

Dated 4 August 2026

**APPLICATION BY NATIONAL GRID ELECTRICITY TRANSMISSION PLC FOR AN ORDER
GRANTING DEVELOPMENT CONSENT FOR THE NORWICH TO TILBURY PROJECT**

PLANNING INSPECTORATE REFERENCE NUMBER: EN020027

INTERESTED PARTY NUMBER: [REDACTED]

WRITTEN REPRESENTATION
submitted on behalf of Affinity Water Limited at Deadline 8

1 Introduction

- 1.1 This submission is made at Deadline 8 on behalf of Affinity Water Limited (**Affinity Water**) in connection with the application by National Grid Electricity Transmission Plc (**Promoter**) for the National Grid (Norwich to Tilbury) Order (**Order**), which would grant development consent for the Norwich to Tilbury Project, comprising reinforcement of the existing electricity transmission network between Norwich Main Substation in Norfolk and Tilbury Substation in Essex (**Project**).
- 1.2 This submission provides an update on the matters referred to in Affinity Water's submission dated 21 July 2026 **[REP7-537] (Rule 17 Submission)**.

2 Summary of and update on Affinity Water's position

- 2.1 Affinity Water and the Promoter have engaged constructively throughout the Examination with a view to agreeing the form of Protective Provisions applicable to Affinity Water's apparatus and statutory undertaking. Whilst progress has been made, the Protective Provisions have not been agreed in full.
- 2.2 Affinity Water's position remains as set out in the Rule 17 Submission, namely that Affinity Water has substantial operational assets and interests within the Order limits which require protection through the protective provisions proposed by Affinity Water for inclusion in the final form of the Order (being those set out in Appendix 2 to this submission) (**Affinity Water PPs**).
- 2.3 Since the submission of the Rule 17 Submission, the parties have continued to engage on the drafting of the Protective Provisions and a number of amendments have been discussed. An updated version of the Affinity Water PPs, reflecting the drafting as now proposed by Affinity Water, is appended to this submission at Appendix 2.
- 2.4 Notwithstanding the progress made during the Examination, several important matters remain unresolved. The principal differences between the Promoter's preferred drafting and the Affinity Water PPs are summarised in Appendix 1.
- 2.5 Affinity Water maintains that the Affinity Water PPs are necessary, reasonable and proportionate to protect its apparatus, operational assets and statutory undertaking and should therefore be included in the final form of the Order.

3 Consistency with Recently Made Orders

- 3.1 On 17 December 2025, the Secretary of State made the Five Estuaries Offshore Wind Farm Order 2025 and, on 14 May 2026, the Secretary of State made the North Falls Offshore Wind Farm Order 2026. Both Orders include protective provisions for the benefit of Affinity Water which are materially consistent with the Affinity Water PPs sought in this Examination.
- 3.2 Affinity Water considers that the inclusion of those provisions in recently made orders demonstrates that the protections sought are both reasonable and necessary. The Secretary of State's acceptance of materially equivalent drafting in those Orders provides further support for the inclusion of the Affinity Water PPs in the Order.

Addleshaw Goddard LLP on behalf of Affinity Water

4 August 2026

Appendix 1
Summary of Outstanding Differences Between the Promoter's and Affinity Water's Protective Provisions

Provision	Reason why the Affinity Water drafting should be included
Paragraph 6(1)(b)	The reference to rights being "overridden" should be retained because the Order contains powers capable of overriding easements and other rights. The additional provisions concerning replacement easements, rights and Schedule 13 Water Industry Act 1991 consents provide protection where Affinity Water's existing property rights are affected, including circumstances where apparatus remains in place. Similar provisions have been included in recent Orders.
Paragraph 6(1)(b)(i) and (ii) and paragraph 6(2)	The Promoter considers that proposed sub-paragraphs 6(1)(b)(i) and (ii) and 6(2) are unnecessary because the matter is fully addressed by the retained apparatus provisions in paragraph 7. Affinity Water's position is that the proposed wording should be retained. The retained apparatus provisions apply where apparatus is removed, relocated or diverted and are directed towards securing the facilities, rights and consents required for alternative apparatus. They do not expressly provide for the grant of replacement easements or other land rights where the undertaker acquires, appropriates, extinguishes or otherwise interferes with an existing easement or other right benefiting Affinity Water, particularly where no diversion of apparatus is required. While other provisions in the draft protective provisions seek to secure continued access during the carrying out of works and the provision of alternative access arrangements, including temporary arrangements where appropriate, a separate protection remains necessary to ensure that Affinity Water is left with equivalent easements, land rights and other property interests where its existing rights are affected by the exercise of powers under the Order. The rationale for including the provisions in paragraph 6(1)(b), including those relating to Schedule 13 and associated matters, applies equally in this context as it does in relation to paragraph 7. The proposed wording is also precededented in other development consent orders, including Part 13 of Schedule 9 to the Five Estuaries Offshore Wind Farm Order 2025.
Paragraph 7(3)	The wording proposed by Affinity Water provides additional protection and procedural certainty. While paragraph 7(2) requires the replacement rights package to include reasonable provisions addressing any consent that might otherwise be required under Schedule 13 to the Water Industry Act 1991, this paragraph provides greater clarity as to the matters those reasonable provisions should address. The intention is to ensure that future works by Affinity Water to its relocated apparatus are not, so far as reasonably practicable, unduly delayed or prevented by the operation of Schedule 13 to the Water Industry Act 1991. The proposed wording establishes a mechanism for identifying, in advance, categories of works that may be approved under Schedule

