

Planning Act 2008

Marine and Coastal Access Act 2009

**The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations
2009 Regulation 5(2)(b)**

The Proposed Tidal Lagoon Swansea Bay (Generating Station) Order

Draft Development Consent Order

February 2014

Document Reference: 3.1

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STATUTORY INSTRUMENTS

201[***] No. [***]

INFRASTRUCTURE PLANNING

**The Tidal Lagoon Swansea Bay (Generating Station) Order
201[***]**

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

CONTENTS

- Preliminary
1. Citation and commencement
 2. Interpretation
- Principal powers
3. Development consent etc. granted by the Order
 4. Non-material changes
 5. Maintenance of authorised development
 6. Operation of generating station
 7. Benefit of the Order
 8. Defence to proceedings in respect of statutory nuisance
- Streets
9. Street works
 10. Temporary stopping up of streets
 11. Access to works
 12. Agreements with street authority
- Supplemental powers
13. Discharge of water
 14. Protective work to buildings
 15. Authority to survey and investigate the land
- Tidal works
16. Right to dredge
 17. Tidal works not to be executed without approval of the Welsh Government
 18. Abatement of tidal works abandoned or destroyed
 19. Survey of tidal works
 20. Lights on tidal works etc. during construction
 21. Provision against danger to navigation
 22. Permanent lights on tidal works

Powers of acquisition

23. Compulsory acquisition of land
24. Statutory authority to override easements and other rights
25. Power to override easements and other rights
26. Private rights of way
27. Time limit for exercise of authority to acquire land compulsorily
28. Compulsory acquisition of rights
29. Application of the Compulsory Purchase (Vesting Declarations) Act 1981
30. Acquisition of subsoil only
31. Acquisition of part of certain properties
32. Rights under or over streets
33. Temporary use of land for carrying out the authorised development
34. Temporary use of land for maintaining authorised development
35. Statutory undertakers

Miscellaneous and general

36. Railway and navigation undertakings
37. Application of landlord and tenant law
38. Operational land for purposes of the 1990 Act
39. Felling or lopping of trees
40. Disapplication of the Commons Act 2006
41. Disapplication of the Energy Act 2004
42. Development consent obligation
43. Development consent obligation - enforcement
44. Byelaws
45. Procedure in relation to certain approvals etc.
46. Certification of plans etc.
47. Arbitration
48. Planning, etc. jurisdiction
49. Saving for Trinity House
50. Protection of Interests
51. Crown rights

SCHEDULES

- SCHEDULE 1 — Authorised Development
- PART 1 — Authorised Development
 - PART 2 — Building Heights
 - PART 3 — Requirements
- SCHEDULE 2 — Streets Subject to Street Works
- SCHEDULE 3 — Streets to be Temporarily Stopped Up
- SCHEDULE 4 — Access to Works
- SCHEDULE 5 — Land of which temporary possession may be taken
- SCHEDULE 6 — Procedure for Discharge of Requirements
- SCHEDULE 7 — Protective Provisions

The undertaker has applied to the Secretary of State for an order granting development consent in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(a);

The application was examined by an examining authority appointed by the Secretary of State under Part 4 of the Planning Act 2008 (the “Act”)(b);

The examining authority has considered such national planning statements as are or may be relevant to the application and so far as the same are applicable or otherwise important and relevant matters has concluded that the application accords with these statements as set out in section 104(3) of the Act;

The Secretary of State as decision-maker has decided to grant development consent and, under section 114 of the Act, to make the following Order.

Preliminary

Citation and commencement

1. This Order may be cited as The Tidal Lagoon Swansea Bay (Generating Station) Order 201[*] and shall come into force on [*****] 201[*].

Interpretation

2.—(1) In this Order—

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

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

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

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

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- (a) S.I. 2009/2264 as amended by the Localism Act (Infrastructure Planning) (Consequential Amendments) Regulations 2012.
- (b) 2008 c. 29.
- (c) 1961 c. 33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government Planning and Land Act 1990 (c. 65). There are other amendments to the 1961 Act which are not relevant to this Order.
- (d) 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 (c. 34). Subsection (1) of section 11 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 (c. 34). 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 (c. 34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1). There are other amendments to the 1965 Act which are not relevant to this Order.
- (e) 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 1984 (c. 51); section 1(2A) was inserted, and section 1(3) was amended, by section 259(1), (2) and (3) of the Greater London Authority Act 1999 (c. 29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c. 71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11), by section 64(1), (2) and (3) of the Transport and Works Act (c. 42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c. 37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c. 51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c. 29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c. 15). There are other amendments to the 1980 Act which are not relevant to this Order.

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

“the 2004 Act” means the Energy Act 2004**(c)**;

“the 2008 Act” means the Planning Act 2008**(d)**;

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

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

“book of reference” means the book of reference certified by the decision-maker as the book of reference for the purposes of this Order;

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

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

“commence” means beginning to carry out any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the authorised development other than operations consisting of site clearance, demolition work, archaeological investigations, 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” shall be construed accordingly;

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

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

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

“land plans” means the plans certified as the land plans by the decision-maker for the purposes of this Order;

“limits of deviation” means the limits of deviation for the scheduled works comprised in the authorised development shown on the works plans;

“maintain” includes maintain, inspect, repair, adjust, alter, remove, clear, refurbish, reconstruct, decommission, demolish, replace and improve and “maintenance” shall be construed accordingly;

“Order land” means the land shown on the land plans which is within the Order limits and described in the book of reference;

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

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

“planning drawings” means the drawings numbered 2.4.1 to 2.4.58 set out in requirement 5 in Part 3 of Schedule 1 (requirements);

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- (a) 1990 c. 8. Section 56(4) was amended by section 32 of, and paragraph 10(2) of Schedule 7 to, the Planning and Compensation Act 1991 (c. 34). Section 106 was substituted, and section 106A inserted, by section 12(1) of the Planning and Compensation Act 1991. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the 2008 Act. Sections 272 to 274 and section 279 were amended by section 406(1) of, and paragraph 103 of Schedule 17 to, the Communications Act (c. 21), and section 280 was amended by section 406(1) of, and paragraph 104 of Schedule 17 to, that Act. Sections 272 to 274 were also amended by S.I. 2011/741 and S.I. 2012/2590. Section 282 was amended by S.I. 2009/1307. There are other amendments to the 1990 Act which are not relevant to this Order.
- (b) 1991 c. 22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c. 26). Part 3 of the 1991 Act was amended by Part 4 of the Traffic Management Act 2004 (c. 18). Section 74 was amended, and sections 74A and 74B inserted, by sections 255 and 256 of the Transport Act 2000 (c. 38). There are other amendments to the 1991 Act but they are not relevant to this Order.
- (c) 2004 c. 20.
- (d) 2008 c. 29.
- (e) 2009 c. 23.
- (f) 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.

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

“requirements” means those matters set out in Part 3 of Schedule 1 (requirements) to this Order;

“scheduled works” means the numbered works specified in Schedule 1 to this Order, or any part of them as the same may be varied pursuant to article 3;

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

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

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

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

“tidal work” means so much of any work authorised by this Order as is on, under or over tidal waters or tidal lands below the level of high water;

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

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“undertaker” means Tidal Lagoon (Swansea Bay) plc, which is the named undertaker, or any other person who has the benefit of this Order in accordance with section 156 of the 2008 Act for such time as that section applies to that person;

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

“the works plans” means the plans certified as the works plans by the decision-maker for the purposes of this Order.

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

(3) All points, distances, areas, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development shall be taken to be measured along that work.

(4) Reference points specified in this Order shall be construed as references to Ordnance Survey National Grid reference points.

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

Principal powers

Development consent etc. granted by the Order

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

(2) For the purposes of the authorised development, development consent granted by this Order shall include and permit the alteration, removal, clearance, refurbishment, reconstruction, decommissioning and demolition of any buildings or other structures within the Order limits to the extent that they relate to are required by or are incidental to the carrying out of the authorised development.

(3) The development authorised by this Order shall be constructed in the lines or situations shown on the works plans and, subject to the provisions of the requirements, in accordance with the drawings specified in the requirements.

(4) The numbered works comprised in the authorised development shall be constructed within the limits of deviation.

(5) In constructing or maintaining the scheduled works, the undertaker may—

- (a) deviate laterally from the lines or situations shown on the works plans within the limits of deviation; and
- (b) deviate vertically from the levels shown on the sections—
 - (i) to any extent not exceeding 3 metres upwards; or
 - (ii) to any extent downwards as may be found necessary or convenient.

