to which the relevant provision of this Order applies is situated;

“relevant planning authority” means the planning authority for the area in which the land to which the relevant provision of this Order applies is situated;

“Requirements” means those matters set out in Part 2 (Requirements) of Schedule 1;

“statutory undertaker” means any person falling within section 127(8), 128(5) or 129(2) of the 2008 Act;

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

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

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

“undertaker” means Knottingley Power Limited (company number 05902446);

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

“the works plan” means the plan certified as the works plan by the Secretary of State for the purposes of this Order (drawing number KPL-APFP\_5\_2\_J-2.3, sheet 1 revision F, sheet 2 revision D, sheet 3 revision D, sheet 4 revision D, sheet 5 revision D).

(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 are taken to be measured along that work.

(4) Any reference in this Order to a work identified by the number of the work is to be construed as a reference to the work of that number authorised by this Order, described in Part 1 of Schedule 1 and shown on the works plan.

(5) The expression “includes” shall be construed without limitation.

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(a) 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 are not relevant to this Order.

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

## PART 2 PRINCIPAL POWERS

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

3. Subject to the provisions of this Order and to the Requirements in Part 2 of Schedule 1, the undertaker is granted development consent for the authorised development in Part 1 of Schedule 1 to be carried out within the Order limits, and Schedule 1 (authorised development) has effect for that purpose.

### **Power to maintain authorised development**

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

## PART 3 OPERATIONS

### **Operation of generating station**

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

(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 an electricity generating station.

### **Limits of deviation**

6. In carrying out the authorised development the undertaker may—

- (a) deviate laterally from the lines or situations of the authorised development shown on the works plan to the extent of the limits of deviation shown on that plan; and
- (b) deviate vertically to any extent downwards as may be found necessary or convenient.

### **Benefit of the Order**

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

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

except where paragraph (5) applies in which case no such consent is required.

(2) Consent under paragraph (1) may not be unreasonably withheld or delayed.

(3) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (4), include references to the transferee or lessee.

(4) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(5) This paragraph applies where—

- (a) the transferee or lessee is a person who holds a licence under section 6 of the Electricity Act 1989(a) or section 7 of the Gas Act 1986(b); or
- (b) the time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
  - (i) no such claims have been made;
  - (ii) any such claims have been made and have been compromised or withdrawn;
  - (iii) compensation has been paid in final settlement of any such claims;
  - (iv) payment of compensation into court has taken place in lieu of settlement of any such claims; or
  - (v) it has been determined by the tribunal or court of competent jurisdiction in respect of any such claims that no compensation is payable.

(6) The provisions of articles 10 (street works), 12 (public rights of way), 18 (compulsory acquisition of land), 21 (compulsory acquisition of rights and imposition of restrictive covenants), 27 (temporary use of land for carrying out the authorised development) and 28 (temporary use of land for maintaining the authorised development) have effect only for the benefit of the named undertaker and a person who is a transferee or lessee and also holds a licence under section 6 of the Electricity Act 1989 or section 7 of the Gas Act 1986.

(7) The provisions of article 10 (street works) in addition only have effect for the benefit of the named undertaker and a person who is a transferee or lessee and is also a street authority.

### **Application and modification of legislative provisions**

8. Regulation 6 of the Hedgerows Regulations 1997(c) is modified so as to read for the purposes of this Order only as if there were inserted after paragraph (1)(j) the following—

“(k) or for carrying out development which has been authorised by development consent made pursuant to the Planning Act 2008.”

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

9.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(d) (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 may be made, and no fine may be imposed, under section 82(2)(e) 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 sites), or a consent

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(a) 1989 c.29. Section 6 was amended by section 30 of the Utilities Act 2000 (c.27), and section 6(10) amended by section 89(3) of the Energy Act 2004 (c.20). There are other amendments to this section that are not relevant to this Order.

(b) 1986 c.44. Section 7 was amended by section 5 of the Gas Act 1995 (c.45) and section 76(2) of the Utilities Act 2000 (c.27). There are other amendments to this section that are not relevant to this Order.

(c) S.I 1997/1160. There are amendments to the Regulations which are not relevant to this Order.

(d) 1990 c.43. Section 82(1) was amended by paragraph 6 of Schedule 17 to the Environment Act 1995 (c.25). There are amendments to this Act which are not relevant to this Order.

(e) Section 82(2) was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c.40) and paragraph 6 of Schedule 17 to the Environment Act 1995 (c.25).



given under section 61 (prior consent for work on construction sites) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(a); or

- (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and that the nuisance is attributable to the use of the authorised development which is being used in compliance with a noise management scheme approved by the relevant planning authority under Requirement 23 (control of noise – operational phase); 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 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), does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

## PART 4 STREETS

### Street works

**10.**—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 2 (streets subject to street works) as are within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) drill, tunnel or bore under the street;
- (c) place 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(b) apply to any street works carried out under paragraph (1).

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

### Stopping up of street

**11.**—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets specified in column (2) of Schedule 3 (streets to be stopped up) to the extent specified.

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(a) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15(4) of Schedule 15 to, the Environmental Protection Act 1990, c.43. There are other amendments to the 1974 Act which are not relevant to this Order.

(b) A number of these provisions are amended, including by the Traffic Management Act 2004 (c.18).

(2) No street specified in column (2) of Schedule 3 (being a street to be stopped up for which a substitute is to be provided) may be wholly or partly stopped up under this article unless—

- (a) the new street to be substituted for it for the passage of such traffic as could have used the street to be stopped up has been completed to the reasonable satisfaction of the street authority and is open for use between the commencement and termination points for the stopping up of the street; or
- (b) the temporary alternative route, which is specified in column (4) of that Part of that Schedule, is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, until the completion and opening of the new street in accordance with sub-paragraph (a).

(3) Where a street has been stopped up under this article—

- (a) all rights of way over or along the street so stopped up are extinguished; and
- (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the street as is bounded on both sides by land owned by the undertaker.

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

(5) This article is subject to article 31 (apparatus and rights of statutory undertakers in stopped-up streets).

### **Public rights of way**

**12.—**(1) Subject to paragraph (2), with effect from the date of commencement of Work No. 1 (electricity generating station), the section of the public right of way (being a claimed public bridle way) specified in Part 1 of Schedule 4 (public rights of way to be temporarily closed and permanently stopped up) and shown by a green dashed line on the public rights of way temporary closures and permanent stopping up plan is extinguished.

(2) The public right of way (being a claimed bridleway) specified in paragraph (1) must not be extinguished under this article unless the temporary bridleway specified in column (4) of Part 1 of Schedule 4 and shown in yellow on the works plan is first provided, to the reasonable satisfaction of the relevant planning authority.

(3) The temporary bridleway must be kept open and maintained by the undertaker until the completion and opening of a permanent replacement bridleway approved by the relevant planning authority.

(4) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, temporarily close each of the public rights of way specified in column (2) of Parts 2 and 3 of Schedule 4 to the extent shown on the public rights of way temporary closures and permanent stopping up plan.

### **Access to works**

**13.** The undertaker may, for the purposes of the authorised development—

- (a) form and lay out means of access, or improve existing means of access, in the location specified in columns (1) and (2) of Schedule 5 (access to works); and
- (b) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

### **Agreements with street authorities**

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

- (a) any temporary closure, 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 10(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.

## PART 5

### SUPPLEMENTAL POWERS

#### **Discharge of water**

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

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) is to be determined as if it were a dispute under section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but may not be unreasonably withheld.

- (4) The undertaker must not make any opening into any public sewer or drain except—
- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval may not be unreasonably withheld; and
  - (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river other than in accordance with a consent granted by the Environment Agency.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise a water discharge activity or groundwater activity that is prohibited by regulation 12 of the Environmental Permitting (England and Wales) Regulations 2010(b).

- (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(c), an internal drainage board, a joint planning

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(a) 1991 c.56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c.37), and amended by section 32 of, and paragraph 16(2) of Schedule 3 to, the Flood and Water Management Act 2010 (date in force to be appointed, see section 49(3)(h)(i)). There are other amendments to this section which are not relevant to this Order.

(b) S.I. 2010/675, as amended by the Environmental Permitting (England and Wales) (Amendment) Regulations 2011 (S.I. 2011/2043), the Environmental Permitting (England and Wales) (Amendment No. 2) Regulations 2011 (S.I. 2011/2933), the Environmental Permitting (England and Wales) (Amendment) Regulations 2012 (S.I. 2012/630), the Controlled Waste (England and Wales) Regulations 2012 (S.I. 2012/811).

(c) 1964 c.40.

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 Environmental Permitting (England and Wales) Regulations 2010 have the same meaning as in those Regulations.

### **Authority to survey and investigate the land**

**16.**—(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;
- (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) must, if so required on entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes may be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority, but such consent may not be unreasonably withheld; or
- (b) in a private street without the consent of the street authority, but such consent may not be unreasonably withheld.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act<sup>(a)</sup>.

### **Removal of human remains**

**17.**—(1) In this article “the specified land” means the land within the Order limits.

(2) Before the undertaker carries out any development or works which will or may disturb any human remains in the specified land it must remove those human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.

(3) Before any such remains are removed from the specified land the undertaker must give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised development; and
- (b) displaying a notice in a conspicuous place on or near to the specified land.

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(a) The functions of the Lands Tribunal under the 1961 Act are transferred to the Upper Tribunal under the Tribunals, Courts and Enforcement Act 2007 (c.15).

(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker must send a copy of the notice to the relevant local authority.

(5) At any time within 56 days after the first publication of a notice under paragraph (3) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.

(6) Where a person has given notice under paragraph (5), and the remains in question can be identified, that person may cause such remains to be—

- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
- (b) removed to, and cremated in, any crematorium,

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).

(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who must remove the remains and as to the payment of the costs of the application.

(8) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or
- (b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or
- (c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (10) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves must be re-interred in individual containers which are identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that the person may make in relation to the removal and re-interment or cremation of the remains.

(11) On the re-interment or cremation of any remains under this article—

- (a) a certificate of re-interment or cremation must be sent by the undertaker to the Registrar General giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) must be sent by the undertaker to the relevant local authority mentioned in paragraph (4).

(12) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(13) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(14) Section 25 of the Burial Act 1857<sup>(a)</sup> (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) does not apply to a removal carried out in accordance with this article.