	13 and, where such advance approval is not possible, for determining future consent requests within agreed timescales. This provides greater certainty to both parties and helps ensure the efficient operation, maintenance, renewal and improvement of Affinity Water's apparatus.
Paragraph 7(1)	Affinity Water should be afforded a period of 56 days to review any notice of the required works submitted by the Promoter. Affinity Water requires sufficient time to review the proposed works, assess their potential impact on its apparatus and property interests, determine whether any protective works are required, and obtain any necessary technical, operational and legal input. Given the potentially complex nature of the works and the assessments that may be required, a period of 56 days is considered reasonable and proportionate to enable Affinity Water to assess the proposals adequately and ensure that its apparatus and property interests are appropriately protected.
Paragraph 9(1)	Affinity Water should be afforded a period of 56 days to review any plans showing specified works submitted by the Promoter. Affinity Water requires sufficient time to review the specified works, assess their potential impact on its apparatus and property interests, determine whether any protective works are required, and obtain any necessary technical, operational and legal input. Given the potentially complex nature of the specified works and the assessments that may be required, a period of 56 days is considered reasonable and proportionate to enable Affinity Water to assess the proposals adequately and ensure that its apparatus and property interests are appropriately protected.
Paragraph 9(7)	The reference to the revised plan should be retained, as it reflects the revised plan submitted pursuant to sub-paragraph 4(a). Sub-paragraph (6) already makes provision for the agreement of a programme where Affinity Water is carrying out restricted specified works.
Paragraph 9(11)	As noted above, Affinity Water requires sufficient time to consider any proposals submitted by the Promoter. Where the Promoter submits proposals that are materially different from those previously submitted, Affinity Water should be afforded an appropriate period to review those proposals, assess their potential impact on its apparatus and property interests, determine whether any additional mitigation or protective works may be required, and obtain any necessary technical, operational and legal input. It would not be reasonable for materially revised proposals to be treated as a continuation of the original approval process where the changes may necessitate a fresh assessment. Affinity Water should therefore be entitled to a further review period in respect of any materially revised proposals.
Paragraph 9(15)	The notice requirement should not be a condition precedent to Affinity Water's ability to carry out any necessary protective works, nor should Affinity Water be required to justify how those protective works ensure the safety and protection of its apparatus. As the statutory undertaker responsible for the operation, maintenance and protection of its network, Affinity Water is best placed to determine what protective works are reasonably necessary to safeguard its apparatus and secure the continued provision of its statutory services.

	Requiring Affinity Water to demonstrate the necessity of such works would introduce an unnecessary additional layer of scrutiny and could delay the implementation of measures required to protect its apparatus. In any event, paragraph 10 already provides the undertaker with appropriate protection by limiting recovery to costs that are reasonably incurred. Accordingly, a separate requirement for Affinity Water to justify the necessity of protective works is neither necessary nor appropriate.
Paragraph 10(9)	It is important that this provision expressly provides that neither the submission of a schedule of costs, nor the submission of a final account, nor the making of any payment pursuant to either, shall constitute a final settlement of Affinity Water's entitlement under paragraph 10. Affinity Water should remain entitled to recover any additional charges, costs or expenses subsequently incurred and recoverable under paragraph 10, and no such submission, account or payment should operate to prevent, restrict or otherwise prejudice any further claim. This is necessary because it may not be possible at the time a schedule of costs or final account is submitted to identify all costs that may ultimately be incurred as a consequence of the authorised development. In the absence of this clarification, there is a risk that the submission of a final account, or payment made in response to it, could be argued to constitute a full and final settlement of Affinity Water's entitlement to recover its costs.
Paragraph 11(1)(a)	The inclusion of the word "appropriate" in relation to the invoice cannot be agreed. The term is subjective and lacks sufficient certainty, as it is unclear what criteria would determine whether an invoice is "appropriate". The use of such language introduces unnecessary ambiguity and creates scope for dispute between the parties.
Paragraph 16	Expert determination should be retained in relation to disputes concerning the facilities and rights required for alternative apparatus. Such disputes are often technical and property-specific in nature and are therefore well suited to determination by an independent expert with relevant expertise. The inclusion of expert determination is consistent with the approach adopted in a number of recent offshore wind development consent orders and provides an efficient and proportionate mechanism for resolving disputes without the need for more formal and potentially time-consuming dispute resolution procedures. Retaining this provision will assist in ensuring that any disagreement concerning the facilities and rights to be provided for alternative apparatus can be resolved promptly, thereby reducing the risk of delay to either party.