Non-material changes

4.—(1) The provisions of section 96A of the 1990 Act shall apply to development consent granted by this Order insofar as it relates to matters ordinarily governed by planning permission under the 1990 Act as if it were a planning permission granted under the 1990 Act and as if the words “in England” were omitted from sub-section 96A(1).

(2) In construing section 96A of the 1990 Act for the purposes of giving effect to this article, references to “planning permission” shall be construed as references to “development consent”, references to “conditions” shall be construed as references to requirements attached to this Order and references to the land to which the planning permission relates shall be references to land owned or occupied by the undertaker.

(3) This article shall apply only to articles 3, 5, 6, 39 and Part 3 to Schedule 1 of the Order.

Maintenance of authorised development

5.—(1) Subject to the other terms of this Order, including the requirements, the undertaker may at any time maintain the authorised development, except to the extent that this Order, or an agreement made under this Order, provides otherwise.

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

- (a) works to alter the position of apparatus below ground level including mains, sewers, drains and cables including below ground structures associated with that apparatus within the Order limits;
- (b) works to alter the position of apparatus on, over or under tidal waters or tidal lands within the Order limits;
- (c) works to alter, erect and construct such offices and other buildings, yards, engines, machinery, apparatus, structures and other works, and conveniences as the undertaker sees fit;
- (d) works to construct junctions and communications (including the provision of steps and ramps for the use of persons on foot) with any highway or access way intersected or interfered with by, or contiguous to, any of those works, and to widen or alter any highway or access way for the purposes of connecting it with any of those works or another highway, or of crossing under or over the highway or access way;
- (e) all such embankments, aprons, abutments, retaining walls, wing walls, culverts and other such works as the undertaker thinks fit;
- (f) works to alter the course of, or otherwise interfere with, a watercourse other than a navigable watercourse;
- (g) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the scheduled works;
- (h) works for the benefit or protection of premises affected by the scheduled works; and
- (i) works of decommissioning and demolition.

(3) This article only authorises the carrying out of maintenance of works within the Order limits.

Operation of generating station

6.—(1) The undertaker is authorised to operate the generating station 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 to authorise the operation of a generating station.

Benefit of the Order

7.—(1) Subject to paragraph (2) the provisions of articles 9 to 11, 13 to 36 and 40 shall have effect only for the benefit of the named undertaker and a person who is a transferee or lessee as defined in this article.

(2) The undertaker may, with the consent of the Secretary of State—

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

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

(4) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (2) shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

Defence to proceedings in respect of statutory nuisance

8.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraphs (c), (d), (e), (fb), (g), (ga) and (h) of section 79(1) of that Act no order shall be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level) of the Control of Pollution Act 1974(b); or
 - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and that the nuisance is attributable to the use of the authorised development which is being used in accordance with a scheme of monitoring and attenuation of noise agreed with the relevant planning authority as described in requirement 18 of Part 3 of Schedule 1; or

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

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

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

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

Streets

Street works

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

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

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

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

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

Temporary stopping up of streets

10.—(1) Subject to sub-paragraph (4) the undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter or divert any street and may for any reasonable time—

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

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

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule 3 (streets to be temporarily stopped up) within the extent of the footpath diversion zones for each such street shown on the land plans.

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

- (a) the street specified as mentioned in paragraphs (3) and (4) without first consulting the local highway authority; and
- (b) any other street without the consent of the local highway authority which may attach reasonable conditions to any consent.

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

Access to works

11. The undertaker may, for the purposes of carrying out 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 4 (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 authority

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

Supplemental powers

Discharge of water

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

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

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

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

(5) The undertaker shall not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

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

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by Regulations 12(1)(b) and 38(1)(s) and Schedule

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

21 of the Environmental Permitting (England and Wales) Regulations 2010^(a) (water discharge activities).

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to Natural Resources Wales, an internal drainage board, a local authority or a sewerage undertaker; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991^(b) have the same meaning as in that Act.

Protective work to buildings

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

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first opened for use.

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

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

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

(5) Before exercising—

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

the undertaker shall, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days’ notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 47 (arbitration).

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

(8) Where—

- (a) protective works are carried out under this article to a building; and

(a) S.I. 2010/675

(b) 1991 c. 57. Amended by sections 100(1) and 120(1) of, paragraph 128 of Schedule 22 to, and Schedule 24 to the Environment Act 1995 (c. 25).

- (b) within the period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

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

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

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

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

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

Authority to survey and investigate the land

15.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development 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) shall, 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 shall be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent shall not be unreasonably withheld.

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

Tidal works

Right to dredge

16.—(1) The undertaker may, for the purposes of constructing and maintaining the work and of affording access to the work by vessels from time to time deepen, dredge, scour, cleanse, alter and improve so much of the bed, shores and channels of tidal waters as adjoin or are near to the work and may use, appropriate or dispose of the materials (other than wreck within the meaning of Part 9 of the Merchant Shipping Act 1995) from time to time dredged by them.

(2) No such material shall be laid down or deposited—

- (a) In contravention of the provisions of any enactment as respects the disposal of waste; or
- (b) In any place below the level of high water other than in such position and under such conditions as may be approved or prescribed by Natural Resources Wales.

(3) The undertaker shall consult with the relevant port authority before exercising the rights conferred on it by this article.

Tidal works not to be executed without approval of the Welsh Government

17.—(1) Unless its construction has commenced within 5 years of the coming into effect of this Order, no tidal work shall be constructed, reconstructed, extended, enlarged, replaced or relaid except in accordance with plans and sections approved by the Welsh Government and subject to any conditions and restrictions imposed by the Welsh Government before that work is begun.

(2) Any request for the approval of the Welsh Government under paragraph (1) shall be accompanied by written evidence to demonstrate to the satisfaction of the Welsh Government that Schedule 7 (protective provisions) have been complied with as respects the tidal work for which approval is being requested.

(3) If a tidal work is constructed, reconstructed, extended, enlarged, replaced or relaid in contravention of paragraph (1) or of any condition imposed under that paragraph—

- (a) the Welsh Government may by notice in writing require the undertaker at its own expense to remove the tidal work or any part of it and restore the site to its former condition; and, if on the expiration of 30 days beginning with the date when the notice is served on the undertaker, it has failed to take reasonable steps to comply with the requirements of the notice, the Welsh Government may take whatever steps the Secretary of State considers appropriate to achieve the result required by the notice; or
- (b) if it appears to the Welsh Government urgently necessary to do so, the Welsh Government may remove the tidal work, or part of it, and restore the site to its former condition,

and any expenditure incurred by the Welsh Government in doing so shall be recoverable from the undertaker.

(4) This article shall cease to have effect where any tidal work is constructed, reconstructed, extended, enlarged, replaced or relaid more than 5 years after the date of the coming into effect of this Order or if a marine licence under Part 4 of the 2009 Act exists in relation to such tidal work.

Abatement of tidal works abandoned or destroyed

18.—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Welsh Government may by notice in writing require the undertaker at its own expense either to repair and restore that work or any part, or to remove that work and restore the site to its proper condition, to such an extent and within such limits as the Welsh Government thinks proper.

(2) Where a work consisting partly of a tidal work and partly of works on or over the land above the level of high water is abandoned or suffered to fall into decay and that part of the work on or over land above the level of high water is in such condition as to interfere or to cause reasonable apprehension that it may interfere with the right of navigation or other public rights over the

foreshore, the Welsh Government may include that part of the work, or any portion of it, in any notice under this article.

(3) If the undertaker fails to comply in any respect with a notice served under this article within the period of 30 days beginning with the date of service of the notice, the Welsh Government may take whatever steps the Welsh Government considers appropriate to achieve the result required by the notice; and any expenditure incurred by the Welsh Government shall be recoverable from the undertaker.

Survey of tidal works

19. If the Welsh Government considers it expedient to do so, the Welsh Government may order a survey and examination of a tidal work or of the site on which it is proposed to construct the work, and any expenditure incurred by the Secretary of State in any such survey and examination shall be recoverable from the undertaker.

Lights on tidal works etc. during construction

20. The undertaker shall at or near—

- (a) a tidal work, including any temporary work; or
- (b) any plant equipment or other obstruction placed, in connection with the authorised development within the area of seaward construction activity,

during the whole time of construction, reconstruction, extension enlargement, replacement of relaying, exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as the Welsh Government and the Maritime and Coastguard Agency may from time to time direct.

Provision against danger to navigation

21. In case of damage to, or destruction or decay of, a tidal work or any part of it, the undertaker shall as soon as reasonably practicable notify Trinity House and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House may from time to time direct.

