



liverpool bay ccs limited

Registered Office
Liverpool Bay CCS Limited
Eni House, 10 Ebury Bridge Road
London SW1W 8PZ
United Kingdom
Tel: +44 (0) 20 7344 6000
Fax: +44 (0) 20 7344 6044

The Planning Inspectorate
National Infrastructure Planning
Temple Quay House
2 The Square, Bristol
BS1 6PN

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By e-mail to:

FrodshamSolarFarm@planninginspectorate.gov.uk

Written submission in relation to Deadline 6 of the Frodsham Solar Development Consent Order Application (PINS Reference: EN010153)

Further to the Relevant Representation [RR-011] submitted by Liverpool Bay CCS Limited (LBCCS) and the draft Statement of Common Ground (SoCG) between LBCCS and Frodsham Solar Ltd ('the Applicant') [REP1-039], LBCCS is writing to clarify its current position in relation to the interaction between the Frodsham Solar Development Consent Order Application ('the DCO') and the Runcorn Carbon Dioxide Spur Pipeline Proposed Development ('Runcorn Spur Pipeline') (promoted by LBCCS).

1. Summary of Runcorn Spur Pipeline planning application

The Runcorn Spur Pipeline is a cross-boundary project, and the planning applications are currently under determination by two local planning authorities: Cheshire West and Chester Council (CWCC) (Application ref: 25/02108/FUL) and Halton Borough Council (HBC) (Application ref: 25/00293/FULEIA).

The Runcorn Spur Pipeline is proposed to transport carbon dioxide captured from the Viridor Energy from Waste Facility Carbon Capture Plant and other potential future Upstream Emitters for storage in the existing depleted gas fields in Liverpool Bay via the Main Onshore Carbon Dioxide Pipeline.



The current position on the Runcorn Spur Pipeline planning application since its submission in July 2025 is as follows:

- LBCCS has responded to consultee comments received on the planning application, ensuring that all matters raised have been satisfactorily addressed. As a result, the relevant statutory consultees have withdrawn their holding objections, enabling the planning application to be assessed thoroughly. At the time of writing, only two statutory consultee responses remain outstanding, as summarised below:
 - an updated consultation response from Natural England following positive discussions further to LBCCS's submission made in response to Natural England's first consultation response, dated 18th December 2025 (Document ref: 524950); and
 - a consultation response from the CWCC Natural Environment Officer. CWCC has advised that these comments will not be available until end of April 2026. No correspondence has been received from the CWCC Natural Environment Officer to date.
- LBCCS maintains that the Runcorn Spur Pipeline is to be constructed in advance of the Non-Breeding Bird Mitigation Area (NBBMA) associated with the DCO, and further considers that the two projects can proceed without giving rise to unacceptable in-combination effects (details set out in Section 2 of this submission);
- There has been limited engagement from CWCC and Natural England on the Runcorn Spur Pipeline application, which in turn has had significant implications on LBCCS's ability to engage with and contribute to the DCO process. However, LBCCS has fully engaged with the Applicant and has provided draft suggested planning conditions to CWCC to secure the requisite control over the pipeline construction programme;
- LBCCS and the Applicant are in alignment on an appropriate mechanism to secure construction sequencing between the two projects by way of planning conditions, imposed on the Runcorn Spur Pipeline application (details set out in Section 3 of this submission); and
- Although LBCCS has proactively and positively engaged with the Applicant during the DCO, the SoCG between LBCCS and the Applicant is not finalised due to limited availability and engagement from CWCC and Natural



England. Certain matters therefore remain outstanding, beyond the control of either LBCCS or the Applicant.

Subject to receipt of the aforementioned consultee responses and based on discussions at regular meetings with CWCC and HBC, LBCCS anticipates decisions from CWCC and HBC by June 2026. As such, a determination on the Runcorn Spur Pipeline from both local authorities is expected ahead of a decision on the DCO.

LBCCS considers that there are no impediments to the consent for Runcorn Spur Pipeline being granted at this stage and will continue to maintain ongoing engagement with both authorities pending those decisions.

Please note that LBCCS are not inviting the Examining Authority (ExA) to assess, adjudicate on or in any way review the planning merits of the Runcorn Spur Pipeline; that is not an exercise for this DCO process. The extent of overlap between the projects is minimal in the circumstances, being wholly limited to consideration of the NBBMA.