Appendix 2
Affinity Water's Protective Provisions

FOR THE PROTECTION OF AFFINITY WATER

Application

1. The following provisions have effect for the protection of Affinity Water, unless otherwise agreed in writing between the undertaker and Affinity Water.

Interpretation

2. In this Part of this Schedule—

“Affinity Water” means Affinity Water Limited (Company Registration No. 02546950) whose registered office address is at Tamblin Way, Hatfield, Hertfordshire. AL10 9EZ or any wholly-owned subsidiary (as defined in section 1159 of the Companies Act 2006;

“alternative apparatus” means alternative apparatus adequate to enable Affinity Water to fulfil its statutory functions in a manner no less efficient than previously including any reasonably necessary protective works;

“Affinity Water’s apparatus” means:

- (a) mains, pipes, connections, reservoirs, or any other apparatus belonging to or maintained by Affinity Water for the purposes of water supply; and
- (b) mains, pipes, connections or any other apparatus that is the subject of an agreement to adopt by Affinity Water made under section 51A (agreements to adopt water main or service pipe at future date) of the Water Industry Act 1991;

“authorised works” means “authorised development” and “ancillary works” as both are defined in article 2 of the Order together with the use and maintenance of such authorised development or ancillary works, which for the avoidance of doubt includes the construction, use and maintenance of any works pursuant to this Part of this Schedule;

“commence” and “commencement” includes the first carrying out of 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, intrusive investigations for the purpose of assessing ground conditions, and the first implementation of environmental mitigation, including planting;

“functions” includes powers and duties;

“HAUC Advice Note” means HAUC Advice Note No 2010/01 (available at https://static.hauc-uk.org.uk/downloads/Advice_Note_No_2010-01.pdf), including the Diversionary Works Calculator HAUC(UK) referred to at paragraph 29.4 of that advice note; “in”, in a context referring to Affinity Water’s apparatus or alternative apparatus in land, includes a reference to Affinity Water’s apparatus or alternative apparatus under, over or upon land;

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

“protective works” means the underpinning, strengthening and any other reasonable works the purpose of which is to prevent damage that may be caused to Affinity Water’s apparatus by the carrying out, maintenance, construction or use of the authorised works;

“restricted specified works” means-

- (a) the placing, installation, bedding, packing, removal, connection or disconnection of any of Affinity Water’s apparatus;
- (b) the execution of any excavation and filling around any of Affinity Water’s apparatus (where the apparatus is laid in a trench) within 600 millimetres of any of Affinity Water’s apparatus that is to be retained in situ ; or
- (c) any works in relation to any water mains.

“specified works”, unless otherwise agreed in writing with Affinity Water (acting reasonably), means any authorised works under the Order (including any works of maintenance) and that—

- (a) may in any way adversely affect Affinity Water’s apparatus and/or any easement of other property interest held or used by Affinity Water;

(a) are within the following distances of Affinity Water's apparatus measured from the outer surface of such apparatus, the removal of which has not been required by the undertaker under paragraph 7 or otherwise—

- i. where the apparatus is a pipe, 2 metres where the diameter of the pipe is less than 150 millimetres;
- ii. where the apparatus is a pipe, 3 metres where the diameter of the pipe is between 150 and 450 millimetres;
- iii. where the apparatus is a pipe, 4 metres where the diameter of the pipe exceeds 450 millimetres; and
- iv. 4 metres of any other apparatus,

unless otherwise agreed in writing with Affinity Water (acting reasonably);

(b) outside the distances referred to in (b) will or may have electromagnetic or high voltage effects on any of Affinity Water's apparatus, the removal of which has not been required by the undertaker under paragraph 7 or otherwise; and

“water main” has the meaning given in the Water Industry Act 1991.

On street apparatus

3. Except for paragraphs 4 (apparatus in stopped up streets), 9 (specified works), 10 (expenses and costs) and 11 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under this Order affecting the rights of Affinity Water or of Affinity Water's apparatus, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and Affinity Water are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

Apparatus in stopped up streets

4.