Permanent lights on tidal works

22. After the completion of a tidal work the undertaker shall at the outer extremity of it exhibit every night from sunset to sunrise such lights, if any, and take such steps, if any, for the prevention of danger to navigation as Trinity House may from time to time direct.

Powers of acquisition

Compulsory acquisition of land

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

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

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

(4) This article is subject to article 34 (temporary use of land for carrying out the authorised development), article 35 (temporary use of land for maintaining authorised development).

(5) This article is subject to article 30 (acquisition of subsoil only), article 32 (rights under or over streets) and article 51 (Crown rights).

Statutory authority to override easements and other rights

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

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

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

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

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

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.

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

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

Power to override easements and other rights

25.—(1) Any authorised activity which takes place on land or which is a tidal work within the Order limits (whether the activity is undertaken by the undertaker, by its successor pursuant to a transfer or lease under article 7 of this Order, by any person deriving title under them or by any of their servants or agents) is authorised by this Order for the purposes of this article if it is authorised by the Order apart from this article and done in accordance with the terms of this Order, notwithstanding that it involves—

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

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

- (a) the erection, construction or carrying out, or maintenance of any building or work on land or over, in or under tidal waters or tidal lands;
- (b) the erection, construction, or maintenance or anything in, on, over or under land or over, in or under tidal waters or tidal lands; or
- (c) the use of any land and/or tidal waters and/or tidal lands.

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

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

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

- (a) shall be payable under section 63 or 68 of the Lands Clauses Consolidation Act 1845 or under section 7 or 10 of the Compulsory Purchase Act 1965; and
- (b) shall be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—
 - (i) the compensation is to be estimated in connection with a purchase under those Acts; or
 - (ii) the injury arises from the execution of works on or use of land acquired under those Acts.

(6) Nothing in this article shall be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1) of this article.

(7) This article shall not apply in respect of any agreement, restriction, obligation or other provision contained in a deed made pursuant to section 106 of the 1990 Act, or section 278 of the 1980 Act.

Private rights of way

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

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

whichever is the earlier, but only to the extent required for or necessary or incidental to the authorised development.

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

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

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

(5) This article does not apply in relation to any right of way to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 35 (statutory undertakers) applies.

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

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

(7) If any such agreement as is referred to in paragraph (6)(b)—

- (a) is made with a person in or to whom the right of way is vested or belongs; and

- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

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

Time limit for exercise of authority to acquire land compulsorily

27.—(1) After the end of the period of 5 years beginning on the day on which this Order comes into effect—

- (a) no notice to treat shall be served under Part 1 of the 1965 Act; and
(b) no declarations shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 29 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)(a).

(2) The authority conferred by article 33 (temporary use of land for carrying out the authorised development) shall cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph shall prevent the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

28.—(1) The undertaker may acquire compulsorily the existing rights and create and acquire compulsorily the new rights described in the book of reference and shown on the land plans.

(2) As from the date on which a compulsory acquisition notice is served or the date on which a new right is vested in the undertaker, whichever is the later, the land over which any new rights is acquired shall be discharged from all rights trusts and incidents to which it was previously subject so far as their continuance would be inconsistent with the exercise of that new right.

(3) Subject to section 8 of the 1965 Act as substituted by article 31 (acquisition of part of certain properties), where the undertaker acquires an existing right over land under paragraph (1), the undertaker shall not be required to acquire a greater interest in that land.

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

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

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

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

- (3) In section 3 (preliminary notices), for subsection (1) there shall be substituted—

“(1) Before making a declaration under section 4 with respect of any land which is subject to a compulsory purchase order, the acquiring authority shall include the particulars specified in subsection (3) in a notice which is—

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- (a) 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 other amendments to the 1981 Act which are not relevant to this Order.
- (b) 1981 c. 66. Sections 2 and 116 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.

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.

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

(5) In that section for subsections (5) and (6) there shall be substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”

(6) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” there shall be inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) shall be omitted.

(7) In section 7 (constructive notice to treat), in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” shall be omitted.

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

Acquisition of subsoil only

30.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 23 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

(3) Paragraph (2) shall not prevent article 31 (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.

(4) Nothing in this article shall require the undertaker to acquire any estate, right or interest in the corpus of any adopted highway.

Acquisition of part of certain properties

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

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

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

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

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

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

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

the owner shall be required to sell the land subject to the notice to treat.

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

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

the notice to treat shall be deemed to be a notice to treat for that part.

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

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land subject to the counter-notice, or if the tribunal determines that—

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
- (b) the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.

(9) Where, by reason of a determination by the tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, shall pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or land consisting of a house with a park or garden, the undertaker shall pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

Rights under or over streets

32.—(1) The undertaker may enter upon and appropriate so much of the subsoil of, or air space over, any street within the Order limits as may be required for the purposes of the authorised

development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

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

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

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

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

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

Temporary use of land for carrying out the authorised development

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

- (a) enter on and take temporary possession of the land specified in columns (1) and (2) of Schedule 5 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule;
- (b) remove any buildings and vegetation from that land;
- (c) construct temporary or permanent works (including the provision of means of access) and buildings on that land; and
- (d) construct any works specified in relation to that land in column (3) of Schedule 5 or any other mitigation works.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker shall serve notice of the intended entry 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 after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (3) of Schedule 5 unless and to the extent that it is authorised to do so by the acquisition of rights over land or the creation of new rights over land pursuant to article 28 of this Order.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker shall not be required to replace a building removed under this article or restore the land on which any works have been constructed under paragraph (1)(d).

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

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

(7) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

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

- (a) acquiring new rights over any part of that land under article 28 (compulsory acquisition of rights); or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 30 (acquisition of subsoil only).

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

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

(11) Nothing in this article shall prevent the taking of temporary possession more than once in relation to any land specified in Schedule 5.

Temporary use of land for maintaining authorised development

34.—(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) shall not authorise the undertaker to take temporary possession of—

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

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker shall 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 shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage rising 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 compensation, shall be determined under Part 1 of the 1961 Act.

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

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

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

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

Statutory undertakers

35.—(1) The undertaker may—

- (a) subject to the following provisions of this paragraph sections 271 to 274 of the 1990 Act (power to extinguish rights of statutory undertakers etc. and power of statutory undertakers etc. to remove or re-site apparatus) shall apply in relation to any land acquired under this Order, or which is held by the undertaker and is appropriated or used (or about to be used) by it for the purposes of the Order or for any connected purpose, and all such other provisions of that Act as apply for the purposes of those provisions (including sections 275 to 278, which contain provisions consequential to the extinguishment of any rights under sections 271 and 271, and sections 279(2) to (4), 280 and 282, which provide for the payment of compensation) shall have effect accordingly.

(2) In the provisions of the 1990 Act, as applied by paragraph (1) references to the appropriate Minister are references to the Secretary of State.

Miscellaneous and general

Railway and navigation undertakings

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

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

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

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

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

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

Application of landlord and tenant law

37.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

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

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

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

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

Operational land for purposes of the 1990 Act

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

Felling or lopping of trees

39.—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised development or the Order land, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub 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 shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity.

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

Disapplication of the Commons Act 2006

40. No land within the Order limits may be the subject of an application under section 15 (registration of greens) of, or paragraphs 2 to 4 of Schedule 2 (non-registration or mistaken registration under the 1965 Act) to, the Commons Act 2006(a).

Disapplication of the Energy Act 2004

41.—(1) Notwithstanding the provisions of section 104(4)(b) of the 2004 Act the authorised development shall comprise a renewable energy installation for the purposes of that Act.

(2) To the extent that the authorised development is a renewable energy installation in accordance with paragraph (1) any programme for decommissioning the authorised development submitted in response to a notice given by the Secretary of State under section 105 of the 2004 Act shall be limited to removal or alteration of Work No 2a of the scheduled works.

Development consent obligation

42.—(1) The undertaker may enter into an obligation relating to the authorised development under section 106 of the 1990 Act in respect of any land within the Order limits notwithstanding that the undertaker may not be the owner of such land or any interest in it.

(2) Any obligation to which paragraph (1) applies shall have effect in respect of land within the Order limits acquired after the date of that obligation—

(a) 2006 c. 26.

- (a) from the date of acquisition as if the undertaker had been the owner of the land at the date of the obligation; and
- (b) thereafter shall be enforceable under subsection 106(3) of the 1990 Act and subject to subsection 106(4) of that Act.

(3) Any obligation by the undertaker prior to the date of the Order and expressed to be subject to the terms of this provision shall have effect as if these provisions were in force at its date.