2. Progress made during the DCO Examination

HRA position

A number of matters, submissions and positions advanced throughout the DCO Examination relate specifically to potential in-combination effects arising under the 'after scenario', whereby construction of the Runcorn Spur Pipeline would follow the creation of the NBBMA. LBCCS are aware that, through the DCO Examination, CWCC has raised concerns specifically in relation to this 'after scenario', including the control mechanisms that would be available to avoid in-combination effects should such a scenario arise.

LBCCS has consistently maintained that this scenario does not form part of the Runcorn Spur Pipeline application, which has been submitted, assessed and consulted upon on the basis that the pipeline would be constructed in advance of the NBBMA. On this assessed 'before scenario', Natural England has confirmed



that the-construction related in-combination impacts can be appropriately managed.

LBCCS further acknowledges that, should pipeline installation prior to the NBBMA works associated with the DCO not be feasible, any variation would need to be addressed through the appropriate statutory and regulatory processes. To help progress the Runcorn Spur Pipeline application, LBCCS has provided draft suggested planning conditions to the local planning authorities intended to secure delivery in accordance with the submitted construction sequencing and to deliver the level of control CWCC seeks in respect of any changes to the pipeline construction programme.

As noted above, LBCCS has not received timely replies or substantive engagement in respect of the NBBMA, either from CWCC or Natural England, which in turn constrains LBCCS's engagement in the DCO process. There has been no interaction or comments received from the CWCC Natural Environment Officer since submission of the Runcorn Spur Pipeline application to CWCC in July 2025.

Natural England provided clear feedback to the FSL DCO on 5 March 2026, in their "Comments on deadline 3 submissions" [REP4-069], confirming that they were satisfied any construction related in-combination impacts can be appropriately managed with the establishment of a joint working group and detailed Construction Environmental Management Plans as a requirement for both schemes and noted that in an event where the pipeline cannot be completed ahead of the NBBMA, then this would be considered further under a revised HRA for the Runcorn Spur Pipeline application at that time. However, at the time of writing, NE still have not formally updated their position in respect of the Runcorn Spur Pipeline application. LBCCS has been waiting for this formal update for three months, since the last meeting with Natural England on 28 January 2026.

In the absence of this engagement, LBCCS are unable to present the ExA with an agreed or resolved position, despite its best efforts.



In-Combination Effects

LBCCS's position on construction sequencing between the Runcorn Spur Pipeline and the DCO is set out in its Relevant Representation [RR-011]. As reported therein, LBCCS has engaged proactively with the Applicant throughout the pre-application stage and, subject to agreed safeguards, considers the two projects to be capable of proceeding without giving rise to unacceptable in-combination effects.

LBCCS has engaged with the DCO Examination as an interested party and directly with the Applicant with a view to resolving matters.

In response to the ExA's First Written Questions, a draft Memorandum of Understanding (MoU) [Appendix D to REP5-041] was submitted by the Applicant. This draft MoU was agreed between the Applicant and LBCCS. The Applicant has further confirmed, within its responses to the ExA's Second Written Questions [REP5-041], that no comments have been received from CWCC on the draft MoU.

In any event, LBCCS's position on managing in-combination effects mirrors Natural England's comments in [REP4-069]. Any construction-related in-combination impacts can be appropriately managed between the joint working group and a condition imposing a Construction Environmental Management Plan on the Runcorn Spur Pipeline consent that explicitly addresses these effects. Further, if the Runcorn Spur Pipeline cannot be completed ahead of the proposed NBBMA construction works for any reason, there would then need to be a revised HRA for the Runcorn Spur Pipeline to accommodate for this scenario.

3. Outstanding concerns

Control mechanisms

LBCCS notes CWCC's suggestion in their DCO Examination Deadline 5 submission letter [REP5-046] that due to the absence of control mechanisms in the DCO, the ExA should consider the option of either a DCO Requirement or a tripartite legal agreement as a robust mechanism to prevent pipeline works progressing in the "after scenario". This letter does not engage with Natural



England's position in respect of the Runcorn Spur Pipeline as per their DCO Examination Deadline 4 "Comments on deadline 3 submissions" [REP4-069] and instead refers only to Natural England's position as reported in the Runcorn Spur Pipeline application process.

