

**THE DEVON COUNTY COUNCIL (A380 SOUTH DEVON LINK ROAD
(KINGSKERSWELL BYPASS) CLASSIFIED ROAD) (SIDE ROADS) ORDER 2008**

**THE DEVON COUNTY COUNCIL A380 SOUTH DEVON LINK ROAD
(KINGSKERSWELL BYPASS) COMPULSORY PURCHASE ORDER 2008**

**PROOF OF EVIDENCE OF
ROBERT STOCKLEY ENG TECH MIGEM LCGI
FOR NATIONAL GRID GAS PLC**

18 June 2009

1 PERSONAL DETAILS

1.1 Introduction

My name is Robert Stockley. I am employed by National Grid Gas plc as Gas Asset Management Engineer. I have prepared this Proof of Evidence on behalf of National Grid Gas plc (National Grid) to provide evidence on National Grid's concerns relating to the impact of the construction of the proposed A380 South Devon Link Road (Kingskerwell Bypass) (the Scheme) and related orders on National Grid's interests and operations.

1.2 Qualifications and Experience

I originally trained as a Pipe-fitter Welder in 1971, and have progressed through various roles and companies, joining British Gas in 1990.

I am qualified to HNC Level and have worked on National Grid High Pressure Gas Assets since 1997. I have held various roles including Network Assistant, Asset Officer, Planning Officer, and my current role Gas Asset Management Engineer or Technical Engineer (Pipelines).

2 SCOPE OF EVIDENCE

In this Proof of Evidence I will identify National Grid's affected apparatus, to outline the concerns that National Grid has regarding the impact of the Scheme upon its apparatus and operations, and the measures it requires be taken in order to minimise any adverse impact upon them.

3 GAS APPARATUS

- 3.1 National Grid is a gas transporter authorised under section 7 of the Gas Act 1986 (as amended by the Gas Act 1995), having statutory powers and duties with regard to the conveyance of gas. National Grid has identified apparatus which is severely affected by the Scheme.
- 3.2 The Devon County Council A380 South Devon Link Road (Kingskerswell Bypass) Compulsory Purchase Order 2008 (the CPO) makes provision for the permanent acquisition of land and rights for the construction and maintenance of the Scheme. The Scheme also includes the Devon County Council (A380 South Devon Link Road (Kingskerswell Bypass) Classified Road) (Side Roads) Order 2008.
- 3.3 The CPO includes the acquisition of land and rights in land in which the Kenn to Fishacre National High Pressure Main (NHPM) is laid, the location of which is shown on the plan at Appendix 1. The NHPM runs through parcels 7/73, 7/73e and 7/74 of the CPO.
- 3.4 The NHPM is a 32.47 kilometre long pipeline of 609.6 millimetre diameter, with a maximum operating pressure of 70 bar. The NHPM is the single source feed of gas to the South West of England and the Langage Power Station. The intention is that the pipeline will transport 12 million standard cubic metres of gas by 2013. The NHPM

is therefore an important piece of strategic apparatus for National Grid. The acquisition of land and the construction of the Scheme over the NHPM is unacceptable to National Grid. If the Scheme is constructed, National Grid requires that the NHPM is diverted, for the reason set out in paragraphs 3.5 to 3.14 of this Proof of Evidence.