## PART 6

### POWERS OF ACQUISITION

#### **Compulsory acquisition of land**

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

(2) This article is subject to paragraph (2) of article 21 (compulsory acquisition of rights and imposition of restrictive covenants) and article 27 (temporary use of land for carrying out the authorised development).

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

**19.** Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981 (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 and rights compulsorily**

**20.**—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

- (a) no notice to treat may be served under Part 1 of the 1965 Act; and
- (b) no declaration may be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 23 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)<sup>(b)</sup>.

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

#### **Compulsory acquisition of rights and imposition of restrictive covenants**

**21.**—(1) The undertaker may acquire compulsorily such rights or impose restrictive covenants over the Order land, by creating them as well as by acquiring rights already in existence, as are described in the book of reference and shown on the land plan.

(2) Subject to section 8 of the 1965 Act, as substituted by paragraph 5 of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants), where the undertaker acquires an existing right over land or imposes a restrictive covenant under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(3) Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants) has effect for the purpose of modifying the

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(a) 1857 c.81. There are amendments to this Act which are not relevant to this Order.

(b) 1981 c.66. Sections 2, 6 and 11 were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). There are other amendments to the 1981 Act which are not relevant to this Order.

enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of restrictive covenants.

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

(5) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (4) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(6) Where the power in paragraph (4) is transferred to a statutory undertaker and the statutory undertaker—

- (a) is liable to pay compensation for the exercise of that power; and
- (b) fails to discharge that liability,

the liability is enforceable against the undertaker.

(7) Nothing in this article affects any agreement between the undertaker and any statutory undertaker receiving the benefit of any power transferred by the operation of paragraph (4).

(8) Any person who suffers loss as a result of the acquisition of any private right or the imposition of a restrictive covenant under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

### **Private rights**

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

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

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights under this Order shall be extinguished in so far as their continuance would be inconsistent with the exercise of the right—

- (a) as from the date of acquisition of the right by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry), as modified by paragraph 7 of Schedule 6 to this Order;

whichever is the earlier.

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

(4) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152 of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 30 (statutory undertakers) applies.

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

- (a) any notice given by the undertaker before—

- (i) the completion of the acquisition of the land or the acquisition of rights or the imposition of restrictive covenants over or affecting the land;
  - (ii) the undertaker's entry onto it; or
  - (iii) the undertaker's taking temporary possession of it,
- that any or all of those paragraphs do not apply to any right specified in the notice; and
- (b) any agreement made at any time between the undertaker and the person in or to whom the right of way in question is vested or belongs.
- (7) If any such agreement as is referred to in paragraph (6)(b)—
- (a) is made with a person in or to whom the right is vested or belongs; and
  - (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

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

(8) Reference in this article to private rights over land includes reference to any trusts or incidents to which the land is subject.

### **Application of the Compulsory Purchase (Vesting Declarations) Act 1981**

- 23.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.
- (2) The 1981 Act, as so applied, has effect with the following modifications.
- (3) In section 3 (preliminary notices)—
- (a) for subsection (1) there is 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 must 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.”
  - (b) in subsection (2), for “(1)(b)” there is substituted “(1)” and after “given” there is inserted “and published”;
  - (c) for subsections (5) and (6) there is 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.”
- (4) In section 5 (earliest date for execution of declaration)—
- (a) in subsection (1), after “publication” there is inserted “in a local newspaper circulating in the area in which the land is situated”; and
  - (b) subsection (2) is omitted.
- (5) 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)” are omitted.
- (6) References to the 1965 Act in the 1981 Act are to 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**

**24.**—(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 18 (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 is not required to acquire an interest in any other part of the land.

(3) Paragraph (2) does not prevent article 25 (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**

**25.**—(1) This article applies instead of section 8(1) of the 1965 Act (other provisions as 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 is 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 is required to sell only the land subject to the notice to treat must, 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 is 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 is 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 is 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 is 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, must 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 must 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**

**26.—**(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) does not apply in relation to—

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

(4) Subject to paragraph (5), any person who is an owner or occupier of land 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, is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

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

### **Temporary use of land for carrying out the authorised development**

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

- (a) enter on and take temporary possession of—
  - (i) such land as is specified as being required only temporarily in the book of reference, and
  - (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the 1981 Act;

- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access), security fencing and buildings on that land; and
- (d) construct any mitigation works required by the relevant planning authority as a condition to discharging any of the requirements in Part 2 (Requirements) of Schedule 1.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry and the stated purpose of possession on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken; or
- (b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

- (a) replace a building removed under this article;
- (b) restore the land on which any works have been constructed under paragraph (1)(d), or on which landscaping works have been carried out (in accordance with Requirement 7 (provision of landscaping) if appropriate), if the owners and occupiers consent to the works remaining; or
- (c) remove any ground strengthening works to facilitate the construction of the authorised development.

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

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(7) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1) except that the undertaker is not be precluded from—

- (a) acquiring new rights over any part of that land under article 21 (compulsory acquisition of rights and imposition of restrictive covenants); or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 24 (acquisition of subsoil only).

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

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

### **Temporary use of land for maintaining authorised development**

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

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

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

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

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

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

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

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

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

(8) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

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

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

(11) In this article “the maintenance period”, in relation to any part of the authorised development, means the period of 5 years beginning with the date on which that part of the authorised development is first operational.

### **Protective provisions for specified undertakers**

**29.** Schedule 8 (protective provisions) has effect.

### **Statutory undertakers**

**30.** The undertaker may—

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, the land belonging to statutory undertakers shown on the land plan within the limits to the land to be acquired and described in the book of reference; and
- (b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers over or within the Order land.

### **Apparatus and rights of statutory undertakers in stopped-up streets**

**31.**—(1) Where a street is stopped up under article 11 (stopping up of street), any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 11, any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the undertaker must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

- (a) the execution of the relocation works required in consequence of the stopping up of the street; and
- (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(4) If in the course of the execution of relocation works under paragraph (2)—

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) is reduced by the amount of that excess.

(5) For the purposes of paragraph (4)—

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

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) do not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works are determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and
- (b) the allowable costs are borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article—

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“relocation works” means work executed, or apparatus provided, under paragraph (2); and

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) of the Communications Act 2003(a).

## PART 7

### MISCELLANEOUS AND GENERAL

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

**32.**—(1) This article applies to—

(a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and

(b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person’s use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

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

(a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;

(b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or

(c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

#### **Operational land for purposes of the 1990 Act**

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

#### **Felling or lopping of trees and hedgerows**

**34.**—(1) The undertaker may fell or lop any tree or shrub within the Order limits described in the works plan, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development.

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

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

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(a) 2003 c.21.

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

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

### **Certification of plans etc.**

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

- (a) the access to works plan;
- (b) the book of reference;
- (c) the design and access statement;
- (d) the environmental statement;
- (e) the flood risk assessment;
- (f) the indicative generating station layout drawings;
- (g) the indicative overhead lines and pylons layout drawings;
- (h) the indicative pump house layout drawing;
- (i) the indicative AGI layout drawing;
- (j) the land plan;
- (k) the landscaping plan;
- (l) the public rights of way temporary closures and permanent stopping up plan;
- (m) the works plan; and
- (n) any other plans or documents referred to in this Order,

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

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

### **Arbitration**

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

### **Procedure in relation to certain approvals etc.**

**37.**—(1) Where an application is made to or request is made of the relevant planning authority, a highway authority, a street authority or the owner of a watercourse, sewer or drain (“relevant planning authority”) for any agreement or approval required or contemplated by any of the provisions of the Order, such agreement or approval must, if given, be given in writing and may not be unreasonably withheld or delayed.

(2) Schedule 7 has effect in relation to all agreements or approvals granted, refused or withheld in relation to Requirements.

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

10th March 2015

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

## AUTHORISED DEVELOPMENT

## PART 1

## Authorised Development

A nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act, comprising—

*Work No. 1* – an electricity generating station located on a site off Common Lane east of Knottingley, West Yorkshire which includes the site of a former chemical works, with a nominal net electrical output capacity of up to 1,500 MWe at ISO Conditions (with a tolerance of up to 5 per cent) fuelled by natural gas, comprising—

(1) *Work No. 1A* – up to three separate generating units, with each generating unit including—

- (a) gas turbine and steam turbine within a turbine building;
- (b) one or two electricity generators within a turbine building;
- (c) heat recovery steam generator;
- (d) condenser;
- (e) main stack;
- (f) main and auxiliary transformer;
- (g) auxiliary cooling building;
- (h) condensate polisher;
- (i) oil water separator;
- (j) dosing system skid;
- (k) boiler feed pump building;
- (l) auxiliary electrical modules;
- (m) emission and ambient monitoring system;
- (n) blow down tank;
- (o) fuel gas coalescing filter;
- (p) fuel gas drains tank;
- (q) fuel gas flow measurement system;
- (r) fuel gas performance heater;
- (s) hydrogen storage;
- (t) condensate storage tank and make-up pump; and
- (u) pipe racks.

(2) In addition to the generating units, *Work No. 1A* may comprise any of the following further elements—

- (a) cooling water pump house;
- (b) hybrid cooling towers;
- (c) chemical dosing station with electrical modules;
- (d) cooling water treatment;
- (e) general and unit services main control centre container;
- (f) fire protection pump house;
- (g) fire fighting and raw storage water tank;



- (h) de-mineralised water storage tank;
- (i) water treatment plant;
- (j) workshop and store building;
- (k) administration and control building;
- (l) water pre-treatment area;
- (m) water intake structure;
- (n) auxiliary boilers and associated stacks;
- (o) grease and oil storage building;
- (p) hazardous materials storage building;
- (q) emergency diesel generators and associated stacks;
- (r) gas receiving station;
- (s) gas boiler;
- (t) gas compressor building/area;
- (u) above Ground Installation/pig trap system;
- (v) gas compressor utility rooms;
- (w) water pre-treatment building; and
- (x) waste water treatment.

(3) *Work No. 1B* – an electricity sub-station with gas insulated switchgear.

(4) Associated development within the meaning of section 115(2) of the 2008 Act within the area comprised in *Work No. 1A* and *Work No. 1B*, namely—

- (a) lay down area;
- (b) car parking;
- (c) internal roadways and footpaths; and
- (d) lighting columns and lighting.