(4) In this article and article 43 “obligation” has the same meaning as in section 106 of the 1990 Act.

Development consent obligation - enforcement

43.—(1) Where the undertaker has entered into any obligation, notwithstanding the provisions or effect of sections 1, 106(3) and 106(9)(d) of the 1990 Act the document recording the obligation may specify that a planning authority, other than the planning authority for which the land bound by the obligation is situated, may enforce the relevant obligation.

(2) The provisions of this article may apply to all or some of the obligations contained in any document entered into by the undertaker under section 106 of the 1990 Act in relation to the authorised development.

Byelaws

44.—(1) The undertaker may from time to time make and enforce byelaws regulating the use and operation of the authorised development, the maintenance of order on and about the authorised development and the conduct of all persons including employees of the undertaker while on and about the authorised development.

(2) Without prejudice to the generality of paragraph (1) byelaws made under this article may provide for:—

- (a) regulating the admission and access to the seawall(s) forming part of the authorised development in particular in the vicinity of the Swansea University Bay Campus;
- (b) preventing and removing obstructions or impediments within the authorised development;
- (c) preventing damage or injury to any goods, vehicles, plant, machinery, property or person within the authorised development;
- (d) regulating the activities of divers, surfers, water skiers and other persons engaged in recreational pursuits within the authorised development; and
- (e) prohibiting persons in or entering the authorised development from smoking in open spaces; and
- (f) with respect to the prevention of nuisances on the authorised works.

(3) Byelaws made under this article may—

- (a) provide for imposing upon persons found guilty on summary conviction of offending against them, or against any condition, requirement or direction imposed, made or given under them, fines not exceeding level 3 on the standard scale;
- (b) relate to the whole or to any part of the authorised development;
- (c) make different provision for different parts of the authorised development or in relation to different classes of vehicles.

(4) Byelaws made by the undertaker under this Order shall not come into operation until they have been confirmed by the Secretary of State.

(5) At least 28 days before applying for any byelaws to be confirmed under this article the undertaker shall publish a notice of its intention to apply for the byelaws to be confirmed and the place at which and the time during which a copy of the byelaws will be open to public inspection—

- (a) once in the London Gazette; and

(b) once in each of two successive weeks in a local newspaper circulating in the area and any person affected by any of the byelaws may make representation on them to the Secretary of State within a period specified in the notice being a period of not less than 28 days.

(6) For at least 28 days before an application is made under this article for byelaws to be confirmed a copy of the byelaws shall be kept at the principal office of the undertaker in the area of the authorised development and shall at all reasonable hours be open to public inspection without payment.

(7) The undertaker shall supply a copy of the byelaws or of part of the byelaws to a person who applies for it on payment of a reasonable charge.

(8) During the period of one month after completion of the publication of any notice required by paragraph (2), any person may make in writing to the Secretary of State any objection to or representation respecting the byelaws to which the notice relates.

(9) The Secretary of State may confirm with or without modification or may refuse to confirm any of the byelaws submitted under this article for confirmation and may fix a date on which any byelaws so confirmed shall come into effect and if no date is so fixed the byelaws shall come into effect after the expiry of 28 days after the date on which they were confirmed.

(10) The Secretary of State may charge the undertaker such fees in respect of any byelaws submitted for confirmation under this article as the Secretary of State may consider appropriate for the purpose of defraying any administrative expenses incurred by the Secretary of State in connection with such confirmation

(11) A copy of the byelaws when confirmed shall be printed and deposited at the principal office of the undertaker and shall at all reasonable hours be open to public inspection without payment, and the undertaker shall at the request of any person supply that person with a copy of any such byelaws on payment of such reasonable sum as the undertaker shall determine.

(12) Byelaws made under this article may be varied or revoked by subsequent byelaws and byelaws made under this article may also vary or revoke any byelaws made under any other provision in respect of the authorised development at any time.

Procedure in relation to certain approvals etc.

45.—(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 for any consent, agreement or approval required or contemplated by any of the provisions of the Order such consent, agreement or approval shall, if given, be given in writing and shall not be unreasonably withheld.

(2) Schedule 6 shall have effect in relation to all agreements or approvals granted, refused or withheld in relation to requirements.

Certification of plans etc.

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

- (a) the book of reference;
- (b) the land plans; and
- (c) the works plans;

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

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

Arbitration

47. Any difference under provision of this Order, unless otherwise provided for, shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the decision-maker.

Planning, etc. jurisdiction

48.—(1) During the period beginning with the date when this Order comes into effect and ending on the accretion date, the area east of the county borough boundary within the Order limits and seaward of mean high water springs shall, for the purposes of the Control of Pollution Act 1974 and the 1990 Act be annexed to and incorporated with the City and County of Swansea.

(2) On the accretion date, the area of the whole or of so much of the works authorised by the Order and being east of the county borough boundary and seaward of mean high water springs as shall have been completed or substantially commenced shall be annexed to and incorporated with the City and County of Swansea.

(3) In this article—

- (a) “accretion date” means the date when the works authorised by the Order have been completed or, if earlier, the date when the benefits and rights granted by this Order cease to have effect; and
- (b) “county borough boundary” means the boundary between the City and County of Swansea and Neath Port Talbot County Borough.

Saving for Trinity House

49. Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

Protection of Interests

50. Schedule 7 to this Order has effect.

Crown rights

51.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular nothing in this Order authorises the undertaker to—

- (a) take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—
 - (i) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;
 - (ii) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the Government Department or the Welsh Government having the management of that land; or
 - (iii) belonging to a Government Department or the Welsh Government or held in trust for Her Majesty for the purposes of a Government Department or the Welsh Government without the consent in writing of that Government Department or the Welsh Government; or
- (b) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown land which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority.

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

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

Address
[Day/Month 201[]]

Name
Head of Unit
Department for Energy and Climate Change

SCHEDULES

SCHEDULE 1

Article 3

Authorised Development

PART 1

Authorised Development

A nationally significant infrastructure project being an offshore generating station as defined in sections 14(1)(a) and 15(3) of the 2008 Act comprising:

In Swansea Bay and the City and County of Swansea and the County Borough of Neath Port Talbot

Work No. 1a A seawall crested by a road and footway commencing at 266417E, 189134N approximately 2700 metres in length and incorporating—

- (a) operation and maintenance facilities, a visitor centre and/or viewing area(s);
- (b) installation of services along the seawall, including electricity, telecommunications, water and foul sewage;
- (c) a low voltage substation;
- (d) provision of and for lighting;
- (e) boating facilities with associated hardstanding, one or more slipways, jetties and access points; and
- (f) a landscape area where the seawall makes landfall including park and landscaping.

Work No. 1b A seawall crested by a road and footway commencing at 266420E; 189131N approximately 6800 metres in length and incorporating—

- (a) oyster spatting ponds;
- (b) installation of services along the seawall, including electricity and telecommunications; and
- (c) provision of and for lighting.

Work No. 2 A turbine and sluice gate housing structure measuring approximately 400 metres in length and 70 metres in width containing up to 16 hydro turbines and up to 10 sluice gates and incorporating—

- (a) a switch room;
- (b) scour protection;
- (c) associated electrical equipment and transformer(s);
- (d) dividing structure(s) and wingwalls; and

- (e) such infrastructure works or plant as may be necessary for the purposes of the authorised development including gantry cranes,

and the above Works Nos. 1a, 1b and 2a also incorporating:

- (a) viewing areas; and
- (b) siting location(s) and mounting facilities for works of public art.

Work No. 2b A temporary work consisting of a cofferdam for the purposes of constructing Work No. 2a;

Work No. 2c A work comprising up to 15 dolphin piles with lights, cable booms and/or floating buoys in between located up to 500m seaward from the outer edge of Work No. 2a for the purposes of demarcating a safety zone; and

Work No. 2d A work comprising buoys (with or without lights) with or without floating boom(s) located up to 500m landward from the outer edge of Work No. 2a for the purposes of demarcating a safety zone.

Work No. 3 A work consisting of the extension of the existing long sea sewage outfall from 268408E, 189407N to 268030E; 187224N.

Work No. 4 A new eastern channel training wall in the River Neath providing for the relocation of Monkstone light(s).