- 3.5 The NHPM was constructed and commissioned in November 1989. At the time of construction, there were discussions between Devon County Council (the Council), the former licence holder, British Gas and its contractor, Laing O'Rourke, to determine the route of the NHPM.
- 3.6 The original planned route for the NHPM was diverted very late in the planning process, when it became evident that a roundabout junction forming part of the Scheme, in its early iteration, would be in close proximity to the pipeline. The decision was made to divert the NHPM and, where the Scheme would cross the pipeline, to lay the NHPM in a heavier wall section, to protect the pipeline at this point.
- 3.7 However, at the time of laying the pipeline, a wall thickness of less than that required by IGE/TD/1 Edition 2¹ was laid, i.e. 17.5 millimetre wall thickness rather than the 19.05 millimetre required by Edition 2. This was possibly due to availability of materials at the time the pipeline was laid. Material availability is usually subject to long lead times, and as the pipelines are constructed from high grade, high quality steel and the late alterations to the route may have meant that the correct materials could not be obtained.
- 3.8 National Grid took ownership of the NHPM in December 2008. Prior to this the pipeline was owned and operated by Wales and West Utilities (WWU). During that time, the pipeline operated at 33.8 bar, and the 1.4 kilometre section at Kingskerswell, with a wall thickness of 17.5 millimetres, would have a resultant stress level of 15% SMYS (Standard Minimum Yield Strength). Therefore, whilst the pipeline belonged to WWU, the pipeline was compliant with the IGE/TD/1 Edition 2 standard to which it was laid.
- 3.9 The NHPM is now part of the National Transmission System operating at higher pressures and stress levels. The maximum operating pressure of 70 bar means there is a resultant stress level now of 35.88%. In order for the NHPM to be compliant with IGE/TD/1 Edition 4, the pipeline needs to operate at less than 30% stress level, or have a wall thickness of not less than 19.05 millimetres.

¹ IGE/TD/1 Edition 2 and IGE/TD/1 Edition 4 referred to in paragraph 3.9 are technical recommendations issued by the Institution of Gas Engineers and Managers, they form part of National Grid's Safety Case, and are accepted by the Health and Safety Executive. IGEM/TD/1 Edition 5 has recently been issued, which upgraded these recommendations to technical standards and is due to be adopted by National Grid in Autumn 2009.

3.10 The following extract is taken from IGE/TD/1 Edition 4:

“Clause 6.10.2 High density traffic routes

Note: High density traffic routes are defined in Appendix 1.

A pipeline which either crosses, or encroaches within, the appropriate minimum proximity distance of a high density traffic route, should have a nominal wall thickness of not less than 11.91 mm. Normally, the design factor should not exceed:

- 0.3 or*
- 0.5 for pipelines with a wall thickness of not less than 19.05 mm.*

Alternatively, a higher design factor (but not exceeding 0.8) may be justified by a risk analysis as part of a safety evaluation (see Sub-Section 6.8 and Appendix 3).

Note: Safety evaluation in this context is defined as a full risk assessment of the section of pipeline being considered, taking account of all factors affecting safety. It is not, normally, intended to mean a safety evaluation of the whole pipeline.

The additional thickness should be extended beyond the edge of the carriageway or railway track. This extension should ensure that no part of the unmodified pipeline is closer than the minimum proximity distance derived from Figures 4 or 5, as appropriate to the design conditions of the unmodified pipeline. The distance should be measured from the edge of the carriageway (excluding the hard shoulder) or the outer rail of railway track.”

- 3.11 Accordingly, if the Scheme were to be constructed over the NHPM as proposed, it would be necessary for there to be an upgrading of the NHPM by diversionary techniques. It is not possible to upgrade the existing pipeline, in compliance with IGE/TD/1 Edition 4, by any other acceptable means as the standards do not provide alternative options. It will be necessary to relay a new section at the correct wall thickness, and abandon the old section on completion.
- 3.12 National Grid has been challenged on a number of occasions, as to the correct interpretation of clause 6.10.2 of IGE/TD/1 Edition 4. I have recently contacted the Institute of Gas Engineers and Managers (IGEM), via their Technical Queries route, and the authors of IGE/TD/1 Edition 4 concur with my interpretation that, “heavy wall thickness pipe is required”, at typical locations such as those described within this document.
- 3.13 National Grid does not accept a Risk Analysis as an alternative option; the location is already occupied by an existing A-Road, and a railway line. The construction of a new dual carriageway bypass will further escalate the risk to travellers and the general public. A pipeline diversion is therefore National Grid’s preferred option, as this removes all the risks associated with this crossing.