- (1) Where any street and/or means of access is stopped up and/or its use is restricted under article 18 (permanent stopping up and restriction of use of streets and private means of access), and Affinity Water has apparatus in that street or apparatus that is accessed by virtue of that street or means of access, Affinity Water is to be at liberty at all times to take all necessary access across the stopped-up and/or restricted street and/or means of access and to execute and do all works and things in, upon or under that street and/or means of access as may be reasonably necessary or desirable to enable it to maintain any of its apparatus which, at the time of the stopping up or restriction, was located in that street or means of access or was accessed by virtue of it..
- (2) Regardless of the temporary stopping up, alteration, diversion, restriction of use of any street under the powers conferred by article 17 (temporary alteration, diversion, prohibition and restriction of the use of streets), Affinity Water is at liberty at all times to take all necessary access across any such stopped up street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any of Affinity Water's apparatus which at the time of the stopping up or diversion was in that street subject to provision of reasonable prior notice to the undertaker (except in the case of emergency) and compliance at all times with the undertaker's reasonable site safety rules and health and safety law.

Protective works to buildings

5. The undertaker, in the case of the exercise of the powers conferred by article 22 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access (including access required for maintenance) to, or maintenance of, any of Affinity Water's apparatus unless otherwise agreed in writing with Affinity Water, such agreement not to be unreasonably withheld or delayed.

Acquisition of land

6.

- (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 must not—

- (a) appropriate or acquire any interest in land held by Affinity Water or take temporary possession of any of Affinity Water's apparatus; or
- (b) acquire, appropriate, extinguish or interfere with or override any easement or other interest or right of which Affinity Water or Affinity Water's apparatus has the benefit otherwise than with the prior written consent of Affinity Water. Such consent may be subject to such conditions as Affinity Water may reasonably require and such conditions may include (but not be limited to):
 - (i) provisions to ensure the creation, grant or transfer of such alternative easements, interests or rights for the benefit of Affinity Water's apparatus (including any alternative apparatus) as Affinity Water may reasonably require; and
 - (ii) where Affinity Water's apparatus is to remain in, on, under or over any authorised development or property of the undertaker that are to be present as a result of any appropriation, acquisition, extinguishment, interference or overriding within sub-paragraph 6(1)(b), reasonable provisions in respect of the necessary consent by the undertaker that might otherwise be required from the undertaker under Schedule 13 to the Water Industry Act 1991 in respect of any interference to such authorised development or property of the undertaker resulting from the carrying out of any works or the exercise of any other powers by Affinity Water in respect of such Affinity Water's apparatus.
- (2) The reasonable conditions in sub-paragraph 6(1)(b)(ii) may include requirements for the undertaker and Affinity Water to determine no later than the date of completion of the authorised development, works or exercise of powers or categories of works or exercise of powers the carrying out or exercise of which by Affinity Water is capable of being consented to in advance by the undertaker. In respect of such works or powers that are capable of being consented to in advance by the undertaker, that advance consent under Schedule 13 to the Water Industry Act 1991 will be given by the undertaker on completion of the authorised development. In respect of those works or powers the carrying out or exercise of which by Affinity Water is not capable of being consented to in advance, the reasonable provisions will set out a process for the giving of the consent under Schedule 13 within specified expedited timescales (such timescales to be agreed between the undertaker and Affinity Water acting reasonably) following any request for such consent by Affinity Water.
- (3) If in consequence of any agreement reached in accordance with paragraph 6 or of the exercise of the powers conferred by this Order, the access to any of Affinity Water's apparatus is materially obstructed, the undertaker must at all times provide such alternative rights and means of access to such apparatus as will enable Affinity Water to maintain or use Affinity Water's apparatus no less effectively than was possible before such obstruction.

Removal of apparatus

7.

- (1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any of Affinity Water's apparatus is placed or over which any access to any of Affinity Water's apparatus is enjoyed and requires that Affinity Water's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Affinity Water to maintain that apparatus in that land and to gain access to it must not be extinguished, until:
 - (a) alternative apparatus has been constructed and is in operation and access to it has been granted to the reasonable satisfaction of Affinity Water in accordance with sub-paragraphs (2) to (8); and
 - (b) facilities and rights have been secured for that alternative apparatus in accordance with paragraph 8.
- (2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any of Affinity Water's apparatus placed in that land, the undertaker must give to Affinity Water 20 business days' written notice of that requirement, together with a plan 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 Affinity Water reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Affinity Water, in so far as the undertaker has the ability to reasonably grant or transfer them, the necessary facilities and rights and consents, and the benefit of any statutory permits granted to the undertaker in respect

of the apparatus in question (whether under the Environmental Permitting Regulations 2010 or other legislation), for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus. Such rights and consents will include reasonable provisions in respect of the necessary consent by the undertaker that might otherwise be required from the undertaker under Schedule 13 to the Water Industry Act 1991 in respect of any interference to the undertaker's authorised works or property resulting from the carrying out of any works or the exercise of any other powers by Affinity Water in respect of the alternative apparatus.