Work No. 5a A 275kV grid connection consisting of three single phase cables and other electric cables connecting Work No. 2a to 266970E; 191821N;

Work No. 5b A 275kV grid connection consisting of three single phase cables and other electric cables from Work No. 5a to the boundary between the administrative areas of the County and City of Swansea and Neath Port Talbot County Borough;

Work No. 5c A 275kV grid connection consisting of three single phase cables and other electric cables from Work No. 5b at the boundary between the administrative areas of the County and City of Swansea and Neath Port Talbot County Borough along and/or parallel to Fabian Way to 271434E; 193302N;

Work No. 5d A 275kV grid connection consisting of three single phase cables from Work No. 5c to 272209E; 193140N;

Work No. 5e A 275kV grid connection consisting of three single phase cables passing under the River Neath by means of horizontal directional drilling and connecting Work No. 5d with Work No. 5h; and

Work No. 5f A 275kV grid connection consisting of three single phase cables passing under the River Neath by means of existing ducting from Work No. 5d to 272416E; 192816; and

Work No. 5g A 275kV grid connection consisting of three single phase cables passing under the River Neath and connecting Work No. 5f with Work No. 5h;

Work No. 5h A 275kV grid connection of three single phase cables from 272865E; 192988N to the existing Baglan Bay substation;

Work No. 5i An 11kV or 33kV cable connection from a point on Work No. 5b to the Swansea Bay Waste Water Treatment Works at 268955E; 192922N; and

Work No. 5j An 11kV or 33kV cable connection from a point on Work No. 5c to Swansea University Bay Campus at 270097E; 192929N.

Work No. 6a A work consisting of the construction of a jetty or mole and floating pontoons and piles or dolphins;

Work No. 6b A work consisting of construction of onshore operation and maintenance facilities;

and the above Work Nos. 6a and 6b also consisting of the construction of onshore facilities incorporating—

- (a) one or more buildings;
- (b) visitor orientation and boating facilities;
- (c) a hatchery(ies) and laboratories;
- (d) visitor parking spaces and facilities;
- (e) maintenance workshop(s) and spares store(s);
- (f) non-visitor vehicle parking facilities and garages;
- (g) boat storage;
- (h) a control room;
- (i) office accommodation;
- (j) welfare facilities; and
- (k) emergency access facilities.

Work No. 7a A new internal access road comprising two carriageways together with a fence in between running in a north easterly direction from 267048E; 191928N to 269035E; 192887N;

Work No. 7b A new internal access road comprising two carriageways together with a fence in between running in a westerly direction from Work No. 7a to 268575E; 192877N;

Work No. 7c A new internal access road comprising two carriageways together with a fence in between running in a north westerly direction from Work No. 7b to 268109E; 192964N;

Work No. 7d A new internal access road comprising two carriageways, one for the purposes of the Port of Swansea and one for the purposes of the authorised development together with fence in between running in a north westerly direction from Work No. 7C to 267984E; 193046N;

Work No. 7e A work comprising improvements to the public highway along Langdon Road from 267984E; 193046N TO 267975E; 193044N;

Work No. 7f A work comprising improvements to the public highway from Work No. 7e to the junction of Langdon Road and Fabian Way; and

Work No. 7g A work for a new access track at the eastern seawall landfall running in an easterly direction from 269016E; 192826N to 270275E; 192496N;

Work No. 8 A work comprising an ultra violet storm water treatment facility to be used with the existing sewage log sea outfall incorporating civil engineering works and electrical and mechanical equipment for the treatment of storm water overflow.

Work No. 9a A pontoon and related piles on the eastern bank of the River Tawe; and

Work No. 9b A work comprising replacement or alteration of the existing pontoon on the western bank of the River Tawe.

Work No. 10 A work including reclamation of land to establish a saltmarsh habitat area of approximately 5ha. and coastal grassland habitat area of approximately 3ha including pedestrian and cycle routes and structures at the northern edge of the lagoon adjacent to land.

Work No. 11 A work including reclamation of land to establish a new coastal grassland and dune area of approximately 11 ha. close to the landfall of Work No. 1b incorporating:

- (a) a beach area;
- (b) a visitor/information point to serve Crymlyn Burrows SSSI; and
- (c) extension of the existing surface drainage outfalls serving Fabian Way.

and in connection with such works and to the extent that they do not otherwise form part of any such work, further development comprising mitigation or enhancements being part of the

nationally significant infrastructure project whether or not shown on the plan referred to in the requirements including—

- (a) temporary construction works, including storage areas for rock armour;
- (b) waterfront public realm including works to existing wave protection walls;
- (c) habitat creation (including mariculture);
- (d) navigational aids;
- (e) internal site roads and vehicle parking facilities;
- (f) workshops and stores;
- (g) bunds, embankments, swales, landscaping and boundary treatments and fencing;
- (h) the demolition of buildings and structures within the Order limits;
- (i) the provision of footpaths;
- (j) lighting columns and lighting; and
- (k) safety/emergency points.

PART 2

Building Heights

<i>(1)</i> <i>Building</i>	<i>(2)</i> <i>Height (metres)</i> <i>above ordnance datum</i>	<i>(3)</i> <i>Upwards deviation (metres)</i>
Seawall	9 (14m chart datum)	2m
Turbine and sluice gate housing structure	12 (17m chart datum)	2m
Offshore building	29 (34m chart datum)	3m
Onshore building	20m	1m
SSSI building	12m	1m
Crane	22.5 (27.5m chart datum)	2m

PART 3

Requirements

Interpretation

1.—(1) In this Part of this Schedule—

“the 1990 Act” means the Town and Country Planning Act 1990;

“the 2008 Act” means the Planning Act 2008;

“AEMP” means the adaptive environmental monitoring plan to be submitted and approved pursuant to requirement 7 below;

“CEMP” means the construction environmental management plan to be submitted and approved pursuant to requirement 7 below;

“CPTMP” means the construction phase traffic management plan to be submitted and approved pursuant to requirement 26 below;

“DCWW” means Dwr Cymru Welsh Water;

“design and access statement” means the document with that title submitted with the application for the Order;

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

“METMP” means the major events travel management plan to be submitted and approved pursuant to requirement 28 below;

“NRW” means Natural Resources Wales;

“OEMP” means the operational environmental management plan to be submitted and approved pursuant to requirement 6 below;

“OPTMP” means the operational phase travel management plan to be submitted and approved pursuant to requirement 27 below;

“operate” means operate the authorised development for generation of electricity for transmission to the national electricity grid following completion of wet commissioning and “operation” and “operating” shall be construed accordingly;

“relevant planning authority” means (same as provided by article 48) the Council of the City and County of Swansea in relation to land in its administrative area and Neath Port Talbot County Borough Council in relation to land in its administrative area, and “relevant planning authorities” means both of them.

(2) Where any requirement specifies “unless otherwise approved” by the discharging authority or requires the applicant to demonstrate the existence of exceptional circumstances, such approval shall not be given or exceptional circumstances agreed except in relation to minor or immaterial changes where it has been demonstrated to the satisfaction of the discharging authority that the subject-matter of the approval sought or the undertaker’s proposed response to exceptional circumstances is unlikely to give rise to any materially new or materially different effects from those assessed in the Environmental Statement.

Time limits etc.

2. The authorised development shall commence no later than the expiration of five years beginning with the date that this Order comes into effect.

3.—(1) No part of the authorised development shall be commenced until a construction phasing scheme for the authorised development has been submitted to and approved in writing by the relevant planning authority. The phasing scheme shall set out the sequence of construction of the authorised development and under which requirements approvals will be sought in whole or in part depending on the details of the construction phasing scheme.

(2) Where a construction phasing plan has been submitted to and approved by the relevant planning authority the details to be submitted to the relevant planning authority to discharge any requirement may relate to a particular construction phase only in order that the construction and/or operation of that phase may commence in accordance with the approved details. Where details have not been submitted in relation to any particular construction phase then construction of that phase shall not commence until the relevant part of any requirement has been discharged in relation to that phase. Construction shall then be carried out in accordance with any relevant approval.

Detailed design

4. Except where the authorised development is carried out in accordance with the plans listed in requirement 5, no authorised development may commence until details of the layout, scale, siting, design, dimensions and external appearance of Works No. 1a, 2a, 6a, 6b, 9a, 9b, 10 and 11 comprised in the authorised development so far as they do not accord with the approved development plans have been submitted to and approved by the relevant planning authorities. The authorised development must be carried out in accordance with the approved details.