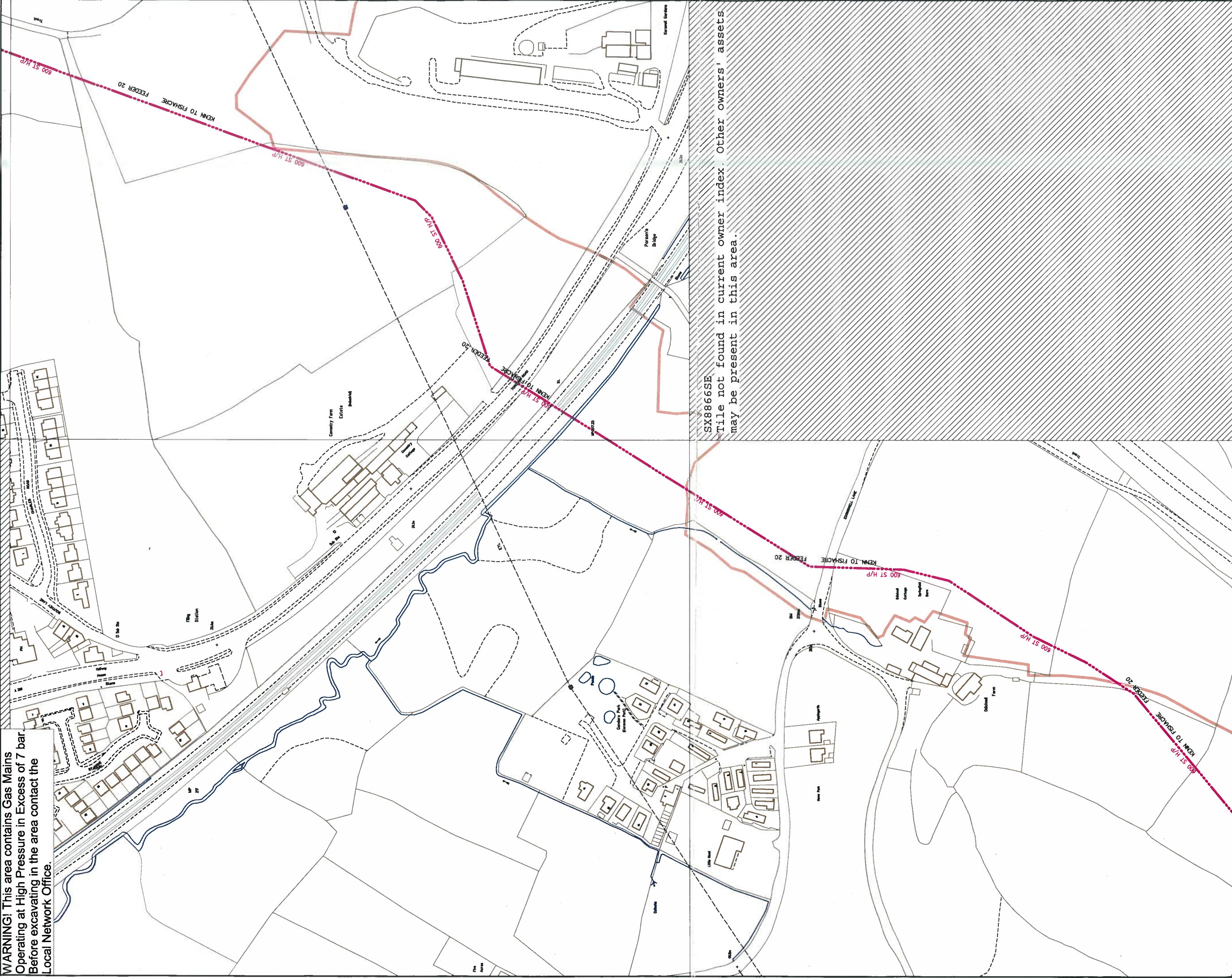
- 3.14 The NHPM will therefore need to be diverted. If a suitable route can be found at the current crossing location, it will be necessary to auger bore under the existing road and railway line to suitable connection points, which must be at least 49 metres from boundaries of all the transportation routes and any existing buildings (required by IGE/TD/1 Edition 4).
- 3.15 A feasibility study should therefore be instigated, at the earliest opportunity, to determine if the NHPM can be relayed in close proximity to the existing pipeline location. If, for any reason, i.e. other utility equipment or below ground structures, the preferred route is not feasible, then it may be necessary to carry out a diversion which equates to some 20 kilometres or more. I must therefore emphasise the urgency to undertake the feasibility study at the earliest possible opportunity.
- 3.16 National Grid requires that the Council cover the total costs associated with any diversion, and any other costs incurred by National Grid as a result of the Scheme.
- 3.17 On 5 May 2009, I met with Roger Hull of Parsons Brinckerhoff, the Council's engineering consultants, along with Adam Richards, our Senior Commercial Analyst, to explain National Grid's concerns. During this meeting, we suggested that the parties should enter into a Pre-Works Agreement in order to explore the potential routes for diversion of the NHPM, and explained the diversion options. I have had no response from Parsons Brinckerhoff or the Council in relation to this suggestion.
- 3.18 More generally, National Grid is concerned that the acquisition of plots 7/73, 7/73e and 7/74 will interfere with its rights relating to the NHPM, thereby not allowing it to carry out its statutory obligations and duties. Accordingly, NGG seeks assurance by way of a protective agreement that it will continue to have the necessary rights to carry out its functions as a gas undertaker.
- 3.19 National Grid has provided to the Council and Parsons Brinckerhoff a draft protective agreement dealing with diversion of the NHPM and protecting National Grid's interests. A copy of the draft protective agreement is at Appendix 2 to this Proof of Evidence. The Council has indicated that it considers such an agreement to be unnecessary, but has not offered National Grid any other form of assurance.