LBCCS consider that CWCC have a route available to secure a robust mechanism without the need to fall back on a DCO Requirement or legal agreement. That route is to engage proactively with LBCCS as planning applicant and determine the planning application, which is before them, and in doing so to impose appropriate planning conditions on this topic.

The ExA will be aware of the presumption in the Planning Practice Guidance that supports, where a matter could be addressed by condition or legal agreement, that matter should be addressed by condition. Draft suggested planning conditions which resolve this matter have been proposed to CWCC. In that context, a legal agreement is considered to be wholly unnecessary in planning terms, and the CWCC proposal included in [REP5-046] is premature.

4. Policy Compliance and Protective Provisions

Policy Compliance

As set out in [RR-011], LBCCS consider it necessary for Protective Provisions to be included within the DCO for the safeguarding and protection of the Runcorn Spur Pipeline. This matter remains unresolved between LBCCS and the Applicant. A set of Protective Provisions for the benefit of the Runcorn Spur Pipeline are appended to this submission and LBCCS requests that the ExA include these within the recommended DCO.

The Runcorn Spur Pipeline will reduce carbon dioxide emissions from industry and support economic growth in the North West of England and North Wales. EN-1 Overarching National Policy Statement (NPS) for Energy (DESNZ, 2025) is relevant to both Runcorn Spur Pipeline and the DCO. In support of the Runcorn Spur Pipeline, EN-1 in Section 3.5 highlights the "*urgent need for new carbon capture and storage infrastructure to ensure the transition to a net zero*



economy". At Paragraph 3.5.7, EN-1 states that *"CCS infrastructure, CCS technologies, pipelines and storage infrastructure are considered to be critical national priority (CNP) infrastructure"*.

In addition, EN-1 at Paragraph 4.1.5 and 4.1.6 requires the Secretary of State to take into account the DCO's *"potential adverse impacts, including on the environment, and including any long-term and cumulative adverse impacts, as well as any measures to avoid, reduce, mitigate or compensate for any adverse impacts, following the mitigation hierarchy"* and *"environmental, social and economic benefits and adverse impacts, at national, regional and local levels"*.

The Runcorn Spur Pipeline will provide clear and substantial benefits on a local, regional and national level by supporting national and local carbon reduction targets, facilitating the transition to a low carbon economy, and contributing significantly to efforts against the climate emergency. The Runcorn Spur Pipeline aligns with the Government's visions and targets for decarbonising the waste management and energy generation sectors and supporting carbon capture and storage and hence is based on a strong breadth of national and local planning policy support. This includes the following key policies (but not limited to):

- Paragraph 161 of the National Planning Policy Framework (December 2024) which states the planning system should support the transition to Net Zero;
- STRAT 11 (Infrastructure) of the CWCC Local Plan Part One (2015) which supports new infrastructure and aids the mitigation and adaptation to climate change; and
- Policy CS(R)19 (Sustainable Development and Climate Change) of the Halton Delivery and Allocations Local Plan (2022) which supports proposals for decentralised renewable and low carbon energy schemes; not resulting in unacceptable adverse impacts to the environment.

The Runcorn Spur Pipeline demonstrates a strong commitment to biodiversity and landscape protection by carefully considering potential effects on the natural



environment, including the sensitivity of the site and the surrounding area, throughout the design and assessment process.

LBCCS therefore considers that the need for and principle of the Runcorn Spur Pipeline is well established and strongly supported by national and local planning policy.

Protective Provisions

Protective Provisions are required to mitigate adverse impacts and will provide assurance that any unacceptable harm can be mitigated and deliver the strategic benefits of the Runcorn Spur Pipeline in line with relevant policy.

The Protective Provisions address the operational, safety and integrity requirements of the pipeline and are considered essential to ensure that the DCO does not prejudice the continued use or future maintenance of the pipeline.

Planning permission for the Runcorn Spur Pipeline is expected to be granted prior to the DCO decision being made. In any event, the Protective Provisions are expressly conditional upon the grant of consent for the Runcorn Spur Pipeline and would therefore only take effect, and bind the Applicant, if and when that consent is secured. In this context, LBCCS considers that the inclusion of Protective Provisions in advance of the consent is both appropriate and acceptable.