- (3) The reasonable provisions in sub-paragraph (2) may include requirements for the undertaker and Affinity Water to determine no later than the date of completion of the authorised development, works or exercise of powers or categories of works or exercise of powers the carrying out or exercise of which by Affinity Water is capable of being consented to in advance by the undertaker. In respect of such works or powers that are capable of being consented to in advance by the undertaker, that advance consent under Schedule 13 to the Water Industry Act 1991 will be given by the undertaker on completion of the authorised development. In respect of those works or powers the carrying out or exercise of which by Affinity Water is not capable of being consented to in advance, the reasonable provisions will set out a process for the giving of the consent under Schedule 13 within specified expedited timescales (such timescales to be agreed between the undertaker and Affinity Water acting reasonably) following any request for such consent by Affinity Water.
- (4) If alternative apparatus, or any part of such apparatus including protective works, is to be constructed elsewhere than in other land of the undertaker or secured by the undertaker, or 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, or the benefit of any statutory permits granted to the undertaker, Affinity Water will, on receipt of a written notice to that effect from the undertaker, as soon as reasonably practicable use its reasonable endeavours to obtain the necessary facilities and rights and consents in the land in which the alternative apparatus is to be constructed, and any required statutory permits.
- (5) Affinity Water will have an absolute discretion whether or not to use or seek any powers of compulsory acquisition that may be available to Affinity Water for the purposes of sub-paragraph (4).
- (6) Any alternative apparatus to be constructed in land of the undertaker or secured by the undertaker under this Part of this Schedule must be constructed in such manner and in accordance with such plans as may be agreed between Affinity Water and the undertaker or in default of agreement settled by arbitration in accordance with article 54 (arbitration).
- (7) Affinity Water must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 54 (arbitration), and subject to any written diversion agreement having been entered into between the parties and after the grant to Affinity Water of any such facilities and rights and consents or statutory permits as are referred to in sub-paragraphs (2) or (3), proceed in accordance with a programme that has been agreed or settled by arbitration in accordance with article 54 (arbitration) to construct and bring into operation the alternative apparatus and subsequently to remove any of Affinity Water's apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.
- (8) Regardless of anything in sub-paragraph (7), if the undertaker gives notice in writing to Affinity Water that it desires itself to execute any work, or part of any work in connection with the construction or removal of Affinity Water's apparatus in any land of the undertaker, that work, instead of being executed by Affinity Water, may be executed by the undertaker, with the prior written consent of Affinity Water (which must not be unreasonably withheld or delayed and is to be subject to any conditions as are reasonable and proper to protect Affinity Water's apparatus) in accordance with plans and in a position agreed between Affinity Water and the undertaker, or in default of agreement determined by arbitration in accordance with article 54 (arbitration), without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Affinity Water.
- (9) Following such approval given in writing by Affinity Water, any alternative apparatus will be deemed to be adopted by Affinity Water as though it had been adopted under s.51A (agreement to adopt water main or service pipe at future date) of the Water Industry Act 1991 on the date 28 days after the giving of such approval or such later date as is agreed in writing between Affinity Water and the undertaker.
- (10) If Affinity Water fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable, any proposed details relating to required removal works under sub-paragraph (2) within 56 days of receiving a notice of

the required works from the undertaker, the undertaker shall have recourse to arbitration in accordance with article 54 (arbitration).

- (11) In carrying out any work under sub-paragraph (8), the undertaker must comply with all statutory obligations which would have been applicable had the works been carried out by Affinity Water.
- (12) Nothing in sub-paragraph (8) authorises the undertaker to—
 - (a) execute any work of connection to, or disconnection from, Affinity Water's operational network;
 - (b) execute the placing, installation, bedding, packing, removal, connection or disconnection of any of Affinity Water's apparatus, or execute any excavation and filling around any of Affinity Water's apparatus (where the apparatus is laid in a trench) within 600 millimeters of any apparatus to be retained in situ; or
 - (c) carry out any works in relation to any water mains.
- (13) Whenever alternative apparatus is to be or is being substituted for Affinity Water's existing apparatus, the undertaker must, before taking any step which will trigger the need for those substitution works, use all reasonable endeavours to comply with Affinity Water's reasonable requests for a reasonable period of time to enable Affinity Water to:
 - (a) make network contingency arrangements; or
 - (b) bring such matters as it may consider reasonably necessary to the attention of end users of the utility in question.

Facilities and rights for alternative apparatus

8.