Associated development within the meaning of section 115(2) of the 2008 Act in connection with the Nationally Significant Infrastructure Project referred to in *Work No. 1* comprising—

*Work No. 2* – area reserved for carbon capture, compression and storage and laid out as parking and open storage, including—

- (a) lay down area;
- (b) car parking;
- (c) security gatehouse;
- (d) internal roadways and footpaths; and
- (e) lighting columns and lighting.

*Work No. 3* – refurbishment of existing wharf on the Aire and Calder Navigation Canal and facilities to enable the offloading/unloading of equipment and materials from vessels moored at this wharf.

*Work No. 4* – improvements to Common Lane from the junction with Weeland Road running in an easterly direction to the western boundary of *Work No. 1*.

*Work No. 5* – National Grid upgrade works and new overhead line, including modification by way of alteration and repositioning of the existing 4YR Eggborough - Ferrybridge/Rochdale 400 kV overhead line route between towers 4YR001 and 4YR004 on land south and west of Kellingley Colliery, Knottingley, West Yorkshire, comprising—

- (a) construction and installation of a temporary pylon and temporary mast realignment through the temporary pylon and temporary mast of existing 400 kV overhead line, phase

and earthwire conductors between pylon 4YR001 and pylon 4YR004 for the duration of construction;

- (b) construction and installation of two new transmission pylons, 4YR002R and 4YR003R, installation of new phase conductors, insulators, fittings and earthwire from pylon 4YR001 to pylon 4YR004;
- (c) removal of existing transmission pylon 4YR002 and pylon 4YR003 and the phase and earthwire conductors between pylon 4YR001 and pylon 4YR004;
- (d) installation of new connections from the new pylon 4YR003 to the electricity substation comprised in Work No. 1B;

and in connection with such works comprised in Work No. 5, further associated development within the Order limits consisting of—

- (a) ramps, means of access and trackways;
- (b) drainage, wing walls, fencing and culverts;
- (c) works to alter the position of apparatus, including mains, sewers, drains and cables;
- (d) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (e) works for the benefit or protection of land affected by the authorised development;
- (f) works required for strengthening, improvement, maintenance, or reconstruction of any streets;
- (g) establishment of highway accesses, site construction compounds, crane pads, anchor points, temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction related buildings, welfare facilities, construction lighting and haulage roads;
- (h) installation of wires, cables, ducts, pipes, earthing strips and conductors;
- (i) installation of netted scaffold or any other form of third party asset protection as is deemed necessary for the duration of construction; and
- (j) such other works, including working sites storage areas, and works of demolition, as may be necessary or expedient for the purposes of or in connection with the construction of the authorised development.

*Work No. 6* – cooling water pipelines and pumping station to convey water from the River Aire to the power plant for evaporative cooling and to convey purge water from the evaporative cooling system, treated wastewaters and rainwater to the River Aire comprising—

(1) *Work No. 6A* – a water abstraction pipeline and intake screen arrangement to convey water from the river to the pumping station (Work No. 6C) including—

- (a) a passive wedge wire screen arrangement connected to the end of the pipeline at the intake point and installed to a depth of 1 m approximately above the river bed; and
- (b) a pipeline between the intake screen and the pumping station.

(2) *Work No. 6B* – a water discharge pipeline to convey water from the pumping station to the river to the pumping station (Work No. 6C) including—

- (a) a dispersion device to distribute the discharged waters in the river; and
- (b) a pipeline between the dispersion device and the pumping station.

(3) *Work No. 6C* – a pumping station containing a wet well sump and multiple pumps, including—

- (a) pump house building;
- (b) electrical supply and control equipment;
- (c) pipework and valves;
- (d) flow metering equipment;
- (e) power and control cables;

- (f) pump lifting equipment;
- (g) access track from Stocking Lane to Pumping Station compound; and
- (h) internal vehicular access, parking areas, pedestrian areas and landscaping, gated security fencing, close circuit television and intruder detection systems, lighting and rainwater drainage.

(4) *Work No. 6D* – water abstraction and discharge pressure pipelines running in parallel from the Pumping Station to the southern boundary of Weeland Road.

(5) *Work No. 6E* – water abstraction and discharge pressure pipelines running in parallel from the southern boundary of Weeland Road to the power plant site.

The pipelines will be installed under Weeland Road and the Aire and Calder Canal using trenchless methods. The pipelines elsewhere in *Work No. 6E* will be laid in trench or using trenchless methods.

*Work No. 7* – above ground installation comprising—

- (a) connection to National Grid Gas National Transmission System (NTS) No. 29 feeder pipeline including NTS Spur Pipeline and Minimum Offtake Connection (MOC);
- (b) above ground pipework;
- (c) emergency shutdown devices;
- (d) pipeline Internal Gauge (PIG) launcher for pipe inspection while maintaining normal gas flow;
- (e) gas vents;
- (f) instrumentation kiosks;
- (g) standby generator sockets;
- (h) access track;
- (i) hardstanding;
- (j) security fencing and gates; and
- (k) perimeter landscaping treatment.

*Work No. 8* – a high pressure steel pipeline up to 600 mm (Nominal Bore) in diameter for the transport of gas. Its proposed route is shown by an indicative pink line (subject to the limits of deviation in article 6) on the works plan and comprises—

(1) *Work No. 8A* – high pressure steel gas pipeline running from an indicative location within *Work No. 7* near Gateforth in a southerly direction to the mid-point of Birkin Road where it connects with *Work No. 8B*.

(2) *Work No. 8B* – high pressure steel gas pipeline running from *Work No. 8A* in the mid-point of Birkin Road in a predominantly southerly direction crossing the Fleet to a point on the northern bank of the River Aire where it meets *Work No. 8C*.

(3) *Work No. 8C* – a high pressure steel gas pipeline running from the northern bank of the River Aire from *Work No. 8B* to the southern bank of the River Aire where it connects with *Work No. 8D*.

(4) *Work No. 8D* – a high pressure steel gas pipeline running from the southern bank of the River Aire from *Work No. 8C* in a south and south westerly direction to the mid-point of Beal Lane where it connects with *Work No. 8E*. The pipeline will be installed under Marsh Drain using trenchless methods.

(5) *Work No. 8E* – a high pressure steel gas pipeline running from the mid-point of Beal Lane from *Work No. 8D* in a westerly direction crossing New Lane to the mid-point of Common Lane where it connects with *Work No. 8F*.

(6) *Work No. 8F* – high pressure steel gas pipeline running from the mid-point of Common Lane from *Work No. 8E* to the southern boundary of Weeland Road where it connects with *Work No. 8G*.

(7) *Work No. 8G* – a high pressure steel gas pipeline running from the southern boundary of Weeland Road from *Work No. 8F* to *Work No. 1A*. The termination point shown on the works plan is indicative only.

The gas pipeline will be laid using either trenched or trenchless methods except for—

- (a) all adopted highway crossings;
- (b) the River Aire crossing;
- (c) the Aire and Calder Canal crossing;
- (d) the Marsh Drain crossing (comprised in *Work No. 8D*); and
- (e) the Fleet crossing (comprised in *Work No. 8B*)

where the pipeline will be installed using trenchless methods as shown on the works plan.

*Work No. 9* – alternative private track/temporary bridleway along the southern boundary of *Work No. 1* from Blackburn Lane to Southmoor Lane, at least five metres wide and being gated at either end.

In connection with *Work Nos. 1* to *9* and to the extent that they do not otherwise form part of any such work, further associated development whether or not shown on the plan referred to in the requirements including—

- (a) bunds, embankments, landscaping, fencing and boundary treatments;
- (b) connection to the electricity network for the purpose of supply to the authorised development;
- (c) connection to the telecommunications network for the purpose of supply to the authorised development;
- (d) temporary construction site offices;
- (e) haul roads and hardstandings on site for the parking of construction vehicles plant and machinery or for the vehicles of construction workers;
- (f) construction of temporary lay down storage areas and compounds and their restoration;
- (g) water supply works, foul drainage provision, surface water management systems, channelling and culverting;
- (h) habitat creation;
- (i) temporary footpaths;
- (j) marker posts;
- (k) telecommunication cables to be laid alongside pipeline;
- (l) cathodic protection posts;
- (m) site preparation works, site clearance (including fencing, vegetation removal, demolition of existing structures and the creation of alternative footpaths);
- (n) earthworks (including soil stripping and storage, site levelling);
- (o) piling;

and to the extent that they do not form part of any such work, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the works assessed by the environmental statement.

## PART 2

### Requirements

#### Interpretation

1. In this Part of this Schedule—

“the AGI” means the above ground installation comprised in Work No. 7;

“the Canal and River Trust” means the private company limited by guarantee of that name (company number 07807276) whose registered office is at First Floor, North Station House, 500 Elder Gate, Milton Keynes, MK9 1BB;

“the capture equipment” means the plant and equipment required to capture and compress the target carbon dioxide and identified as such in the current CCS proposal;

“CCS” means carbon capture and storage;

“the CCS proposal” means a proposal for the capture, transport and storage of the target carbon dioxide, which identifies the proposed technology, transport route and storage location for the authorised development;

“the CCS site” means an area within the area hatched pink on the works plan and described as Work No. 2 in Part 1 of this Schedule, which satisfies relevant legal and policy requirements as in force from time to time;

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

“the Common Lane upgrade” means Work No. 4 in Part 1 of this Schedule;

“the cooling water pipelines” means Work No. 6 in Part 1 of this Schedule;

“current CCS proposal” means—

(a) the CCS proposal contained in appendix F.2 of the environmental statement, set out in a feasibility study and assessed in accordance with the guidance entitled “Carbon Capture Readiness (CCR) A guidance note for section 36 Electricity Act 1986 consent applications”; or

(b) if a revised CCS proposal has been identified under Requirement 29, the proposal which has most recently been so identified;

“the gas pipeline” means Work No. 8 in Part 1 of this Schedule;

“the generating station” means Work No. 1 in Part 1 of this Schedule;

“heavy commercial vehicles” means any vehicles or mobile plant 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 for the purposes of construction of the authorised development;

“the Lead Local Flood Authority” means the Lead Local Flood Authority as defined by section 6(7) of the Flood and Water Management Act 2010(a);

“NRIL” means Network Rail Infrastructure Limited, company number 02904587 registered at Kings Place, 90 York Way, London, N1 9AG;

“the overhead lines and pylons” means Work No. 5 in Part 1 of this Schedule as shown on the works plan;

“part of the authorised development” means any part of Work Nos. 1 to 9 as listed in Part 1 of this Schedule;

“the relevant highway authority” means the relevant highway authority for the area in which the land to which the relevant provision of this Order applies is situated;

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(a) 2010 c.29.