4 CONCLUSION

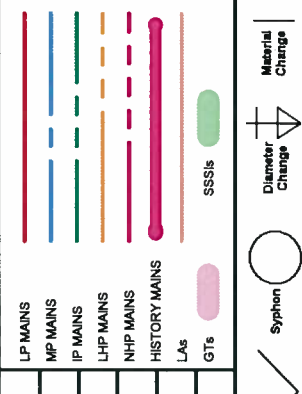
- 4.1 The Scheme will have a significant impact on major strategic apparatus and interests belonging to National Grid. Any damage or interference with this apparatus may cause severe operational difficulties and considerable expense to National Grid.
- 4.2 National Grid seeks form of written assurance from the Council that the measures outlined in this Proof of Evidence will be taken to protect these important assets. In the absence of such assurance, National Grid maintains its objection to the proposals and submits that the CPO should not be confirmed.

Robert Stockley
18 June 2009

WARNING! This area contains Gas Mains Operating at High Pressure in Excess of 7 bar. Before excavating in the area contact the Local Network Office.



SCALE: 1 : 2500
 USER ID: steve.carter
 DATE: 29/09/2008
 INTERNAL USE ONLY
 MAP REF: SX8866
 CENTRE: 288465, 066553
 Some examples of Plant Name:



This plan shows those pipes owned by National Grid Gas plc in their role as a Licensed Gas Transporter (GT). Gas pipes owned by other GTs, or otherwise privately owned, may be present in this area. Information with regard to such pipes should be obtained from the relevant owners. The information shown on this plan is given without warranty, the accuracy thereof cannot be guaranteed. Service pipes, valves, syphons, stub connections, etc. are not shown but their presence should be anticipated. No liability of any kind whatsoever is accepted by National Grid Gas plc or their agents, servants or contractors for any error or omission. Safe digging practices, in accordance with HS(G)47, must be used to verify and establish the actual position of mains, pipes, services and other apparatus on site before any mechanical plant is used. It is your responsibility to ensure that this information is provided to all persons (either direct labour or contractors) working for you on or near gas apparatus. The information included on this plan should not be referred to beyond a period of 28 days from the date of issue.

Desktop MAPS Version 5.1.2.0

Hinckley Area

This plan is reproduced from or based on the OS map by National Grid Gas plc, with the sanction of the controller of HM Stationery Office. Crown Copyright Reserved.

DATED

2009

(1) DEVON COUNTY COUNCIL

and

(2) NATIONAL GRID GAS PLC

AGREEMENT

**relating to the Devon County Council A380 South Devon Link Road
(Kingskerswell Bypass) Compulsory Purchase Order 2008**

Draft

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THIS AGREEMENT is made the _____ day of _____ 2009

BETWEEN

- (1) **DEVON COUNTY COUNCIL** of County Hall, Exeter EX2 4QD (**the Council**)
- (2) **NATIONAL GRID GAS PLC** (company registration number 2006000) whose registered office is at 1-3 Strand, London WC2N 5EH (**NGG**)