The inclusion of the Protective Provisions at this stage would not prejudice the Applicant and are of a similar nature to Protective Provisions included for the protection of pipeline operators in other made development consent orders.

Other matters

As noted by the Applicant in its cover letter submitted at DCO Examination Deadline 5 [REP5-044], the SoCG with LBCCS is not finalised as the above matters are outstanding. LBCCS has informed the Applicant that it wishes to receive further comments from CWCC on the Runcorn Spur Pipeline application before finalising the SoCG.



5. Conclusion

LBCCS has worked closely and collaboratively with the Applicant and in our view a positive and agreed outcome remains achievable and deliverable. LBCCS intends to continue to engage constructively with the Applicant throughout the post-Examination period in order to progress and, where possible, conclude negotiations on the Protective Provisions.

Nevertheless LBCCS retain the objection advanced at [RR-011], on the basis that the DCO must not prejudice or prevent the future delivery of the Runcorn Spur Pipeline, and until appropriate protections are secured there remains uncertainty on this topic. For this reason, LBCCS respectfully requests that the ExA recommends the inclusion of LBCCS's preferred Protective Provisions (appended to this submission) within the DCO.

Yours faithfully,


Managing Director of Liverpool Bay CCS Limited

SCHEDULE [●]
PROTECTIVE PROVISIONS

PART [●]
FOR THE PROTECTION OF LIVERPOOL BAY CCS LIMITED

Application

1.—(1) Subject to sub-paragraph (2), the following provisions will have effect for the protection of LBCCS, unless otherwise agreed in writing between the undertaker and LBCCS.

(2) The consent of LBCCS under this Part of this Schedule is not required where the Runcorn Spur Pipeline Planning Permission has expired without the development having been implemented pursuant to the Runcorn Spur Pipeline Planning Permission.

Interpretation

2. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the reasonable satisfaction of LBCCS to enable LBCCS to carry on its undertaking in a manner no less efficient than previously;

“apparatus” means any pipeline elements including the Runcorn spur pipeline both underground (West of Weaver River) and above ground (East of Weaver River), Runcorn above ground installation (AGI) and ancillary items including, pipe bridges, pipe supports, plinth foundations, cathodic protection cables, cable trays, fibre optic cables, heat tracing and power cables, leak detection sensors and marker posts or other apparatus belonging to, or maintained by, LBCCS for the purposes of LBCCS’s undertaking together with any replacement apparatus and such other apparatus constructed pursuant to this Order that becomes operational apparatus of LBCCS for the purposes of LBCCS’s undertaking and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) of the Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” and “commencement” in this Part of this Schedule includes any below ground surveys, monitoring, work operations, remedial work in respect of any contamination or other adverse ground condition, the receipt and erection of construction plant and equipment, and intrusive investigations for the purpose of assessing ground conditions;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“facilities and rights” for construction and for maintenance include any appropriate working areas required to reasonably and safely undertake that construction or maintenance, and any necessary rights of access;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by LBCCS (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, must require the undertaker to submit for LBCCS’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“LBCCS” means Liverpool Bay CCS Limited (Company Number 13194018) whose registered office is at Eni House, 10 Ebury Bridge Road, London, England, SW1W 8PZ;

“LBCCS’s undertaking” means the construction, operation and maintenance of CO2 transportation network infrastructure;

“maintain” and “maintenance” include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of LBCCS: retain, lay, construct, inspect, maintain, protect, use, access, enlarge, replace, renew, remove, decommission or render unusable or remove the apparatus;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“Runcorn Spur Pipeline Planning Permission” means the planning permission granted (whether on appeal or otherwise) pursuant to the planning applications submitted by LBCCS to Cheshire West and Chester Council (application reference 25/02108/FUL) and Halton Borough Council (application reference 25/00293/FULEIA) for the Runcorn spur pipeline;

“rights” includes rights and restrictive covenants and, in relation to decommissioned apparatus, the surrender of rights, release of liabilities and transfer of decommissioned apparatus; and

“specified works” means any of the authorised works or activities (including maintenance) undertaken in association with the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker; and
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 6(2) or otherwise.