“the remediation permission” means the planning permission granted by Wakefield Metropolitan District Council in relation to engineering and remediation works at the former Oxiris chemical works site in Knottingley, WF11 8BN and allocated the reference number 12/02488/FUL or any such variation as may be permitted by the relevant planning authority;

“Requirement consultee” means any person whom the relevant planning authority is required to consult when discharging any of the requirements in this Part of this Schedule; and

“Requirements” means the requirements under this Part of this Schedule.

### **Time limits**

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

### **Detailed design**

3.—(1) No part of the authorised development comprising the generating station may commence until details of the following have been submitted to and approved in writing by the relevant planning authority—

- (a) details of the siting, design, external appearance and dimensions of all new or modified buildings and structures, including fencing or other means of enclosure, which are to be retained following commissioning;
- (b) details of the colour, materials and surface finishes in respect of those buildings and structures referred to in paragraph (a);
- (c) details of all external lighting;
- (d) details of vehicular access and circulation roads, parking, hardstanding, loading and unloading facilities and turning facilities;
- (e) details of drainage, storage tanks and silos;
- (f) details of ground levels and heights of all permanent buildings and structures together with cross-sections through the site showing existing and proposed ground levels; and
- (g) details of an operational travel plan, which must include details of the expected means of travel to and from the authorised development and any parking to be provided during the operational phase, and must be implemented within one month of the authorised development becoming operational.

(2) The details approved under sub-paragraph (1) must be in accordance with the following thresholds—

Maximum number of main stacks	3
Maximum height of main stacks	75 metres
Maximum height of turbine buildings and heat recovery steam generator	45 metres
Maximum height of auxiliary boiler stacks	30 metres
Maximum height of cooling towers	20 metres
Maximum height of other buildings and structures	15 metres

(3) The relevant planning authority must consult NRIL in respect of the details of fencing and external lighting approved under sub-paragraph (1) to the extent that they affect any railway belonging to NRIL.

(4) The authorised development comprising the generating station must be carried out in accordance with the approved details.

(5) A facility must be provided and maintained within Work No. 1 to enable steam pass-outs and/or hot water pass-outs and reserve space for the provision of water pressurisation, heating and pumping systems for off-site users of process and space heating and its later connection to such systems should a commercial arrangement be identified for combined heat and power which is economically viable.

(6) The generating station may not be brought into operation until an operational traffic management plan has been submitted to and approved by the relevant planning authority. The operational traffic management plan must be implemented as approved.

### **Overhead lines and pylons**

4.—(1) No part of the authorised development comprising the overhead lines and pylons may commence until details of the overhead lines and pylons have been submitted to and approved in writing by the relevant planning authority.

(2) The details approved under sub-paragraph (1) must be in accordance with the following thresholds—

Maximum height of transmission towers	65 metres
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(3) Prior to the commencement of development comprising the part of the overhead lines and pylons affecting a railway belonging to NRIL, the undertaker must enter into an Outside Parties Basic Asset Protection Agreement (BAPA) (terms of which should be reasonable and proportionate to the routine works and technical standards required for reconductoring powerlines) with NRIL in accordance with National Grid Electricity Transmission Limited's NGET Master Wayleave Agreement dated 12th September 1961 and supplemental agreement 4YR/9 dated 3rd February 1967.

(4) The authorised development comprising the overhead lines and pylons must be implemented in accordance with the approved details and, insofar as it affects any railway belonging to NRIL, the BAPA entered into with NRIL.

### **Cooling water pipelines and pumping station**

5.—(1) No part of the authorised development comprising the cooling water pipelines or pumping station may commence until details of the cooling water pipelines and pumping station, including fencing or other means of enclosure, have been submitted to and approved in writing by the relevant planning authority.

(2) The details approved under sub-paragraph (1) must be in accordance with the following thresholds—

Number of cooling water pipelines	2 (one abstraction and one discharge)
Maximum diameter	700 mm (nominal bore)
Maximum height of buildings, including security fence	5 metres

(3) The authorised development comprising the cooling water pipelines and pumping station must be implemented in accordance with the approved details.

### **Gas pipeline and AGI**

6.—(1) No part of the authorised development comprising the gas pipeline and above ground installation may commence until—

(a) details of the gas pipeline, and

(b) details of the AGI, including in respect of fencing or other means of enclosure,

have been submitted to and approved in writing by the relevant planning authority.

(2) The details approved under sub-paragraph (1) in relation to the gas pipeline must be implemented in accordance with the following thresholds—

Maximum diameter	600 mm (nominal bore)
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(3) The details approved under sub-paragraph (1) in relation to the AGI must be implemented in accordance with the following thresholds—

Maximum height of buildings, including security fence	3 metres
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### **Provision of landscaping**

7.—(1) No part of the authorised development may commence until a written landscaping scheme for that part has been submitted to and approved in writing by the relevant planning authority. The landscaping scheme must include details of all proposed hard and soft landscaping works, including—

- (a) location, number, species, size and planting density of any proposed planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) proposed finished ground levels;
- (d) hard surfacing materials;
- (e) vehicular and pedestrian access, parking and circulation areas;
- (f) minor structures, such as furniture, refuse or other storage units, signs and lighting;
- (g) proposed and existing functional services above and below ground, including drainage, power and communications cables and pipelines, manholes and supports;
- (h) details of existing trees to be retained, with measures for their protection during the construction period;
- (i) retained historic landscape features and proposals for restoration, where relevant;
- (j) a tree and scrub buffer zone around the generating station and CCS areas, in accordance with the principles of the landscaping plan; and
- (k) implementation timetables for all landscaping works.

(2) The relevant planning authority must consult NRIL in respect of landscaping details around the generating station that are adjacent to any railway belonging to NRIL.

### **Implementation and maintenance of landscaping**

8.—(1) All landscaping works must be carried out in accordance with the landscaping scheme approved under Requirement 7 and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

(2) The landscaping works must be implemented in accordance with implementation timetables approved under Requirement 7.

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

### **Footpath/Public Rights of Way diversions**

9.—(1) No part of the authorised development may commence until a written public rights of way management plan for any sections of public rights of way shown to be extinguished or temporarily closed on the public rights of way temporary closures and permanent stopping up plan for that part has been approved in writing by the relevant planning authority in consultation with the relevant highway authority.

(2) The public rights of way management plan for the relevant part must include details of and a specification for the provisions of the temporary bridleway to be provided as part of Work No. 9.

(3) The public rights of way management plan and the provision of the temporary bridleway must thereafter be implemented as approved.



## **Highway accesses**

**10.**—(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 traffic, has, for that part, been submitted to and approved in writing by the relevant planning authority in consultation with the relevant highway authority.

(2) The highway accesses must be constructed in accordance with the approved details prior to commencement of the relevant part of the authorised development.

(3) No part of the authorised development may commence until, for that part, a written Access Management Scheme has been submitted to and approved in writing by the relevant planning authority.

(4) The Access Management Scheme must be implemented in accordance with the approved details.

## **Temporary buildings, structures and roads**

**11.**—(1) No part of the authorised development comprising the generating station, the overhead lines and pylons, the pumping station or the AGI may commence until for that part a written scheme in accordance with sub-paragraph (2) has been submitted to and approved in writing by the relevant planning authority.

(2) The scheme must include details of—

- (a) the siting, design and external appearance of temporary buildings and structures, artificial lighting and fencing to be erected and used during the period of construction;
- (b) temporary vehicular roads, parking hardstandings, laydown areas and turning facilities to be used during the period of construction; and
- (c) the secure fencing of construction sites.

(3) The scheme under sub-paragraph (2) must be implemented as approved.

(4) All temporary works must be removed within a period of twelve calendar months following commencement of the operational phase of the authorised development.

## **Surface and foul water drainage**

**12.**—(1) No part of the authorised development may commence until, for that part, written details of the surface and foul water drainage systems (including means of pollution control) have been submitted to and approved in writing by the relevant planning authority in consultation with the internal drainage board, the Environment Agency, the Lead Local Flood Authority, the Canal and River Trust, and NRIL, as appropriate.

(2) The surface and foul water drainage system must thereafter be constructed in accordance with the approved details before the operational phase of that part of the authorised development commences.

## **Contaminated land and groundwater – general**

**13.**—(1) No part of the authorised development may commence until, for that part, a written scheme produced in line with CLR11 Model Procedures (which may be included in the CEMP) to deal with the contamination of any land, including groundwater, within the Order limits has been submitted to and approved in writing by the relevant planning authority in consultation with the Environment Agency.

(2) The scheme must include an investigation and assessment report, prepared by a specialist consultant and approved in writing by the relevant planning authority, to identify the extent of any contamination and a risk based remedial strategy to be produced and fully implemented, based on the findings of the investigation, to render the land fit for its intended purpose, together with a

management plan which sets out long-term monitoring measures with respect to any contaminants remaining on the site.

(3) If during construction of the authorised development contaminated land or groundwater is encountered in excavations of Order land that was not identified in the initial investigation and assessment, then work in the vicinity of that contamination must be suspended, additional investigation and assessment carried out, and the scheme produced under sub-paragraph (1) amended to reflect the results. The amendments and any additional remediation required must be approved by the relevant planning authority in consultation with the Environment Agency prior to any works resuming.

(4) Remediation must be implemented in accordance with the approved scheme.

(5) Prior to commencement of the authorised development (or resumption of works following additional investigation and assessment under sub-paragraph (3)), a verification report demonstrating completion of the remediation works and the effectiveness of the remediation must be submitted to and approved, in writing, by the relevant planning authority in consultation with the Environment Agency. The report must include results of the sampling and monitoring carried out in accordance with the approved remedial strategy to demonstrate that the site remediation criteria have been met.

### **Contaminated land and groundwater – known contamination on the site of the generating station**

**14.** The part of the authorised development comprising the generating station must not commence until the remediation permission has been implemented in full and a verification report under Requirement 13(5) has been submitted to and approved in writing by the relevant planning authority.

### **Archaeology**

**15.—**(1) No part of the authorised development may commence until for that part a written scheme for the investigation of areas of archaeological interest has been submitted to and approved in writing by the relevant planning authority.