WHEREAS

- (A) On 12 September 2008, the Council make the Devon County Council A380 South Devon Link Road (Kingskerswell Bypass) Compulsory Purchase Order 2008 (the Order).
- (B) NGG objected to the Order by way of a letter dated 29 September 2008
- (C) The Council and NGG are entering into this Agreement for the purpose of protecting their respective interests

IT IS HEREBY AGREED:

1 Definitions

In this Agreement:

- | | |
|------------------------------|--|
| the 1991 Act | means the New Roads and Street Works Act 1991; |
| Alternative Apparatus | means alternative apparatus adequate to enable NGG to fulfil its statutory or licensed functions in a manner no less efficient than previously; |
| Apparatus | means gas mains, pipes, pressure governors, ventilators, cathodic protection, cables or other apparatus belonging to, or maintained by, NGG for the purposes of the transportation and/or storage of gas or electricity and includes any structure for the lodging therein of apparatus or for giving access to such apparatus; |
| Authorised Works | means any works carried out as a result of the Scheme; |
| connection work | means the actual placing, erection, installation, bedding, packing, removal, connection or disconnection of any Apparatus or, where the Apparatus is laid in a trench, execute any filling around the Apparatus within 500 millimetres (measured in any direction) of the Apparatus where the Apparatus is operating or only capable of operating at below 7 bar pressure or within 3000 millimetres of the Apparatus where the Apparatus is operating or is |

- 2.1 NGG will forthwith withdraw its objection to the Order and refrain from all further opposition to the Order or to its implementation so long as the Order is confirmed and no amendments to it are made after the date of this Agreement which may adversely affect any Apparatus not affected by the Order as at the date of this Agreement
- 2.2 NGG shall not oppose the Council's promotion of the Scheme or any application for approval of reserved matters or matters required to be approved by conditions resulting from approval of the said applications

3 Apparatus in stopped up streets

- 3.1 Where any street is stopped up under the Order, if NGG shall have Apparatus in the street then NGG shall have the same rights in respect of that Apparatus as it enjoyed immediately before the stopping up and, to the extent that the Council is the freehold owner of land, the Council shall grant to NGG easements or other rights as may be requisite for that purpose and containing such provisions as are reasonably necessary for the protection of the apparatus, but nothing in this clause shall affect any right of the Council or of NGG to require the removal of that Apparatus under clauses 6 and 10 below
- 3.2 The Council shall give not less than 28 days' notice in writing of its intention to stop up any street under the Order to NGG if NGG shall have Apparatus in that street

4 On-street Apparatus

This Agreement shall not apply to anything done or proposed to be done in relation to or affecting any Apparatus in so far as the relations between the Council and NGG are regulated by the provisions of Part III of the 1991 Act

5 Acquisition of land

The Council may in exercise of the powers of the Order acquire or appropriate any land in which any Apparatus is placed and, following the removal of such Apparatus in accordance with the provisions of this Agreement, NGG will forthwith surrender any rights in that land relating to that Apparatus but no Apparatus shall be removed nor shall any right of NGG to use, maintain or renew any Apparatus be surrendered by NGG until any necessary Alternative Apparatus has been constructed and is in operation to the reasonable satisfaction of NGG

6 Kenn to Fishacre High Pressure Main

- 6.1 The Council agrees with NGG that where the High Pressure Main is affected by the Authorised Works, it shall be removed and an alternative high pressure main constructed
- 6.2 The Council shall give to NGG not less than 48 months' written notice of its intention to carry out any Authorised Works which will require the removal of the High Pressure Main

- 6.3 The Council shall reimburse NGG for all costs incurred by NGG for the removal of the High Pressure Main and the construction of an alternative high pressure main including, for the avoidance of doubt, any costs incurred relating to the safety of the High Pressure Main or any alternative high pressure main, and any expenses identified at clause 13 of this Agreement
- 6.4 The Council shall afford to NGG the necessary rights and facilities (including for the avoidance of doubt such easements or other rights as may be requisite and containing such provisions as are reasonably necessary for the protection of the apparatus) for the construction of an alternative high pressure main and thereafter for the use, maintenance and renewal of such high pressure main
- 6.5 The Council shall not seek to carry out itself any work which involves the removal of the High Pressure Main, or construction of any alternative high pressure main