5.—(1) The authorised development shall be carried out in accordance with the approved plans submitted with the application (unless otherwise approved in writing by the relevant planning authority and the altered development accords with the principles of the design and access statement and falls within the Order limits) as follows:

Planning Drawings

<i>(1)</i> <i>Drawing No.</i>	<i>(2)</i> <i>Rev</i>	<i>(3)</i> <i>Drawing Description</i>
3513_PL_001		Masterplan Key Plan
3513_PL_002.1		Masterplan Detail Scale - Sheet 1 of 6
3513_PL_002.2		Masterplan Detail Scale - Sheet 2 of 6
3513_PL_002.3		Masterplan Detail Scale - Sheet 3 of 6
3513_PL_002.4		Masterplan Detail Scale - Sheet 4 of 6
3513_PL_002.5		Masterplan Detail Scale - Sheet 5 of 6
3513_PL_002.6		Masterplan Detail Scale - Sheet 6 of 6
3513_PL_101		Western Landfall Plan
3513_PL_102		Western Landfall Vegetation
3513_PL_103		Western Landfall Sections
3513_PL_104		Western Landfall Sections
3513_PL_105		Eastern Landfall Plan
3513_PL_106		Eastern Landfall Sections
3513_PL_107		Offshore Building Public Realm Plan
3513_PL_108		Offshore Building Public Realm Sections
3513_PL_109		Saltmarsh Plan
3513_PL_110		Saltmarsh Sections
3513_PL_111		Typical Queen's Dock Access Road Plan and Section
3513_PL_112		Typical Lagoon Wall Treatment Plan and Section
3513_PL_113		Spectator Terrace Plan and Section
3513_PL_114		Halfway Point Plan and Section
3513_PL_115		Typical Fence and Gate Details
5118483-ATK-02-ZZ-DR-C-1207		Marine Works Lagoon Water Shuttle
5118483-ATK-02-ZZ-DR-C-1110		Marine Works Turbine Housing and Sluices General Arrangement
5118483-ATK-02-ZZ-DR-C-1208		Marine Works 7m Turbine House Typical Section
5118483-ATK-02-ZZ-DR-C-1209		Marine Works Sluice House Typical Section
5118483-ATK-02-ZZ-DR-C-1213		Marine Works Turbine and Sluice Gate Housing Elevation
5118483-ATK-00-ZZ-DR-C-1301		HV Cable Route and Utilities - Sheet 1 of 8
5118483-ATK-00-ZZ-DR-C-1302		HV Cable Route and Utilities - Sheet 2 of 8
5118483-ATK-00-ZZ-DR-C-1303		HV Cable Route and Utilities - Sheet 3 of 8
5118483-ATK-00-ZZ-DR-C-1304		HV Cable Route and Utilities - Sheet 4 of 8
5118483-ATK-00-ZZ-DR-C-1305		HV Cable Route and Utilities - Sheet 5 of 8
5118483-ATK-00-ZZ-DR-C-1306		HV Cable Route and Utilities - Sheet 6 of 8
5118483-ATK-00-ZZ-DR-C-1307		HV Cable Route and Utilities - Sheet 7 of 8
5118483-ATK-00-ZZ-DR-C-1308		HV Cable Route and Utilities - Sheet 8 of 8
5118483-ATK-02-ZZ-DR-C-1210		HV Cable Route Typical Details
5118483-ATK-HW00-ZZ-DR-D-1401		Improvement Works to Existing Highway Fabian Way Junction 3 - General Arrangement
5118483-ATK-HW00-ZZ-DR-D-1402		TLP Access Road and Construction Access Road - General Arrangement
5118483-ATK-HW00-ZZ-DR-D-1406		ABP Junction Arrangement - General Arrangement
5118483-ATK-00-ZZ-DR-C-1111		Marine Works Dredging General Arrangement
3513/Order/401		Demolition (s) Key Plan
3513/Order/402.1		Demolition (s) Plan - Sheet 1 of 3
3513/Order/402.2		Demolition (s) Plan - Sheet 2 of 3

3513/Order/402.3

Demolition (s) Plan - Sheet 3 of 3

Western Landfall Building

PL(O) 50 \ 51 \ 52 \ 53

GA Elevations

PL(O) 60

GA Sections A0 Landscape

PL(O) 100 \ 200 \ 300

GA Plans A0 Landscape

Offshore Building

1254_C1002_A

Proposed Plan: Basement -2

1254_C1003_A

Proposed Plan: Basement -1

1254_C1004_A

Proposed Plan: Ground Floor

1254_C1005_A

Proposed Plan: First Floor

1254_C1006_A

Proposed Plan: Second Floor

1254_C1007_A

Proposed Plan: Roof

1254_C1010_A

Proposed Section: A-A

1254_C1011_A

Proposed Section: B-B

1254_C1012_A

Proposed Section: C-C

1254_C1024_A

Proposed Elevations

SSSI Building

1259_C1002_A

Proposed Drawings: Burrows Information Centre

(2) Where any alternative details are approved pursuant to this requirement or requirement 4 or 29, those details shall be deemed to be substituted for the corresponding approved details set out above.

Environmental Management and Monitoring Plans

6.—(1) No authorised development shall commence until a CEMP and AEMP, substantially in accordance with the CEMP submitted with the application as part of the environmental statement, has been submitted to and approved in writing by the relevant planning authority.

(2) All construction work shall be carried out in accordance with the approved CEMP and AEMP unless otherwise approved in writing by the relevant planning authority.

(3) No operation of the authorised development shall commence until an OEMP, in accordance with the outline OEMP submitted with the application as part of the environmental statement, has been submitted to and approved in writing by the relevant planning authority.

(4) Operation of the authorised development shall be in accordance with the approved OEMP and AEMP unless otherwise approved in writing by the relevant planning authority.

Provision of landscaping

7.—(1) No authorised development shall commence until a detailed landscaping scheme and associated working programme for the authorised development has been submitted to and approved in writing by the relevant planning authority.

(2) The landscaping scheme shall include details of—

- (a) the location, number, species, size and planting density of proposed planting;
- (b) a planting design on and in the vicinity of works 6a and 6b within the Order land;
- (c) any importation of materials and other operations to ensure plant establishment;
- (d) proposed finished ground levels;
- (e) planting and hard landscaping within the operational areas of the authorised development and the vehicular and pedestrian access, parking and circulation areas;

- (f) the new beaches, salt marks and dunescapes to be constructed as part of the authorised development, including the method of construction, plant types, sizing and spacing, and the measures proposed for maintenance of areas;
 - (g) minor structures such as signage, refuse or other units, and furniture;
 - (h) signage and cycle parking facilities on the access roads proposed as part of the authorised development;
 - (i) proposed and existing functional services above and below ground, including power and communications cables and pipelines, manholes and supports;
 - (j) the specified standard to which the works will be undertaken; and
 - (k) a timetable for the implementation of all hard and soft landscaping works.
- (3) All planting undertaken pursuant to the landscaping scheme shall comprise:
- (a) species that would also enhance biodiversity and connect habitats; and
 - (b) stock of local provenance, where available.

Implementation and maintenance of landscaping

8.—(1) All landscaping works shall be carried out in accordance with the detailed written landscaping scheme approved under Requirement 6 and to the specified standard.

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

(3) If any boundary shrub or vegetation is the subject of localised clearance for the purpose of construction of the authorised development, replacement planting will be undertaken to replace the extent of vegetation lost using locally occurring species to retain the existing vegetation pattern, unless otherwise approved by the relevant planning authority.

(4) Five years after the commencement of the authorised development a long term management plan in accordance with the principles set out in the landscaping scheme shall be submitted to, and approved by, the relevant planning authority, and all planting shall be in accordance with that plan.

Highway works

9.—(1) No part of the authorised development shall commence until details of the siting, design and layout of the highway works comprised in Work Nos. 7a, 7b, 7c, 7d, 7e and 7f have after consultation with the relevant planning authority and highway authority been submitted to and approved by the relevant planning authority.

(2) The approved Works shall be carried out in accordance with the approved details.

Fencing and other means of site perimeter enclosure

10.—(1) No authorised development shall commence until written details of all proposed permanent or temporary fences, walls or other means of enclosure of the authorised development has been submitted to and approved in writing by the relevant planning authority.

(2) All construction sites shall remain securely fenced at all times during construction of the authorised development in accordance with the approved scheme.

(3) All temporary fencing shall be removed on completion of construction of the authorised development.

(4) All perimeter fences, walls or other means of site perimeter enclosure for the authorised development approved in accordance with paragraph (1) must be completed prior to commencement of operation in accordance with the approved details.

Operational surface and foul water drainage

11.—(1) No part of the authorised development shall commence until a written scheme to deal with the details of the surface water drainage system and the sewage system (together the “operational drainage scheme”) has been submitted to and approved in writing by the relevant planning authority.