Protective works to buildings

3.—(1) The undertaker, in the case of the powers conferred by article 18 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of LBCCS (which must not be unreasonably withheld) and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of LBCCS or any interruption in the transportation of carbon dioxide by LBCCS, as the case may be, is caused, the undertaker must bear and pay on demand the cost reasonably incurred by LBCCS in making good such damage or restoring the said transportation; and, subject to sub-paragraph (2), will pay compensation to LBCCS for any expenses, loss, demands, proceedings, damages, claims, penalty, compensation or costs sustained by it.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or

default of LBCCS or its contractors or workers; and LBCCS will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made by LBCCS, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

Acquisition of land

4.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire any interest in land owned by LBCCS or appropriate, acquire, extinguish, interfere with or override any easement or other interest in land of LBCCS otherwise than by agreement with LBCCS.

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out or maintenance of any part of the authorised works (or in such other timeframe as may be agreed between LBCCS and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of LBCCS and/or affects the provisions of any enactment or agreement regulating the relations between LBCCS and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as LBCCS reasonably requires enter into such deeds of consent and variations upon such terms and conditions as may be agreed between LBCCS and the undertaker acting reasonably and which must be no less favourable on the whole to LBCCS unless otherwise agreed by LBCCS, and it will be the responsibility of the undertaker to procure and/or secure the consent to and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) Save where otherwise agreed in writing between LBCCS and the undertaker, the undertaker and LBCCS agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus, including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by LBCCS and other enactments relied upon by LBCCS as of right or other use in relation to the apparatus, then the provisions in this Schedule will prevail.

(4) Any agreement or consent granted by LBCCS under paragraph 7 or any other paragraph of this Part of this Schedule will be taken to constitute agreement under sub-paragraph (1).

(5) Where an undertaker acquires the freehold of any land which is subject to any LBCCS right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 5 do not apply, the undertaker must, unless LBCCS agrees otherwise—

- (a) retain any notice of LBCCS's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; and
- (b) (where no such notice of LBCCS's easement, right or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with its application to register title to the undertaker's interest in such acquired land at the Land Registry) a notice of LBCCS's easement, right or other interest in relation to such acquired land.

Removal of apparatus

5.—(1) If, in the exercise of the powers conferred by this Order, including pursuant to any agreement reached in accordance with paragraph 4, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of LBCCS to maintain that apparatus in that land must not be extinguished or interfered with until alternative apparatus has been constructed, is in operation, and the facilities and rights referred to in sub-paragraph (2) have been provided, to the

satisfaction of LBCCS (acting reasonably) and in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to LBCCS advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order LBCCS reasonably needs to move or remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to LBCCS to its satisfaction (taking into account paragraph 6(1) the necessary facilities and rights—

- (a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by LBCCS in respect of the apparatus);
- (b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by LBCCS in respect of the apparatus); and
- (c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by LBCCS in respect of the apparatus).

(3) If the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, LBCCS may, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between LBCCS and the undertaker or settled by arbitration.

(5) LBCCS must, after the alternative apparatus to be provided or constructed has been agreed or settled, and subject to the prior grant to LBCCS of such facilities and rights as are referred to in sub-paragraph (2) or (3) to LBCCS's satisfaction, acting reasonably, proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

6.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for LBCCS facilities and rights in land for the access to, construction and maintenance of alternative apparatus in substitution for apparatus to be decommissioned or removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and LBCCS and must be no less favourable on the whole to LBCCS than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by LBCCS.

(2) If the facilities and rights to be afforded by the undertaker and agreed with LBCCS under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to LBCCS (in LBCCS's opinion, acting reasonably) than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed, then the terms and conditions to which those facilities and rights are subject will be referred to arbitration in accordance with paragraph 13 of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to LBCCS as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of LBCCS

7.—(1) Not less than 30 days before the commencement of any specified works the undertaker must submit to LBCCS a plan and, if reasonably required by LBCCS, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to LBCCS under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any specified works until LBCCS has given written approval of the plan so submitted (and the ground monitoring scheme if required).

(4) Any approval of LBCCS given under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions; and
- (b) must not be unreasonably withheld or delayed.

(5) For the purposes of sub-paragraph (4)(b) it will be deemed to be reasonable for any approval to be refused if LBCCS considers that the specified works would—

- (a) cause material interference with or material risk of damage to its apparatus; or
- (b) prevent access to its apparatus at any time.