(2) The scheme must identify areas where field work and/or a watching brief are required, and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(3) Any archaeological works or watching brief implemented under the scheme must be by a suitably qualified person or body approved in writing by the relevant planning authority.

(4) Any archaeological works or watching brief must be implemented in accordance with the approved scheme.

### **Ecological management plan**

**16.—**(1) No part of the authorised development may commence until a written ecological management plan (which may form part of the construction environment management plan approved under Requirement 17) for that part has been submitted to and approved in writing by the relevant planning authority in consultation with the Canal and River Trust, the Yorkshire Wildlife Trust, West Yorkshire Ecology and North Yorkshire County Council Ecologist as appropriate.

(2) No part of the gas pipeline or water pipelines may commence, or material construction works on any part of them continue, between the months of October and February in any given year unless a wintering birds survey and, if appropriate, a proposed scheme of mitigation, is first submitted to and approved in writing by the relevant planning authority in consultation with Natural England. Any approved scheme of mitigation must be incorporated into the ecological management plan.

(3) The ecological management plan must contain on-site biodiversity mitigation to address the biodiversity loss resulting from the construction of the generating station (subsequent to the

implementation of the remediation permission), unless off-site compensation or “offsetting” is provided to address this biodiversity loss (in full or in part) to the satisfaction of the relevant planning authority.

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

### **Construction environment management plan**

**17.**—(1) No part of the authorised development may commence until a CEMP relating to that part, which accords with the principles set out in the environmental statement (section 27 – Framework for a CEMP), has been submitted to and approved in writing by the relevant planning authority in consultation with the relevant highway authority.

(2) The CEMP must in particular include—

- (a) a code of construction practice, specifying measures designed to minimise the impacts of construction works, addressing—
  - (i) external lighting;
  - (ii) noise and vibration;
  - (iii) air quality including dust;
  - (iv) construction hours, subject always to paragraph (e), being, between 0700 and 1900 hours on weekdays and 0800 and 1800 hours on Saturdays and no working on Sunday or public holidays, except during such periods and in such locations as are previously agreed by the relevant planning authority; save in relation to Work No. 5 to which no restriction applies under this sub-paragraph (iv);
- (b) a site waste management plan;
- (c) a traffic management plan addressing construction traffic to and materials storage on the authorised development, including any road closures, site access and a construction travel plan;
- (d) a scheme for the notification of any significant construction impacts on local residents to local residents and the relevant planning authority;
- (e) a scheme for impact piling, or other means of pile driving, addressing methods and duration of piling and stating the criteria according to which pile driving is chosen, which must require impact piling to be limited to the following times—
  - (i) Monday to Friday: 0900–1800 hours;
  - (ii) Saturday: 0900–1300 hours; and
  - (iii) no impact piling on Sunday or Bank Holidays unless such impact piling is required because of an emergency;
- (f) a water management assessment (assessment of the risks to and mitigation measures designed to protect controlled waters (surface and groundwater) including pollution control); and
- (g) a review of the impact of the authorised development on the River Aire in a water body action plan.

(3) The relevant planning authority must consult NRIL in respect of the elements of the CEMP concerning—

- (a) temporary external lighting around the generating station and overhead lines and pylons, to the extent that it affects any railway belonging to NRIL, and
- (b) the construction traffic management plan in respect of the generating station and overhead lines and pylons.

(4) All construction works must be implemented in accordance with the CEMP.

### **Common Lane improvement**

18. Prior to commencement of the part of the authorised development comprising the generating station, Work No. 4 (improvements to Common Lane) must be implemented to the satisfaction of the relevant planning authority.

### **Air Safety**

19.—(1) No part of the authorised development comprising the generating station may commence until the undertaker has notified the Ministry of Defence – Defence Geographic Centre in relation to the generating station of—

- (a) the precise location of the authorised development with grid coordinates;
- (b) the proposed date of commencement of construction;
- (c) the height above ground level in metres of the tallest structure;
- (d) the maximum extension height in metres of any construction equipment.

(2) The undertaker must ensure that any stacks are fitted with aviation warning lighting with a minimum intensity of 25 candela omni directional red light or equivalent infra-red light fitted at the highest practicable point of the structure.

(3) Within 28 days of completion of the construction of the generating station the undertaker must notify the Ministry of Defence – Defence Geographic Centre of the date of such completion of construction.

### **Flooding – mitigation**

20.—(1) No part of the authorised development may commence until for that part there has been submitted to and approved in writing by (and deposited with) the relevant planning authority, in consultation with the Environment Agency and the relevant internal drainage board, 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 the flood risk assessment.

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

### **Fire prevention**

21.—(1) No part of the authorised development may commence until for that part there has been submitted to and approved in writing by the relevant planning authority a fire prevention method statement providing details of fire detection measures, fire suppression measures and the location of accesses to all fire appliances in all of the major building structures and storage areas within the authorised development such method statement to be prepared, including measures to contain and treat water used to suppress any fire.

(2) The authorised development must be implemented in accordance with the approved details and all the relevant fire suppression measures and fire appliances must be maintained to the reasonable satisfaction of the relevant planning authority at all times when the authorised development is operational.

### **Waste management on site – operational phase**

22.—(1) No part of the authorised development may be brought into operation until the relevant planning authority has received and approved in writing a waste management plan for the operational phase for that part of the authorised development incorporating the principles in the environmental statement. The site waste management plan must address and include at least the following—

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

- (b) removal of waste materials from the site for recovery/disposal at appropriately licensed sites;
  - (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.

#### **Control of noise – operational phase**

**23.**—(1) The part of the authorised development comprising the generating station may not be brought into operation until a written scheme for noise management including monitoring and attenuation for the use of the authorised development has been submitted to and approved in writing by the relevant planning authority in consultation with Selby District Council.

(2) Noise from the operation of the generating station must be no greater than the existing background level (expressed as LA90 dB) when monitored in accordance with BS4142: 1997 Method for Rating Industrial Noise Affecting Mixed Residential and Industrial Areas, adjacent to the nearest residential properties at such locations as are agreed with the relevant planning authority. The noise levels must be monitored across 1 hour in the day-time and 5 minutes at night-time.

(3) The noise management scheme must be implemented as approved.

#### **European protected species**

**24.**—(1) No part of the authorised development may commence until further survey work for that part has been carried out to establish whether any European protected species is present on any of the land affected, or likely to be affected, by that part of the authorised development or in any of the trees to be lopped or felled or buildings to be demolished in connection with that part of the authorised development.

(2) Where a European protected species is shown to be present, no authorised development of that part may be begun until, after consultation with Natural England, a scheme of protection and mitigation measures has been submitted to and approved in writing by the relevant planning authority.

(3) The authorised development must be implemented in accordance with the approved scheme.

(4) The part of the authorised development comprising the generating station may not be commenced until great crested newts have been removed in accordance with the relevant condition of the remediation permission.

(5) “European protected species” has the same meaning as in regulations 40 and 44 of the Conservation of Habitats and Species Regulations 2010(a).

#### **Restoration of land used temporarily for construction**

**25.**—(1) Any land within the Order limits which is used temporarily for construction must be reinstated to its former condition, or such condition as the relevant planning authority may approve in writing (or which may be provided for under an approved landscaping scheme).

(2) Reinstatement works must be commenced promptly following completion of the relevant part of the authorised development, and within three months of any required approval by the relevant planning authority. The reinstatement must be implemented in accordance with any timetable included in any relevant approved landscaping scheme.

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(a) S.I. 2010/490. There are amendments to these Regulations which are not relevant to this Order.

### **Air quality monitoring**

**26.**—(1) The authorised development comprising the generating station may not become operational until there has been submitted to and approved in writing by Wakefield Metropolitan District Council in consultation with Selby District Council a scheme for the monitoring of nitrogen oxides (NO<sub>x</sub>) in the area.

(2) The scheme must—

- (a) include the measurement locations from which air pollution is required to be monitored,
- (b) specify the equipment and methods to be used,
- (c) specify the frequency of measurement,
- (d) require the first measurement to be taken not less than 24 months prior to the generating station becoming operational, and
- (e) require the final measurement to be taken not more than 12 months after the cessation of operation.

(3) The undertaker must supply to Wakefield Metropolitan District Council and Selby District Council the full details of the measurements obtained in accordance with the scheme as soon as possible after they become available.

### **Combined heat and power**

**27.** A facility must be provided and maintained within Work No. 1 to enable steam pass-outs and/or hot water pass-outs and reserve space for the provision of water pressurisation, heating and pumping systems for off-site users of process and space heating and its later connection to such systems should a commercial arrangement be identified for combined heat and power which is economically viable.

**28.**—(1) Prior to the operation of Work No, 1, a review of potential opportunities for the use of heat from the authorised development must be submitted to and approved by the relevant planning authority.

(2) The review shall provide for the on-going monitoring and full exploration of potential opportunities to use heat from the authorised development as part of a good quality CHP scheme in accordance with the principles set out in the CHPQA Standard Issue 3, and for the provision of subsequent reviews of such opportunities as necessary.

(3) Where viable opportunities for the use of heat are identified, a scheme for the provision of the necessary Plant and pipework to the boundary of the site shall be submitted to and approved by the relevant planning authority; any plant and pipework installed up to the Order limits to enable the use of heat shall be installed in accordance with the agreed details.

(4) In this requirement, ‘CHPQ Standard Issued 3’ refers to the document of that name prepared by the Department for Environment, Food and Rural Affairs and published in January 2009, and the reference to a ‘good quality CHP scheme’ should be interpreted in accordance with that document.

### **CCS site**

**29.** Until such time as the generating station is decommissioned, the undertaker must not, without the written consent of the Secretary of State—

- (a) dispose of any interest in the CCS site; or
- (b) do anything, or allow anything to be done or to occur, which may reasonably be expected to diminish the undertaker’s ability, within two years of such occurrence, to prepare the CCS site for the installation and operation of the capture equipment.

### **CCS monitoring report**

**30.**—(1) The undertaker must make a report (“CCS monitoring report”) to the Secretary of State—

- (a) on or before the date on which three months have passed from commencement of operation of the authorised development; and
- (b) within one month of the second anniversary, and each subsequent even-numbered anniversary, of that date.

(2) Each CCS monitoring report must provide evidence that the undertaker has complied with Requirement 29—

- (a) in the case of the first CCS monitoring report, since this Order was made; and
- (b) in the case of any subsequent report, since the making of the previous CCS monitoring report,

and explain how the undertaker expects to continue to comply with Requirement 29 over the next two years.