(2) The operational drainage scheme shall provide for —

- (a) prior to commencement of development a survey to be undertaken to identify existing site drainage within the Order limits including old surface water boreholes, disused draining networks from earlier developments and part-demolished sections of existing drainage and the decommissioning of any surface water drainage network and/or exposed boreholes so identified to the satisfaction of NRW;
- (b) a rainwater harvesting system to be included in the authorised development;
- (c) surface water that has the potential for oil contamination to be passed through oil interceptors;
- (d) measures to avoid risk of spillage of contaminating material;
- (e) the discharge of all aqueous effluents via the drainage system comprised in the authorised development; and
- (f) for a system to collect run off from stock piles prior to discharge to the surface water drainage system.

(3) Unless otherwise agreed in writing by the relevant planning authority, the scheme shall be implemented in accordance with the approved details prior to operation of the authorised development.

Contamination and groundwater

12.—(1) No part of the authorised development shall commence until a written scheme to deal with the contamination of any land, including groundwater, which is likely to cause significant harm to persons or pollution of controlled waters or the environment has been submitted to and approved in writing by the relevant planning authority.

(2) The scheme shall include an investigation and assessment report, prepared by a specialist consultant approved by the relevant planning authority to identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose, together with a management plan which sets out long-term measures with respect to any contaminants remaining on the site.

(3) Remediation shall be carried out in accordance with the approved scheme unless otherwise agreed in writing by the relevant planning authority.

Storage of liquids on site

13.—(1) No part of the authorised development will be brought into use until a written scheme to deal with handling and onsite storage of process chemicals, cleaning substances, fuels, oils and lubricants on site has been submitted to and approved by the relevant planning authority.

(2) Liquids shall be stored in accordance with the approved scheme.

Construction water supply

14.—(1) No part of the authorised development will be commenced until a building water supply licence has been granted by DCWW for construction of the authorised development.

Marine water quality

15.—(1) No part of the authorised development shall commence until a written scheme of management relating to the use of the waters impounded by the authorised works has been submitted to and approved in writing by the relevant planning authority.

(2) The approved scheme shall make provision for—

- (a) an advanced warning system providing for liaison between Dwr Cymru Welsh Water and TLSB in respect of potential performance issues at the Swansea Bay Waste Water Treatment Works (WWTW) which may affect water quality within the Lagoon;
- (b) measures to regulate use of the Lagoon for water contact activities in the east of storm events or WWTW issues;
- (c) management of safety areas relating to the long sea outfall within the Lagoon; and
- (d) liaison with Swansea City and County Council.

Archaeology

16.—(1) No part of the authorised development shall commence until a written scheme for marine and terrestrial archaeological investigation relating to the authorised development has been submitted to and approved in writing by the relevant planning authority. The written scheme of investigation shall incorporate a detailed mitigation strategy to ensure that all archaeological assets disclosed are adequately recorded, including a strategy for further remains discovered during construction and operation of the authorised development be carried out in accordance with the approved scheme unless otherwise agreed in writing by the relevant planning authority.

(2) The investigation and post investigation assessment set out in the detailed mitigation strategy shall be completed in accordance with the details approved and the results of those assessments shall be provided to the relevant planning authority for analysis, publication and archive deposition.

(3) Any analysis, reporting, publication or archiving required as part of the mitigation strategy in the written scheme for archaeological investigation shall be deposited with the Historic Environment Record held by Gwent-Glamorgan Archaeological Trust.

Retention of historic assets

17. No part of the authorised development shall commence until a written scope of work required for the retention and enhancement of the standing pill boxes and gun emplacement situated seaward of Queen's Dock Swansea, with a buffer zone of approximately 3 metres, as part of the authorised development has been submitted to and approved in writing by the relevant planning authority.

Control of noise during construction

18. No part of the authorised development shall commence until a written scheme providing for the monitoring of noise generated during the construction of the authorised development has been submitted to and approved in writing by the relevant planning authority. The scheme shall specify the locations at which noise will be monitored, the method of noise measurement (which shall accord with BS 5228 or, an equivalent successor standard or other agreed noise measurement methodology appropriate to the circumstances) and the frequency of submission of data to the relevant planning authority.

Piling

19.—(1) No piling activities for the onshore construction of the authorised development may commence until a piling method statement has been submitted to and approved by the relevant planning authority.

(2) Piling shall be carried out in accordance with the approved method statement unless otherwise approved by the relevant planning authority.

Site waste management plan

20. No part of the authorised development shall be constructed until a plan for the management and disposal of waste produced as a result of the construction of the authorised development has been submitted to and approved by the relevant planning authority. The construction of the authorised development shall be carried out in accordance with the approved details.

Construction traffic

21.—(1) No part of the authorised development shall commence until a CPTMP, substantially in accordance with the outline CPTMP submitted with the application, has been submitted to and approved in writing by the relevant planning authority.

(2) All construction work shall be carried out in accordance with the approved CPTMP unless otherwise approved in writing by the relevant planning authority.

Operational traffic

22.—(1) The authorised development shall not be operated until a OPTMP, substantially in accordance with the outline OPTMP submitted with the application, has been submitted to and approved in writing by the relevant planning authority.

(2) All construction work shall be carried out in accordance with the approved OPTMP unless otherwise approved in writing by the relevant planning authority.

Major event traffic

23.—(1) No major event shall be held at the authorised development until a METMP, substantially in accordance with the outline METMP submitted with the application, has been submitted to and approved in writing by the relevant planning authority.

(2) All major events held at the authorised development shall be held in accordance with the approved METMP unless otherwise approved in writing by the relevant planning authority.

Construction and security lighting scheme

24.—(1) No part of the authorised development shall commence until a detailed written construction and security lighting scheme has been submitted to and approved in writing by the relevant planning authority.

(2) The construction and security lighting scheme shall provide for—

- (a) appropriate lighting of any safety zone in place and/or dredging activity taking place during construction;
- (b) the avoidance of direct light spill onto open water within the authorised development including the use of fencing to minimise light spill and avoidance of the use of white mercury lamps;
- (c) the minimisation of light spill, including the use of directional lighting and positioning of lights, baffles, cowls and hoods; and
- (d) measures to ensure that any such lighting will be directional and sensitive to relevant ecological receptors.

(3) Construction of the authorised development must be carried out in accordance with the approved scheme unless otherwise approved by the relevant planning authority.

Permanent lighting

25.—(1) No part of the authorised development shall commence until a detailed written permanent lighting scheme has been submitted to and approved in writing by the relevant planning authority.

(2) The permanent lighting scheme shall provide for—

- (a) details of how the lighting design will reduce trespass, glare and spillage;
- (b) development of appropriate lighting to render the authorised development appropriate to the setting of Swansea Bay; and
- (c) details of how, where possible, operational lighting will be designed to minimise impacts on relevant ecological receptors as described in the environmental statement.

(3) The approved scheme shall be implemented unless otherwise agreed in writing by the relevant planning authority.

Fish and shellfish mitigation strategy

26.—(1) No part of the authorised development shall commence until a written strategy for the mitigation of the impacts of the authorised development on fish and shellfish has been submitted to and approved in writing by NRW.

(2) The fish mitigation strategy shall provide for -

- (a) fish spawning enhancements by introduction of spawning media at locations including Work No. 1a;
- (b) oyster dredge trawls to be undertaken of the proposed dredging area(s) prior to commencement of construction and the translocation of native oysters; and
- (c) use of behavioural fish guidance systems to discourage movement of fish through the turbines.

(3) The approved fish and shellfish mitigation strategy and any measures thereunder shall be implemented and maintained during construction and operation of the authorised development unless otherwise agreed in writing by relevant planning authority.

Avian enhancement strategy

27.—(1) No part of the authorised development shall commence until a written strategy of enhancement measures for avian species has been submitted to and approved in writing by the relevant planning authority.

(2) The bird enhancement strategy shall provide for:—

- (a) provision of artificial roost within a less disturbed area of the authorised development; and
- (b) provision of kittiwake ledges on north eastern front of new turbine and sluice gate housing structure.

(3) The approved strategy and any measures thereunder shall be implemented and maintained during construction and operation of the authorised development unless otherwise agreed in writing by the relevant planning authority.

Habitats creation strategy

28.—(1) No part of the authorised development shall commence until a written strategy for the creation of onshore habitats has been submitted and approved in writing by the relevant planning authority.