- (1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Affinity Water facilities and rights for the construction, use, protection and maintenance in land of the undertaker of alternative apparatus in substitution for Affinity Water's apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Affinity Water and must be no less favourable on the whole to Affinity Water than the facilities and rights enjoyed by it in respect of Affinity Water's apparatus to be removed unless otherwise agreed by Affinity Water or in default of agreement settled by expert determination in accordance with paragraph 16 (expert determination) unless otherwise agreed in writing by the parties.
- (2) In setting those terms and conditions in respect of alternative apparatus to be constructed in the land of the undertaker, any expert will—
 - (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with the proposed works of the undertaker; and
 - (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to Affinity Water's apparatus for which the alternative apparatus is to be substituted.
- (3) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the expert less favourable on the whole to Affinity Water than the facilities and rights enjoyed by it in respect of Affinity Water's apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the expert must make such provision for the payment of compensation by the undertaker to Affinity Water as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Specified Works

9.

- (1) Not less than 56 days before commencement of any specified works, the undertaker must submit to Affinity Water a plan in response of the specified works to be executed.
- (2) The plan must provide details of-
 - (a) The exact position, including level, of the specified works and of all of Affinity Water's apparatus;

- (b) a method statement describing the manner of their construction or renewal including details of excavation and positioning of plant;
 - (c) detailed drawings showing every alteration proposed to be made to or close to any such apparatus;
 - (d) all expected physical impacts (including but not limited to electromagnetic or high voltage effects) that the construction, maintenance or operation of the specified works may have on any of Affinity Water's apparatus, the removal of which has not been required by the undertaker under paragraph 7 or otherwise; and
 - (e) any intended maintenance regimes.
- (3) The undertaker must not commence any specified works until the plan has been approved by Affinity Water.
- (4) Affinity Water may require –
- (a) that the plan be resubmitted as a revised plan with any additional detail that Affinity Water reasonably requires to properly understand the impact of the specified works;
 - (b) such reasonable conditions or modifications to be made to the plan as may be reasonably necessary for the purpose of securing Affinity Water's apparatus against interference or risk of damage or for the provision of protective works or for the purpose of providing or securing reasonable means of access to Affinity Water's apparatus; and
 - (c) the undertaker to re-submit the plan as modified, for approval to Affinity Water, and Affinity Water must advise the undertaker within 10 business days of submission of the revised plan whether it is approved.
- (5) Any approval of Affinity Water given under sub-paragraph (3)-
- (a) may be given subject to such reasonable conditions or with such reasonable modifications for any purpose mentioned in sub-paragraph (4)(b); and
 - (b) must not be unreasonably withheld or delayed.
- (6) Affinity Water may as part of giving its approval under sub-paragraph (3) require that any part of specified works comprising restricted specified works is carried out by Affinity Water, not the undertaker, and in which case Affinity Water must proceed with such part of the specified works in accordance with a programme that has been agreed or settled by arbitration in accordance with article 54 (arbitration).
- (7) If the revised plan is not approved within 14 days, the undertaker may require a meeting to be held between the chief engineers of the undertaker and Affinity Water to agree the plan and programme or, if the plan and programme is not agreed and approved the dispute may be settled by arbitration in accordance with article 54 (arbitration) upon request by either party.
- (8) The specified works and restricted specified works must be executed only in accordance with-
- (a) the plan submitted under sub-paragraph (1) or agreed under sub-paragraph (7), as approved or as amended from time to time by agreement between the undertaker and Affinity Water or as otherwise settled by arbitration; and
 - (b) in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (4)(b),

and Affinity Water is entitled to supervise and inspect the execution of those works where reasonably practicable to do so and subject to compliance at all times with the undertaker's reasonable site safety rules and all applicable health and safety laws and regulations provided that reasonable notice of such supervision or inspection is given appropriately in advance to the undertaker.

- (9) Where Affinity Water requires (acting reasonably) any protective works to be carried out by itself or by the undertaker to ensure the safety of Affinity Water's apparatus (whether of a temporary or permanent nature), Affinity Water must specify what these protective works are, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph. The protective works must be carried out to Affinity Water's reasonable satisfaction prior to the commencement of any specified works for which protective works are required and Affinity Water must give notice of its requirement (in writing) for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency) and in that written notice Affinity Water must specify what the protective works are and how these ensure the safety of Affinity Water's apparatus (Affinity Water acting reasonably).