(3) Each CCS monitoring report must state whether the undertaker considers that some or all of the technology referred to in the current CCS proposals will not work and identify any other impediment to the technical feasibility of the current CCS proposal, explaining the reasons for any such conclusion and whether such impediments could be overcome. If the undertaker considers that technical impediments could be overcome by putting forward a revised CCS proposal, this should be included in the CCS monitoring report.

(4) Each CCS monitoring report must state, with reasons, whether the undertaker has decided to seek any additional regulatory clearances, or to modify any existing regulatory clearances, in respect of its current CCS proposals.

### **Applicability of Requirements 29 and 30**

**31.**—(1) Requirements 29 and 30 will cease to have effect as soon as any of the following events occurs—

- (a) the capture equipment is installed; or
- (b) the generating station is decommissioned; or
- (c) the Secretary of State’s agreement to the undertaker not installing capture equipment and having no current CCS proposals has been obtained in writing.

(2) Requirement 29 will cease to have effect if the requirement to hold land for the installation of capture equipment ceases to be included in law or planning policy as from time to time in force.

(3) Requirement 30 will cease to have effect if the requirement to submit a CCS report ceases to be included in law or planning policy as from time to time in force.

### **Decommissioning**

**32.**—(1) Within 12 months of the generating station ceasing to be used for the purposes of generating electricity, a site closure and restoration plan for the demolition and removal of the generating station and pumping station must be submitted for approval by the relevant planning authority. The scheme must include—

- (a) details of all structures and buildings to be demolished;
- (b) details of the means of removal of the materials resulting from decommissioning works;
- (c) details of the phasing of the demolition and removal works;
- (d) details of the restoration works to restore the operations area to a condition agreed with the relevant planning authority;
- (e) details of any restoration works and their phasing;
- (f) a timetable in which the scheme must be carried out; and

(g) an environment management plan for the demolition and decommissioning works addressing the matters listed in Requirement 17 (construction environment management plan).

(2) The demolition and removal of the generating station must be implemented in accordance with the approved scheme.

### **Requirement for written approval**

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

### **Approved details**

**34.—**(1) All details submitted for the approval of the relevant planning authority under these Requirements must be in accordance with the parameters of the environmental statement and reflect the principles set out in the documents certified under article 37.

(2) The authorised development must be carried out in accordance with the design drawings subject to such non-material amendments as are approved in writing by the relevant planning authority; provided that such approval is not given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

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

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

### **Local liaison committee**

**35.** The authorised development may not commence until the undertaker has established a committee to liaise with local residents and organisations about matters relating to the authorised development (a “local liaison committee”). The local liaison committee must include representatives of the undertaker. The undertaker must invite Wakefield Metropolitan District Council, Selby District Council, North Yorkshire County Council, the Environment Agency, West Yorkshire Police and other relevant interest groups, as may be agreed with Wakefield Metropolitan District Council, to nominate representatives to join the local liaison committee. The undertaker must provide a full secretariat service and supply an appropriate venue. The local liaison committee must meet every other month, starting in the month prior to commencement of the authorised development, until the completion of construction, testing and commissioning works unless otherwise agreed in writing by the majority of the members of the local liaison committee. During the operational phase of the authorised development, the local liaison committee must meet once a year unless otherwise agreed in writing by the majority of the members of the local liaison committee.

### **Employment and Skills plan**

**36.** The authorised development comprised in Work No. 1 shall not commence until an employment and skills plan detailing arrangements to promote employment and skills development opportunities has been submitted to and approved in writing by the relevant planning authority. The plan must include proposals for promoting such opportunities for local residents and the approved employment and skills plan must be implemented and maintained during the construction and operation of the authorised development comprised in Work No.1.



### **Notice of start and completion of commissioning**

**37.**—(1) Notice of the intended start of commissioning must be given to the relevant planning authority where practicable prior to such commencement and in any event within seven (7) days from the date that commissioning is commenced.

(2) Notice of the intended completion of commissioning must be given to the relevant planning authority where practicable prior to such completion and in any event within seven (7) days from the date that commissioning is completed.

### **Notice of commencement of operation**

**38.** Notice of the intended start of operation must be given to the relevant planning authority and the Environment Agency, by means of an operational phase notice, where practicable prior to such commencement and in any event within seven (7) days from the date that operation is commenced.

## SCHEDULE 2

Article 10

### STREETS SUBJECT TO STREET WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to street works</i>
Wakefield Metropolitan District	Common Lane
Wakefield Metropolitan District	Weeland Road (A645)
Selby District	Weeland Road (A645)
Selby District	Farmer's track near Kellingley Farm
Selby District	Common Lane
Selby District	New Lane
Selby District	Beal Lane
Selby District	Farmer's Track in Beal Carrs
Selby District	Marsh Lane
Selby District	Birkin Road
Selby District	Royd's Road
Selby District	Pale Lane

## SCHEDULE 3

Article 11

### STREETS TO BE STOPPED UP

#### STREETS FOR WHICH A SUBSTITUTE IS TO BE PROVIDED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>Temporary alternative route to be provided</i>
Wakefield Metropolitan District	Common Lane	So much of Common Lane (private accommodation road) as is within Work Nos. 1 and 2 as shown on the works plan	The temporary bridleway described in Work No. 9 in Part 1 of Schedule 1 and shown coloured yellow on the plan

## SCHEDULE 4

Article 12

### PUBLIC RIGHT OF WAY TO BE TEMPORARILY CLOSED AND PERMANENTLY STOPPED UP

#### PART 1

Claimed public right of way to be extinguished for which a replacement will be provided

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>Temporary bridleway</i>
Wakefield Metropolitan	Claimed public bridleway along Common Lane	So much of Common Lane as is shown market by a green dashed line on the public rights of way temporary closures and permanent stopping up plan	The temporary bridleway described in Work No. 9 in Part 1 of Schedule 1 and shown coloured yellow on the plan

#### PART 2

Rights of way for which a replacement will be provided during temporary closure

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Footpath to be temporarily closed</i>	<i>(3)</i> <i>Extent of temporary closure</i>
Selby District	Footpath 35.30/7/1 off Pale Lane	As shown marked by a black line on the public rights of way temporary closures and permanent stopping up plan
Selby District	Footpath 35.72/3/1 off Marsh Lane	
Selby District	Footpath 35.41/5/1 south of the River Aire	
Selby District	Footpath 35.7/6/1 along River Aire at pumping station	
Selby District	Footpath 35.7/8/1 north of Kellingley Farm	
Selby District	Footpath 35.7/9/1 west of Kellingley Farm	

## PART 3

### Rights of way for which no replacement will be provided during temporary closure

<i>(1)</i> Area	<i>(2)</i> Footpath to be temporarily closed	<i>(3)</i> Extent of temporary closure
Wakefield District	Claimed public bridleway along Common Lane and leading onto a track connecting to Beal Lane	As shown marked by a pink dashed line on the public rights of way temporary closures and permanent stopping up plan
Wakefield District	Claimed public bridleway along Southmoor Lane	As shown marked by a pink dashed line on the public rights of way temporary closures and permanent stopping up plan

## SCHEDULE 5

Article 13

### ACCESS TO WORKS

<i>(1)</i> Area	<i>(2)</i> Access number on access to works plan	<i>(3)</i> Description of access
Selby District	1	Pale Lane (N) – permanent access
Selby District	2	Pale Lane (S) – indicative temporary access
Selby District	3	Birkin Road (N) – indicative temporary access
Selby District	4	Marsh Lane – indicative temporary access
Selby District	5	Low Road – indicative temporary access
Selby District	6	Beal Lane (N) – indicative temporary access
Selby District	7	Beal Lane (S) – indicative temporary access
Selby District	8	New Lane (E) – indicative temporary access
Selby District	9	New Lane (W) – indicative temporary access
Selby District	10	Common Lane (E) – indicative temporary access
Selby District	11	Common Lane (W) – indicative temporary access
Selby District	12	Stocking Lane – indicative temporary access
Selby District	13	Weeland Road (N) – indicative temporary access

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Access number on access to works plan</i>	<i>(3)</i> <i>Description of access</i>
Wakefield District	14	Weeland Road (S) – indicative temporary access
Wakefield District	15	Common Lane – permanent access
Wakefield District	16	Southmoor Lane (E) – indicative temporary access
Wakefield District	17	Blackburn Lane (E) – permanent Access

## SCHEDULE 6

Article 21

### MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS AND IMPOSITION OF RESTRICTIVE COVENANTS

#### Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restrictive covenant as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without prejudice to the generality of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) for the words “land is acquired or taken” there is substituted the words “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for the words “acquired or taken from him” there is substituted the words “over which the right is exercisable or the restrictive covenant enforceable”.

(3) In section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5—

- (a) for the word “part” in paragraphs (a) and (b) there is substituted the words “a right over or restrictive covenant affecting land consisting”;
- (b) for the word “severance” there is substituted the words “right or restrictive covenant over or affecting the whole of the house, building or manufactory or of the house and the park or garden”;
- (c) for the words “part proposed” there is substituted the words “right or restrictive covenant proposed”; and
- (d) for the words “part is” there is substituted the words “right or restrictive covenant is”.

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(a) 1973 c.26.

### **Application of the 1965 Act**

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

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

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

**4.** For section 7 of the 1965 Act (measure of compensation) there is substituted the following section—

“**7.** In assessing the compensation to be paid by the acquiring authority under this Act, regard is had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

**5.** For section 8 of the 1965 Act (provisions as to divided land) there is substituted the following section—

“**8.**—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right or the imposition of the restrictive covenant would apart from this section fall to be determined by the Upper Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that land and—
  - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased or the restrictive covenant imposed without material detriment to that land; or
  - (ii) where that land consists of such a park or garden, that the right cannot be purchased or the restrictive covenant imposed without seriously affecting the amenity or convenience of the house to which that land belongs,

in relation to that person, the Order ceases to authorise the purchase of the right and is deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section is determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection

to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”.

**6.** The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

**7.** Section 11 of the 1965 Act (powers of entry) is so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12 (unauthorised entry) and 13 (refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

**8.** Section 20 of the 1965 Act (tenants at will, etc.) applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

**9.** Section 22 of the 1965 Act (interests omitted from purchase) is so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

**10.** In this Schedule, “acquiring authority” has the same meaning as “the undertaker” in article 2(1) (Interpretation) of this Order.