(6) In relation to any work to which sub-paragraphs (1) and/or (2) apply LBCCS may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works to which this paragraph applies must only be executed in accordance with—

- (a) the plan submitted under sub-paragraph (1) (and ground monitoring scheme if required), as approved or as amended from time to time by agreement between the undertaker and LBCCS; and
- (b) all conditions imposed under sub-paragraph (4)(a), and LBCCS will be entitled to watch and inspect the execution of those works where reasonably practicable to do so and in accordance with any relevant health and safety legislation.

(8) Where LBCCS requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to LBCCS's satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required prior to commencement.

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 30 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) As soon as reasonably practicable after any ground subsidence event attributable to the authorised works (including such an event attributable to its maintenance)—

- (a) the undertaker must implement an appropriate ground mitigation scheme; and
- (b) LBCCS retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 8.

(11) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to LBCCS notice as soon as is reasonably practicable and a plan of those works and must comply with—

- (a) the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances; and
- (b) Sub-paragraph (13) at all times.

(12) In this paragraph, “emergency works” means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

(13) At all times when carrying out any works authorised under the Order the undertaker must comply with HSE’s “HS(~G)47 Avoiding Danger from underground services”.

Expenses

8.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to LBCCS on demand all charges, costs and expenses reasonably anticipated or reasonably and properly incurred by LBCCS in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (b) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (c) the approval of plans;
- (d) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (e) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule;
- (f) any watching brief pursuant to sub-paragraph 7(7).

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

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

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

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 13 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to LBCCS by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

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

(5) Any amount which apart from this sub-paragraph would be payable to LBCCS in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on LBCCS any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

9.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by the undertaker) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of LBCCS, or there is any interruption in any service provided, or in the supply of any goods, by LBCCS, or LBCCS becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay within 30 days of demand accompanied by an invoice or claim from LBCCS, the cost reasonably incurred by LBCCS in making good such damage or restoring the supply; and
- (b) indemnify LBCCS for any other expenses, loss, demands, proceedings, damages, claims, penalty, compensation or costs incurred by, paid by or recovered from LBCCS, by reason or in consequence of any such damage or interruption or LBCCS becoming liable to any third party as aforesaid other than arising from any default of LBCCS.

(2) The fact that any act or thing may have been done by LBCCS on behalf of the undertaker or in accordance with a plan approved by LBCCS or in accordance with any requirement of LBCCS or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of sub-paragraph (1) unless LBCCS fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan or as otherwise agreed between the undertaker and LBCCS.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of LBCCS, its officers, servants, contractors or agents; and
- (b) any part of the authorised works carried out by LBCCS in the exercise of any functions conferred by this Order pursuant to a grant or transfer under article 36 (consent to transfer the benefit of the Order) subject to the proviso that once such works become apparatus, any specified works yet to be executed and not falling within this paragraph are subject to the full terms of this Part of this Schedule, including this paragraph in respect of new apparatus.

(4) LBCCS must give the undertaker reasonable notice of any such claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) LBCCS must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies. If requested to do so by the undertaker, LBCCS must provide an explanation of how the claim has been minimised. The undertaker is only liable under this paragraph for claims reasonably incurred by LBCCS.

Enactments and agreements

10. Except where this Part of this Schedule provides otherwise, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and LBCCS in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

11.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or LBCCS requires the removal of apparatus under paragraph 5(2) or LBCCS makes requirements for the protection or alteration of apparatus under paragraph 7, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of LBCCS's undertaking and LBCCS must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever LBCCS's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, LBCCS's consent must not be unreasonably withheld or delayed.

Access

12. If in consequence of any agreement reached in accordance with paragraph 4(1) or the powers conferred by this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable LBCCS to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

13. Any difference or dispute arising between the undertaker and LBCCS under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and LBCCS, be determined by arbitration in accordance with article 42 (arbitration).

Notices

14. Notwithstanding article 45 (service of notices), any plans submitted to LBCCS by the undertaker pursuant to paragraph 7(1) must be sent via email to notices.lbccs@eni.com and sent to the General Counsel Department at LBCCS's registered office or such other address as LBCCS may from time to time appoint instead for that purpose and notify to the undertaker in writing.