- (10) If Affinity Water in accordance with paragraph 9 and in consequence of the works proposed by the undertaker, reasonably requires the carrying out of any protective works or the removal of any of Affinity Water's apparatus and Affinity Water gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the protective works or removal of the apparatus had been required by the undertaker under paragraph 7(2).
- (11) Nothing in this paragraph precludes the undertaker from submitting a new plan instead of the plan previously submitted, and the provisions of this paragraph apply to and in respect of the new plan, except that (unless otherwise agreed with Affinity Water acting reasonably):
 - (a) where the new plan is materially different from the plan previously submitted, this new plan shall be submitted at least 56 days before commencing the execution of any works; and
 - (b) where the new plan is not materially different from the plan previously submitted, this new plan shall be submitted at least 28 days before commencing the execution of any works.
- (12) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to Affinity Water notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with reasonable requirements of Affinity Water in so far as is reasonably practicable in the circumstances..
- (13) In this paragraph, "emergency works" means works which, at the time when they are executed are required in order to put an end to, or to prevent the occurrence of, existing or imminent circumstances (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.
- (14) Nothing in sub-paragraph (13) authorises the undertaker to carry out restricted specified works and should any such works need to be undertaken they will be undertaken by Affinity Water, not the undertaker and in which case Affinity Water must agree a programme of works with the undertaker and proceed with such part of the specified works in accordance with that programme.
- (15) As soon as reasonably practicable after any ground subsidence event attributable to the authorised works the undertaker shall implement an appropriate ground mitigation scheme save that Affinity Water retains the right to carry out any further necessary protective works for the safeguarding of Affinity Water's apparatus and can recover any such costs in line with paragraph 10 (expenses and costs).

Expenses and costs

10.

- (1) Subject to the following provisions of this paragraph, the undertaker must pay to Affinity Water within 30 days of receipt of an itemised invoice or claim from Affinity Water all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by Affinity Water, but excluding any consequential loss or indirect loss, in, or in connection with:
 - (a) The supervision, inspection, removal, relaying, replacing, alteration or protection of any of Affinity Water's apparatus or the supervision, inspection, adoption and construction of any new apparatus or alternative apparatus which may be required in consequence of the execution of any such connection with the authorised works; and
 - (b) the consideration and approval of any plan as required by this Part of this Schedule.
- (2) The costs as referred to in sub-paragraphs (1)(a) and (1)(b) are to include but not be limited to—
 - (a) any costs reasonably incurred by or compensation properly paid by Affinity Water in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by Affinity Water as a consequence of Affinity Water;
 - (i) using its own compulsory purchase powers to acquire any necessary rights under this Part of this Schedule; or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting Affinity Water;
 - (b) any costs reasonably incurred in connection with the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;

- (c) the cutting off of any of Affinity Water's apparatus from any other of Affinity Water's apparatus or the making safe of redundant apparatus;
 - (d) the approval of plans;
 - (e) the carrying out of protective works plus a capitalized sum to cover the cost of maintaining and renewing permanent protective works;
 - (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works as referred to in this Part of this Schedule;
 - (g) any costs reasonably necessary in consequence of the execution of any such works as are referred to in this Part of this Schedule; and
 - (h) any costs incurred as a result of any penalties or fines imposed on Affinity Water by any regulator directly resulting from the execution of or failure to execute any works or actions which are required in accordance with this Part of this Schedule.
- (3) The value of any of Affinity Water's apparatus that is removed and re used by Affinity Water, or any value recovered by Affinity Water from the scrapping of any apparatus removed and not re-used, under the provisions of this Part of this Schedule must be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.
- (4) 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 by Affinity Water 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 by Affinity Water 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 article 54 (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 Affinity Water by virtue of sub-paragraph (1) must be reduced by the amount of that excess.
- (5) For the purposes of sub-paragraph (3)—
- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus;
 - (b) where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or to place it at the existing depth, the capacity, dimensions and depth of the apparatus is to be treated as if it has been agreed or so determined; and
 - (c) 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 an inspection chamber is to be treated as if it also had been agreed or had been so determined.
- (6) An amount which, apart from this sub-paragraph, would be payable to Affinity Water in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on Affinity Water any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.
- (7) The amount of the reduction under sub-paragraph (6) must be calculated using the methodology set out in paragraph 29 of the HAUC Advice Note and—
- (a) the 1991 Act and any regulations made under that Act (including the cost sharing regulations made under section 85 (Sharing of costs of necessary measures)); and
 - (b) any other codes of practice or guidance issued under the 1991 Act or regulations made under that Act,
- do not apply in respect of any such calculation under sub-paragraph (6).
- (8) In relation to any anticipated costs, charges and expenses to be payable by the undertaker to Affinity Water pursuant to sub-paragraph (1) Affinity Water must provide the undertaker, on receipt of a request from the undertaker, with a schedule showing its estimate and with such

information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this paragraph.