## SCHEDULE 7

Article 37

### PROCEDURE FOR DISCHARGE OF REQUIREMENTS

#### **Applications made under requirement**

**1.**—(1) Where an application has been made to a relevant planning authority for any agreement or approval required by any requirement included in this Order, the relevant planning authority must give notice to the undertaker of its decision on the application before the end of the decision period.

(2) For the purposes of sub-paragraph (1), the decision period is—

- (a) where no further information is requested under paragraph 2, 8 weeks from the day immediately following that on which the application is received by the authority or the day on which the fee under paragraph 3(1) of this Schedule is received, whichever is the later;

- (b) where further information is requested under paragraph 2, 8 weeks from the day immediately following that on which further information has been supplied by the undertaker under paragraph 2; or
- (c) such longer period as may be agreed by the undertaker and the relevant planning authority in writing before the end of the period in sub-paragraph (a) or (b).

(3) For the avoidance of doubt, the relevant planning authority remains seized of the application after the decision period elapses and pending an appeal by the undertaker for non-determination under paragraph 4(1)(b).

### **Further information**

2.—(1) In relation to any application to which this Schedule applies, the relevant planning authority has the right to request such further information from the undertaker as is necessary to enable it to consider the application.

(2) If the relevant planning authority considers such further information to be necessary and the requirement does not specify that consultation with a requirement consultee is required, it must, within 7 business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the requirement specifies that consultation with a requirement consultee is required, the relevant planning authority must issue the consultation to the requirement consultee within 3 business days of receipt of the application, and must notify the undertaker in writing specifying any further information requested by the requirement consultee within 3 business days of receipt of such a request and in any event within 35 days of receipt of the application.

(4) If the relevant planning authority does not give such notification as specified in sub-paragraph (2) or (3) it is deemed to have sufficient information to consider the application and is not thereafter be entitled to request further information without the prior agreement of the undertaker.

### **Fees**

3.—(1) Where an application is made to the relevant planning authority for agreement or approval in respect of a requirement, a fee of £97, or such greater sum as applies by regulations for the discharge of planning conditions, must be paid to that authority.

(2) Any fee paid under this Schedule must be refunded to the undertaker within 8 weeks of the relevant planning authority failing to determine the application within the decision period as determined under paragraph 1, unless within that period the undertaker agrees, in writing, that the fee may be retained by the relevant planning authority and credited in respect of a future application.

### **Appeals**

4.—(1) The undertaker may appeal in the event that—

- (a) the relevant planning authority refuses an application for any agreement or approval required by a requirement included in this Order or grants it subject to conditions;
- (b) the relevant planning authority does not give notice of its decision to the undertaker within the decision period as determined in paragraph 1;
- (c) on receipt of a request for further information pursuant to paragraph 2 the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or
- (d) on receipt of any further information requested, the relevant planning authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process is as follows—



- (a) the undertaker must submit the appeal documentation to the Secretary of State, a copy of the application submitted to the relevant planning authority and any supporting documentation which the undertaker may wish to provide (“the appeal documentation”);
- (b) the undertaker must on the same day provide copies of the appeal documentation to the relevant planning authority and the requirement consultee (if applicable);
- (c) as soon as is practicable after receiving the appeal documentation, but in any event within 10 business days of receiving the appeal documentation, the Secretary of State must appoint a person and forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for that person’s attention should be sent;
- (d) the relevant planning authority and the requirement consultee (if applicable) must submit written representations to the appointed person in respect of the appeal within 20 business days of the date on which the appeal parties are notified of the appointment of a person under paragraph (c) and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (e) the appeal parties must make any counter-submissions to the appointed person within 10 business days of receipt of written representations pursuant to paragraph (d) above.

(3) The appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable. If the appointed person considers that further information is necessary to enable him to consider the appeal he must, as soon as practicable, notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person. Any written representations concerning matters contained in the further information must be submitted to the appointed person, and made available to all appeal parties within 10 business days of that date.

(5) On an appeal under this paragraph, the appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the relevant planning authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to the appointed person in the first instance.

(6) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the time limits prescribed, or set by the appointed person, under this paragraph.

(7) The appointed person may proceed to a decision even though no written representations have been made within those time limits, if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

(8) The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(9) If an approval is given by the appointed person pursuant to this Schedule, it is deemed to be an approval for the purpose of the relevant Requirement in Schedule 1 Part 2 as if it had been given by the relevant planning authority. The relevant planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) may not be taken to affect or invalidate the effect of the appointed person’s determination.

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

(11) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to Communities and Local Government Circular 03/2009 or any circular or guidance which may from time to time replace it.

### **Interpretation of Schedule 7**

#### **5. In this Schedule—**

“the appeal parties” means the relevant planning authority, the requirement consultee and the undertaker;

“business day” means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971; and

“requirement consultee” means anybody named in a requirement which is the subject of an appeal as a body to be consulted by the relevant planning authority in discharging that requirement.

## **SCHEDULE 8**

Article 29

### **PROTECTIVE PROVISIONS**

*For the protection of Canal and River Trust*

#### **Interpretation**

**1.—**(1) For the protection of CRT the following provisions of this Schedule shall, unless otherwise agreed in writing between the undertaker and CRT, have effect.

#### **(2) In this Schedule—**

“construction”, in relation to any specified work or protective work, includes—

- (a) the execution and placing of that work; and
- (b) any relaying, renewal, or maintenance of that work as may be carried out during the period of 24 months from the completion of that work; and “construct” and “constructed” have corresponding meanings;

“CRT” means the Canal & River Trust;

“CRT’s network” means CRT’s network of waterways;

“detriment” means any damage to the waterway or any other property of CRT caused by the presence of the authorised works and, without prejudice to the generality of that meaning, includes—

- (a) any obstruction of, or interference with, or hindrance or danger to, navigation or to any use of the waterway (including towing paths);
- (b) the erosion of the bed or banks of the waterway, or the impairment of the stability of any works, lands or premises forming part of the waterway;
- (c) the deposit of materials or the siltation of the waterway so as to damage the waterway;
- (d) the pollution of the waterway;
- (e) any significant alteration in the water level of the waterway, or significant interference with the supply of water thereto, or drainage of water therefrom;
- (f) any harm to the ecology of the waterway (including any adverse impact on any site of special scientific interest comprised in CRT’s network);
- (g) any interference with the exercise by any person of rights over CRT’s network;

“the engineer” means an engineer appointed by CRT for the purpose in question;

“plans” includes sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction) and programmes;

“practical completion” means practical completion of all of the specified work notwithstanding that items which would ordinarily be considered snagging items remain outstanding, and the expression “practically complete” and “practically completed” shall be construed accordingly;

“protective work” means a work constructed under paragraph 6(3)(a);

“specified work” means so much of Work Nos. 3, 6 and 8G as are situated upon, across, under, over or within 15 metres of, or may in any way affect the waterway;

“towing path” means the towing path forming part of the waterway;

“the waterway” means the Aire & Calder Navigation, and includes any works, lands or premises belonging to CRT, or under its management or control, and held or used by CRT in connection with that canal.

### **Powers requiring CRT’s consent**

2.—(1) The undertaker shall not in the exercise of the powers conferred by this Order obstruct or interfere with pedestrian or vehicular access to the waterway unless such obstruction or interference with such access is with the consent of CRT.

(2) The undertaker shall not exercise any power conferred by this Order to discharge water into the waterway under article 15 (discharge of water) or in any way interfere with the supply of water to or the drainage of water from the waterway unless such exercise is with the consent of CRT, save as to surface water discharge which will not require the consent of CRT.

(3) The undertaker shall not exercise the powers conferred article 16 (authority to survey and investigate land) or section 11(3) of the 1965 Act, in relation to the waterway unless such exercise is with the consent of CRT.

(4) The undertaker shall not exercise the powers conferred by section 271 or 272 of the Town and Country Planning Act 1990, as applied by Schedule 3 to this Order (streets to be stopped up), so as to divert any right of access to the waterway but such right of access may be diverted with the consent of CRT.

(5) The consent of CRT pursuant to sub-paragraphs (1) to (4) shall not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions which in the case of article 15 (discharge of water) may include conditions—

- (a) specifying the maximum volume of water which may be discharged in any period; and
- (b) authorising CRT on giving reasonable notice (except in an emergency, when CRT may require immediate suspension) to the undertaker to require the undertaker to suspend the discharge of water or reduce the flow of water where this is necessary by reason of any operational or environmental requirement of CRT,

to the extent that any discharge of water by the undertaker is into the waterway.

### **Vehicles, plant and machinery**

3. The undertaker shall not use any land or property of CRT forming part of the waterway for the passage or siting of vehicles, plant or machinery employed in the construction of the specified works other than—

- (a) with the consent in writing of the engineer whose consent shall not be unreasonably withheld; and
- (b) subject to compliance with such reasonable requirements as the engineer may from time to time specify—
  - (i) for the prevention of detriment; or
  - (ii) in order to avoid or reduce any inconvenience to CRT, its officers and agents and all other persons lawfully on such land or property, but nothing in this paragraph shall

apply in relation to anything done in accordance with any approval given by CRT under paragraph 6.

### **Fencing**

4. Where so required by the engineer the undertaker shall to the reasonable satisfaction of the engineer fence off a specified work or a protective work or take such other steps as the engineer may require to be taken for the purpose of separating a specified work or a protective work from the waterway, whether on a temporary or permanent basis or both.

### **Survey of waterway**

5.—(1) Before the commencement of the initial construction of any part of the specified works and again following practical completion of the specified works the undertaker shall bear the reasonable cost of the carrying out by a qualified engineer (the “surveyor”), to be approved by CRT and the undertaker, of a survey including a dip-survey to measure the depth of the waterway (“the survey”) of so much of the waterway and of any land and existing works of the undertaker which may provide support for the waterway as will or may be affected by the specified works.

(2) For the purposes of the survey the undertaker shall—

- (a) on being given reasonable notice (save in case of emergency, when immediate access shall be afforded) afford reasonable facilities to the surveyor for access to the site of the specified works and to any land and existing works of the undertaker which may provide support for the waterway as will or may be affected by the specified works; and
- (b) supply the surveyor as soon as reasonably practicable with all such information as he may reasonably require with regard to such existing works of the undertaker and to the specified works or the method of their construction.