7 Removal of Apparatus

- 7.1 Subject to the provisions of clause 6 of this Agreement, clauses 7.2 to 7.5 apply where:-
- 7.1.1 The Council requires the removal of any Apparatus for the purpose of constructing any of the Authorised Works and gives to NGG not less than 56 days' written notice of that requirement together with a plan of the proposed work and of the proposed position of the Alternative Apparatus to be provided or constructed; or
- 7.1.2 in consequence of the exercise or proposed exercise of any of the powers of the Order, NGG reasonably needs to remove any Apparatus
- 7.2 The Council shall use its best endeavours to afford to NGG the necessary rights and facilities (including for the avoidance of doubt such easements or other rights as may be requisite and containing such provisions as are reasonably necessary for the protection of the apparatus) for the construction of any necessary Alternative Apparatus in other land which is available for the purpose (and which is held or used, or intended for use, by the Council for the purpose of its undertaking or in which it has sufficient rights or interests) and and, if the Council is unable to obtain those rights and facilities, NGG shall, on receipt of a written notice to that effect from the Council, use its best endeavours to obtain the necessary rights and facilities
- 7.3 The obligation imposed upon NGG by clause 7.2 shall not extend to the exercise by NGG of any power to acquire any land or rights in land by compulsory purchase order
- 7.4 Any Alternative Apparatus to be constructed by NGG pursuant to clause 7.2 shall be constructed in such manner, and in such line or situation, as may be agreed between NGG and the Council or, in default of agreement, determined by arbitration
- 7.5 NGG shall, after the manner of construction and the line or situation of any necessary Alternative Apparatus has been agreed or determined and after the grant to or obtaining by NGG of any such facilities and rights as are referred to in clause 7.2 and subject to clause 8, proceed with all reasonable despatch to construct and bring into

operation the Alternative Apparatus and thereafter to remove any Apparatus required by the Council to be removed in accordance with clause 7.1

8 Removal of Apparatus and construction of Alternative Apparatus by the Council

- 8.1 Subject to the provisions of clause 6 of this Agreement, clauses 8.2 to 8.6 apply to so much of the work necessary in connection with the construction of Alternative Apparatus, or the removal of Apparatus required to be removed, as will take place in any land held or used, or intended for use, by the Council for the purpose of its undertaking
- 8.2 If the Council gives notice in writing to NGG that it desires to carry out any part of any work to which this clause applies, such work, instead of being carried out by NGG, may be carried out by the Council with the prior written consent of NGG (which shall not be unreasonably withheld or delayed and shall be subject to any such conditions as are reasonable and proper to protect the Apparatus) in accordance with plans, in a position and at a cost agreed between NGG and the Council or, in default of agreement, determined by arbitration, with all reasonable despatch under the superintendence (if given) and to the reasonable satisfaction of NGG
- 8.3 NGG shall, within 14 days after the necessary work has been agreed or determined by arbitration in accordance with clause 8.2 and after the grant to or obtaining by NGG of any such facilities and rights as referred to in clause 7.2, supply the Council with the names of at least three approved contractors (which may include NGG or any subsidiary of NGG) to carry out any part of the work necessary, and the Council shall be responsible for the engagement of the contractor of its choice from the names so supplied on such terms and conditions as the Council thinks fit
- 8.4 If NGG does not provide the names of contractors within the period required by clause 8.3, the Council shall be entitled to carry out the necessary work using such contractor as it thinks fit, being a contractor who appears to the Council, following reasonable enquiry of NGG, to be competent and suitably qualified to carry out that work
- 8.5 In carrying out any work under clause 8.2 the Council shall comply with all statutory obligations which would have been applicable had the works been carried out by NGG
- 8.6 Nothing in clause 8.2 shall authorise the Council to carry out any connection work

9 Facilities and rights for Alternative Apparatus

- 9.1 Where, in accordance with the provisions of this Agreement, the Council affords to NGG facilities and rights for the construction, use, maintenance and renewal in land of Alternative Apparatus in substitution for Apparatus to be removed as aforesaid, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the Council and NGG or, in default of agreement, determined by arbitration