- (9) Affinity Water must give the undertaker a final account of the costs in relation to which a schedule has been provided under sub-paragraph (8) and within 30 days of the issue of the final account (unless otherwise agreed)—
- (a) if the final account shows a further sum as due to Affinity Water the undertaker must pay to Affinity Water the sum shown due to it; and
 - (b) if the account shows that the payment or payments previously made by the undertaker have exceeded the costs incurred by Affinity Water, Affinity Water must refund the difference to the undertaker

Provided that neither the provision of a schedule under sub-paragraph (8), nor the provision of a final account under this sub-paragraph (9), nor any payment made pursuant to either of them, is to constitute a final settlement of Affinity Water's entitlement under sub-paragraph (1), or otherwise prevent, restrict or prejudice Affinity Water from making any further claim for charges, costs or expenses recoverable under sub-paragraph (1).

- (10) Where the undertaker does not agree that an estimate provided by Affinity Water under sub-paragraph (8) is reasonable, the undertaker must notify Affinity Water of that within 15 days of receiving the schedule of estimate. The undertaker and Affinity Water will escalate the matter internally and will each nominate a senior officer to attend a discussion on the dispute. Where the parties fail to reach agreement following such discussion, any difference or dispute over reasonableness of any excess sum shall be determined by expert determination in accordance with paragraph 10.

11.

- (1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, operation or maintenance of the authorised development or any such works referred to in paragraphs 5 or 7(2), or by reason of any subsidence resulting from the authorised development or such development or works, any damage is caused to any of Affinity Water's apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal pursuant to paragraph 7) or property of Affinity Water, or there is any interruption in any service provided, or in the supply of any goods, by Affinity Water, or Affinity Water becomes liable to pay any amount to any third party incurred in accordance with the provisions of this paragraph, the undertaker must—
- (a) bear and pay the cost reasonably incurred by Affinity Water, and accompanied with an invoice, in making good such damage, restoring the supply or ensuring the continuity of supply; and
 - (b) indemnify Affinity Water against all liabilities, claims, demands, losses (excluding any loss of profit), damages, proceedings, penalties, fines, levies, surcharges, charges, or costs which may be made or taken against or recovered from or incurred by Affinity Water,

by reason or in consequence of any such damage or interruption.

- (2) The fact that any act or thing may have been done by Affinity Water on behalf of the undertaker or in accordance with a plan approved by Affinity Water or in accordance with any requirement of Affinity Water or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless Affinity Water fails to carry out and execute the works properly with due care and attention and in a skillful and professional like manner or in a manner that does not accord with the approved plan.
- (3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the unlawful act, neglect or default of Affinity Water, its officers, servants, contractors or agents.
- (4) Affinity Water must give the undertaker reasonable notice of any such claim or demand and, unless payment is required in connection with a statutory compensation scheme, no settlement or compromise is to be made, without first consulting the undertaker and considering their representations.
- (5) Affinity Water must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.
- (6) Affinity Water must use 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

where it is within Affinity Water's reasonable ability and control to do so but those endeavors expressly exclude any obligation to mitigate liability arising from third parties which is outside of Affinity Water's control. If reasonably requested to do so by the undertaker Affinity Water must provide an explanation of how the claim has been mitigated, where relevant.

Cooperation

12. Where in consequence of the proposed construction of any of the authorised development, the undertaker or Affinity Water requires the removal of Affinity Water's apparatus under paragraph 7(2) or Affinity Water makes requirements for the protection or alteration of Affinity Water's apparatus under paragraph 9, the undertaker must use reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Affinity Water's undertaking, using existing processes where requested by Affinity Water, provided it is appropriate to do so, and Affinity Water must use all reasonable endeavours to co-operate with the undertaker for that purpose.
13. Where the undertaker identifies any apparatus which may belong to or be maintainable by Affinity Water but which has not previously been indicated by Affinity Water as being apparatus belonging to it, the undertaker shall inform Affinity Water of the existence and location of the apparatus as soon as reasonably practicable. If Affinity Water confirms that it owns or maintains the apparatus, that apparatus shall then be afforded the same protection under this Part of this Schedule as other apparatus belonging to Affinity Water.
14. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Affinity Water in respect of any Affinity Water's apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.
15. The undertaker and Affinity Water may by written agreement substitute any period of time for those periods set out in this Part of this Schedule.

Expert Determination

16.
 - (1) Article 54 (arbitration) or the Order does not apply to paragraph 8 (facilities and rights for alternative apparatus) of this Part of this Schedule.
 - (2) Any difference under this Part of this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.
 - (3) On notification by either party of a dispute, the parties must jointly instruct an expert within 14 days of notification of the dispute.
 - (4) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date that an expert is appointed. The expert must—
 - (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 7 days of the expert's appointment;
 - (b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;
 - (c) issue a decision within 7 days of receipt of the submissions under sub-paragraph (b); and
 - (d) give reasons for the decision.
 - (5) Any determination by the expert is final and binding, except in the case of manifest error in which case the different that has been subject to expert determination may be referred to and settled by arbitration under article 54 (arbitration).
 - (6) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.