(2) The habitats creation scheme shall provide for:—

- (a) creation of artificial dunescape at the base of existing coastal defences and management to reduce impact through public access;

- (b) creation of an artificial sandy beach at eastern landfall of the authorised development;
- (c) beach landscaping and design on western side of the eastern landfall of the authorised development to reduce wind effect;
- (d) vegetation management to create areas of bare sand and physical intervention to create blow-outs;
- (e) retention of habitat strips of at least 3 metres in width associated with the grassland in the lea of existing seawall(s) south east of Queen's Dock;
- (f) creation of grassland along the landward side of the new saltmarsh area comprised in the authorised development following removal of the existing seawall;
- (g) encouraging colonisation of existing rock armoured sea defences through infilling of large gaps with aggregate and localised topping with sandy spoil/topsoil;
- (h) creation of a dedicated coastal grassland plot to the seaward side at the south-eastern end of the docks estate with a transition to saltmarsh habitat as well as connectivity to dune habitat towards the east;
- (i) creation of grassland at the periphery of parking bays at the western end of the authorised development;
- (j) translocation of grassland turves and reuse of topsoil from areas of species-rich sward to encourage the establishment of coastal grassland habitat in the newly created areas with plants of local provenance;
- (k) translocation of robust plants or substrates containing target species seeds to holding areas where they can be relocated to newly created habitats on new seawalls; and
- (l) creation of purpose-designed artificial rocky shore habitat on new seawalls.

(3) The approved habitats creation strategy and any measures thereunder shall be implemented and maintained during construction and operation of the authorised development unless otherwise agreed in writing by the relevant planning authority.

Honeycomb worm translocation strategy

29.—(1) No part of the authorised development shall be commenced until a written strategy for the translocation of the honeycomb worm (*Sabellaria alveolata*) has been submitted to and approved in writing by the relevant planning authority.

(2) The honeycomb worm translocation strategy shall provide for:—

- (a) translocation of casts to encourage future settlement to numerous locations around the new seawalls; and
- (b) provision of rockpools and features similar to bio-blocks to provide biodiversity offset.

(3) The approved honeycomb worm translocation strategy and any measures thereunder shall be implemented and maintained during construction and operation of the authorised development unless otherwise agreed in writing by the relevant planning authority.

Other ecological matters

30.—(1) No part of the authorised development shall be commenced until a written strategy to secure the removal of Japanese Knotweed within areas affected by the authorised development has been submitted to and approved in writing by the relevant planning authority.

(2) The approved measures shall be implemented during construction and operation of any part of the authorised development.

Navigation

31.—(1) No marine works comprised in the authorised development shall be commenced until a scheme to secure safety of navigation has been submitted to the relevant planning authority and approved in writing.

- (2) The approved scheme shall make provision for—
- (a) promulgation of notice to mariners;
 - (b) additional aids to navigation;
 - (c) retention of safety vessels during construction;
 - (d) safety zones according with the Safety Zone statement accompanying the application for the Order;
 - (e) installation of protective dolphin piles; and
 - (f) the relocation of any pilot station affected by the authorised development.
- (3) The authorised development shall be carried out in accordance with the approved scheme unless the relevant planning authority shall agree otherwise.

Requirement for written approval

32. Where under any of the above requirements the approval or agreement of the relevant planning authority or any other party is required, that approval or agreement must be provided in writing.

33. Where approval is sought in relation to requirements 26, 27, 28, and 29 approval shall only be given by the relevant planning authority following consultation with NRW.

Amendments to approved details

34. With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority the approved details shall be taken to include any amendments that may subsequently be approved in writing by the relevant planning authority.

SCHEDULE 2

Article 9

Streets Subject to Street Works

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to street work</i>
City and County of Swansea	Langdon Road between X1 and X2 Port access road between X3 and X4 Port access road between X4 and X5 Port access road from X4 to Baldwin's Bridge off slip and link road and Fabian Way eastwards from the junction between the two to X6
Neath Port Talbot County Borough	Fabian Way between X6 and X7 Fabian Way between X7 and X8

SCHEDULE 3

Article 10

Streets to be Temporarily Stopped Up

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
Neath and Port Talbot County Borough	Fabian Way	Between X6 and X7
	Fabian Way	Between X7 and X8
	Wales Coast Path footpath	Between X9 and X10

SCHEDULE 4

Article 11

Access to Works

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Access reference on Works Plans</i>
City and County of Swansea	Access A1 (permanent) Access A2 (permanent) Access A3 (permanent) Access A4 (construction) Access A5 (construction) Access A6 (permanent) Access A7 (permanent) Access A8 (permanent)
Neath Port Talbot County Borough	Access A9 (permanent) Access A10 (construction) Access A11 (construction) Access A12 (construction) Access A13 (construction)

SCHEDULE 5

Article 33
Article 34

Land of which temporary possession may be taken

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on land plan</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>
City and Council of Swansea	01005, 01006, 01010, 01015, 01020, 01025, 01035, 01040, 01045	Construction of a water shuttle pontoon and other works.
	01056, 01059, 01061, 01062, 01111, 01115, 01120, 01125, 01152, 02005, 02008, 02010, 02012, 02013, 02020, 02025, 02026, 02031, 02048, 02050, 02070, 02075, 02115, 05010, 05020	The authorised development.
	01060, 05011, 05015, 08005, 09005, 12005, 14015, 15005, 16010, 17010	The authorised development and dredging.
	01070, 01075.	The authorised development and improvements to Langdon Road and footway.
Neath Port Talbot County Borough	02036, 02041, 02042, 03027, 04070, 04071, 04075, 04110, 04115, 04120, 14010	The authorised development.
	07006, 07010, 07015, 10020.	Construction of training structures and dredging.
	11006, 11010, 11015	Construction of training structures, dredging and the authorised development.

SCHEDULE 6

Article 45

Procedure for Discharge of Requirements

Applications made under requirement

1.—(1) Where an application has been made to a discharging authority for any agreement or approval required by a requirement included in this Order the discharging authority shall give notice to the undertaker of their decision on the application 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, 5 weeks from the day immediately following that on which the application is received by the authority;

- (b) where further information is requested under paragraph 2, 5 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 discharging authority in writing before the end of the period in sub-paragraph (a) or (b).

Further information

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

(2) If the discharging authority considers such further information to be necessary and the requirement does not specify that consultation with a requirement consultee is required, it shall, 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 discharging authority shall issue the consultation to the requirement consultee within 1 business day of receipt of the application, and shall notify the undertaker in writing specifying any further information requested by the requirement consultee within 1 business day of receipt of such a request and in any event within 21 days of receipt of the application.

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

Fees

3.—(1) Where an application is made to the discharging authority for agreement or approval in respect of a requirement, a fee of £97.00 shall be paid to that authority.

(2) Any fee paid under this Schedule shall be refunded to the undertaker within 8 weeks of:

- (a) the application being rejected as invalidly made; or
- (b) the discharging 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 shall be retained by the discharging authority and credited in respect of a future application.

Appeals

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

- (a) the discharging 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 discharging authority is not necessary for consideration of the application; or
- (d) on receipt of any further information requested, the discharging authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process shall be as follows:

- (a) the undertaker shall submit the appeal documentation to the Welsh Government, a copy of the application submitted to the discharging authority and any supporting documentation which the undertaker may wish to provide (“the appeal documentation”);

- (b) the undertaker shall on the same day provide copies of the appeal documentation to the discharging authority and the requirement consultee (if applicable);
- (c) as soon as is practicable after receiving the appeal documentation, the Welsh Government shall appoint a person within 10 business days of receiving the appeal documentation and shall 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 discharging authority and the requirement consultee (if applicable) shall submit written representations to the appointed person in respect of the appeal within 10 business days of the date on which the appeal parties are notified of the appointment of a person under paragraph (c) and shall 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 shall make any counter-submissions to the appointed person within 10 business days of receipt of written representations pursuant to sub-paragraph (d) above.

(3) The appointed person shall 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 shall, 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 (4) shall be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person. Any written representations concerning matters contained in the further information shall 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 discharging authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to 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 shall be final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(9) If an approval is given by the appointed person pursuant to this Schedule, it shall be deemed to be an approval for the purpose of Schedule 1 as if it had been given by the relevant planning authority. The discharging 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) shall 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 discharging authority, the reasonable costs of the appointed person shall be met by the undertaker.

(11) On application by the discharging authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it

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

Interpretation of Schedule 6

5. In this Schedule—

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

SCHEDULE 7

Article 50

Protective Provisions

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for, and authorises Tidal Lagoon (Swansea Bay) plc to construct, operate and maintain, a tidal lagoon generating station in Swansea Bay together with all necessary development. For the purposes of the development it authorises Tidal Lagoon (Swansea Bay) plc is authorised by the Order compulsorily or by agreement to purchase land and rights in land and to use land, as well as to override easements and other rights. The Order also authorises the making of alterations to the highway network, 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.