(3) The reasonable costs of the survey shall include the costs of any dewatering or reduction of the water level of any part of the waterway (where reasonably required) which may be effected to facilitate the carrying out of the survey and the provisions of this Schedule shall apply with all necessary modifications to any such dewatering or reduction in the water level as though the same were specified works.

(4) Copies of the survey shall be provided to both CRT and the undertaker at no cost to CRT.

### **Approval of plans, protective works etc.**

6.—(1) The undertaker shall before commencing construction of any specified work within the boundaries of the specified works including any temporary works supply to CRT proper and sufficient plans of that work and such further particulars available to it as CRT may within 14 days of the submission of the plans reasonably require for the approval of the engineer and shall not commence such construction of a specified work until plans of that work have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) shall not be unreasonably withheld or delayed, and if within 35 days after such plans (including any other particulars reasonably required under sub-paragraph (1)) have been supplied to CRT the engineer has not intimated his disapproval of those plans and the grounds of his disapproval he shall be deemed to have approved the plans as submitted.

(3) When signifying approval of the plans the engineer may specify on land held or controlled by CRT or the undertaker and subject to such works being authorised by the order or being development permitted by an Act of Parliament or general development order made under the 1990 Act—

- (a) any protective work (whether temporary or permanent) which in the reasonable opinion of the engineer should be carried out before the commencement of a specified work to prevent detriment; and

- (b) such other requirements as may be reasonably necessary to prevent detriment; and such protective works shall be constructed by the undertaker or by CRT at the undertaker's request with all reasonable dispatch and the undertaker shall not commence the construction of a specified work until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction such consent not to be unreasonably withheld or delayed.

(4) The undertaker shall pay to CRT a capitalised sum representing the reasonably increased or additional cost of maintaining and, when necessary, renewing any works, including any permanent protective works provided under sub-paragraph (3) above, and of carrying out any additional dredging of the waterway reasonably necessitated by the exercise of any of the powers under this Order but if the cost of maintaining the waterway, or of works of renewal of the waterway, is reduced in consequence of any such works, a capitalised sum representing such reasonable saving shall be set off against any sum payable by the undertaker to CRT under this paragraph.

(5) In the event that the undertaker fails to complete the construction of, or part of, the specified works CRT may, if it is reasonably required in order to avoid detriment, serve on the undertaker a notice in writing requesting that construction be completed. Any notice served under this sub-paragraph shall state the works that are to be completed by the undertaker and lay out a timetable for the works' completion. If the undertaker fails to comply with this notice within 35 days, CRT may construct any of the specified works, or part of such works, (together with any adjoining works) in order to complete the construction of, or part of, the specified works or make such works and the undertaker shall reimburse CRT all costs, fees, charges and expenses it has reasonably incurred in carrying out such works.

### **Design of works**

7. Without prejudice to its obligations under the foregoing provisions of this Schedule the undertaker shall consult, collaborate and respond constructively to any approach, suggestion, proposal or initiative made by CRT on—

- (a) the design and appearance of the specified works, including the materials to be used for their construction; and
- (b) the environmental effects of those works;

and shall have regard to such views as may be expressed by CRT to the extent that these accord with the requirements of the local planning authority in response to such consultation pursuant in particular to the requirements imposed on CRT by section 22 (general environmental and recreational duties) of the British Waterways Act 1995 and to the interest of CRT in preserving and enhancing the environment of its waterways.

### **Notice of works**

8. The undertaker shall give to the engineer 30 days' notice of its intention to commence the construction of any of the specified or protective works, or, in the case of repair carried out in an emergency, such notice as may be reasonably practicable so that, in particular, CRT may where appropriate arrange for the publication of notices bringing those works to the attention of users of CRT's network.

### **Lighting**

9. The undertaker shall provide and maintain at its own expense in the vicinity of the specified or protective works such temporary lighting and such signal lights for the control of navigation as the engineer may reasonably require during the construction or failure of the specified or protective works.

### **Construction of specified works**

10.—(1) Any specified or protective works shall, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid and with any requirements made under paragraph 6(3) and paragraph 7;
- (b) under the supervision (if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little detriment as is reasonably practicable;
- (d) in such manner as to cause as little inconvenience as is reasonably practicable to CRT, its officers and agents and all other persons lawfully using the waterways, except to the extent that temporary obstruction has otherwise been agreed by CRT.

(2) Nothing in this Order shall authorise the undertaker to make or maintain any permanent works in or over the waterway so as to impede or prevent (whether by reducing the width of the waterway or otherwise) the passage of any vessel which is of a kind (as to its dimensions) for which CRT is required by section 105(1)(b) and (2) of the Transport Act 1968 to maintain the waterway.

(3) Following the completion of the construction of the specified works the undertaker shall restore the waterway to a condition no less satisfactory than its condition immediately prior to the commencement of those works unless otherwise agreed between the undertaker and CRT.

### **Prevention of pollution**

11. The undertaker shall not in the course of constructing a specified work or a protective work or otherwise in connection therewith do or permit anything which may result in the pollution of the waterway or the deposit of materials therein and shall take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph.

### **Access to work – provision of information**

12.—(1) The undertaker on being given reasonable notice shall—

- (a) at all reasonable times allow reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

(2) CRT on being given reasonable notice shall—

- (a) at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by CRT under this Schedule during their construction; and
- (b) supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them and the undertaker shall reimburse CRT's reasonable costs in relation to the supply of such information.

### **Alterations to the waterway**

13.—(1) If during the construction of a specified work or a protective work or during a period of twenty four (24) months after the completion of those works any alterations or additions, either permanent or temporary, to the waterway are reasonably necessary in consequence of the construction of the specified work or the protective work in order to avoid detriment, and CRT 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 CRT the reasonable costs of those alterations or additions including, in respect of any such alterations or additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by CRT in maintaining, working and, when necessary, renewing any such alterations or additions.

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

### **Maintenance of works**

14. If at any time after the completion of a specified work or a protective work, not being a work vested in CRT, CRT gives notice to the undertaker informing it that the state of maintenance of the work appears to be such that the work is causing or likely to cause detriment, the undertaker shall, on receipt of such notice, take such steps as may be reasonably necessary to put the work in such state of maintenance as not to cause such detriment.

### **Repayment of CRT's fees, etc.**

15. The undertaker shall repay to CRT in accordance with CRT's Code of Practice for Works affecting the Canal and River Trust (as amended from time to time) all fees, costs, charges and expenses reasonably incurred by CRT—

- (a) in constructing any protective works under the provisions of paragraph 6(3)(a);
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction or repair of a specified work and any protective works;
- (c) in respect of the employment during the construction of the specified works or any protective works of any inspectors, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, watching and lighting any waterway and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works or any protective works; and
- (d) in bringing the specified works or any protective works to the notice of users of CRT's network.

### **Costs of alterations, etc.**

16. Any additional expenses which CRT may reasonable incur in altering, reconstructing or maintaining the waterway under any powers existing at the date when this Order was made 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 repaired by the undertaker to CRT.

### **Making good of detriment; compensation and indemnity, etc.**

17.—(1) If any detriment shall be caused by the construction or failure of the specified works or the protective works if carried out by the undertaker, the undertaker (if so required by CRT) shall make good such detriment and shall pay to CRT all reasonable expenses to which CRT may be put, and compensation for any loss which CRT may sustain, in making good or otherwise by reason of the detriment.

(2) The undertaker shall be responsible for and make good to CRT all costs, charges, damages, expenses and losses not otherwise provided for in this Schedule which may be occasioned to and reasonably incurred by CRT—

- (a) by reason of the construction of a specified work or a protective work or the failure of such a work; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction of a specified work or a protective work; and subject to sub-paragraph (4) the undertaker shall effectively indemnify and hold harmless CRT from and against all claims and demands arising out of or in connection with any of the matters referred to in paragraphs (a) and (b) (provided that, save as expressly set out in this paragraph, CRT shall not be entitled to recover any consequential losses from the undertaker).

(3) The fact that any act or thing may have been done by CRT on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the

engineer or under the engineer's supervision or in accordance with any directions or awards of an arbitrator shall not (if it was done without negligence on the part of CRT or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph.

(4) Nothing in sub-paragraph (2) shall impose any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the neglect or wilful default of CRT, its officers, servants, contractors or agents.

(5) CRT shall give the undertaker reasonable notice of any such claim or demand as aforesaid and no settlement or compromise of such a claim or demand shall be made without the prior consent of the undertaker.

(6) The aggregate cap of the undertaker's gross liability for consequential losses shall be limited to £10,000,000 (ten million pounds) for any one occurrence or all occurrences of a series arising out of the one original cause.

### **Arbitration**

**18.** Any difference arising between the undertaker and CRT under this Schedule (other than a difference as to the meaning or construction of this Schedule) shall be referred to and settled by arbitration in accordance with article 36 (arbitration) of this Order.

### **Capitalised sums**

**19.** Any capitalised sum which is required to be paid under this Schedule shall be calculated by multiplying the cost of the maintenance or renewal works to the waterway necessitated as a result of the operation of the authorised development by the number of times that the maintenance or renewal works will be required during the operation of the authorised development.



## **EXPLANATORY NOTE**

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

This Order grants development consent for, and authorises Knottingley Power Limited to construct, operate and maintain a combined cycle gas turbine power plant located in east Knottingley, Yorkshire, together with associated development comprising the diversion of the existing 400 kV overhead line to connect the power plant to the grid gas pipeline and cooling water pipelines together with all necessary and associated development. For the purposes of the development Knottingley Power Limited is authorised by the Order compulsorily or by agreement to purchase land and rights in land to use land, as well as to override easements and other rights. The Order also provides a defence in proceedings in respect of statutory nuisance and to discharge water. The Order imposes requirements in connection with the development for which it grants development consent.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 35 (certification of plans etc.) of this Order may be inspected free of charge at Knottingley Library at Knottingley Sports Centre, Hill Top, Pontefract Road, Knottingley, WF11 8EE, and at the offices of Wakefield Council at Wakefield One, Burton Street, Wakefield, WF1 2EB, North Yorkshire County Council at County Hall, Northallerton, North Yorkshire, DL7 8AD, and Selby District Council at Access Selby, 8-10 Market Cross, Selby, YO8 4JS.

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