- 9.2 In determining the terms and conditions mentioned in clause 9.1 in respect of Alternative Apparatus to be constructed across or along the Authorised Works the arbitrator shall:-
- 9.2.1 give effect to all reasonable requirements of the Council for ensuring the safety of the Authorised Works and for securing any subsequent alterations or adaptations of the Alternative Apparatus which may be required to prevent interference with any such works; and
 - 9.2.2 give effect to any terms and conditions applicable to the Apparatus (if any) constructed across or along the Authorised Works for which the Alternative Apparatus is to be substituted and to any other reasonable requirements of NGG
- 9.3 If the facilities and rights to be afforded by the Council in respect of any Alternative Apparatus under clause 9.1 and the terms and conditions subject to which the same are to be granted are, in the opinion of the arbitrator, more or less favourable on the whole to NGG than the facilities, rights, terms and conditions applying to the Apparatus to be removed, the arbitrator shall make such provision for the payment of compensation to or by the Council by or to NGG in respect thereof as shall appear to him to be reasonable having regard to all the circumstances of the case

10 Retained Apparatus: protection and plan approval

- 10.1 Not less than 56 days before commencing to construct or renew any Specified Work, the Council shall submit to NGG plans of the works
- 10.2 A Specified Work shall be constructed (and in the case of any temporary work removed) only in accordance with:-
- 10.2.1 the plans submitted as aforesaid; and
 - 10.2.2 all reasonable requirements made by NGG for the alteration, or otherwise for the protection, of the Apparatus, or for securing access thereto
- and NGG shall be entitled by its officer to watch and inspect the carrying out of the work
- 10.3 If within 42 days after the submission to it of any plans under clause 10.1, in consequence of the works proposed by the Council, NGG reasonably requires the removal of any Apparatus and gives written notice to the Council of that requirement, the foregoing provisions of this Agreement shall have effect as if the removal of such Apparatus had been required by NGG under clause 7.1
- 10.4 Nothing in clauses 10.1 or 10.3 shall preclude the Council from submitting at any time, or from time to time, but in no case less than 28 days before commencing the construction of any Specified Work, a new plan thereof in lieu of the plan previously submitted, and thereupon the provisions of those clauses shall apply to, and in respect of, such new plan save that the reference in clause 10.3 to 42 days shall be treated as a reference to 21 days

- 10.5 The Council shall not be required to comply with clause 10.1 in a case where it is necessary to carry out Emergency Works but, in such a case, it shall give to NGG notice so soon as reasonably practicable, and a plan of the works so soon as reasonably practicable thereafter, and shall comply with clause 10.2 so far as reasonably practicable in the circumstances
- 10.6 Nothing in clause 10.5 shall entitle the Council to carry out works to any Apparatus but, upon receipt of notice from the Council, NGG shall proceed to carry out such works as may be required with all reasonable despatch

11 Co-operation

Where in consequence of the proposed construction of any of the Authorised Works, the Council or NGG requires the removal of Apparatus under clause 7.1 or NGG makes requirements for the protection or alteration of Apparatus under clause 10.2, the Council shall 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 NGG shall use its best endeavours to co-operate with the Council for that purpose

12 Access

If in consequence of the exercise of the powers of the Order the access to any Apparatus is materially obstructed the Council shall provide such alternative means of access to such Apparatus as will enable NGG to maintain or use the Apparatus no less effectively than was possible before such obstruction

13 Expenses

- 13.1 Subject to the provisions of clause 6 and the following clauses of this Agreement, the Council shall repay to NGG the reasonable expenses incurred by NGG in, or in connection with:-
- 13.1.1 the inspection, removal and relaying or replacing, alteration or protection of any Apparatus or the construction of any new Apparatus under any provision of this Agreement (including any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or exercise of statutory powers for such Apparatus), and in connection with the cost of the carrying out by NGG of any connection work;
- 13.1.2 the cutting off of any Apparatus from any other Apparatus, or the making safe of any redundant Apparatus in consequence of the exercise by the Council of any power under the Order;
- 13.1.3 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 exercise by the Council of any power under the Order; and

13.1.4 any other work or thing rendered reasonably necessary in consequence of the exercise by the Council of any such power;

within 28 days of being notified by NGG that it has incurred such expenses.

13.2 There shall be deducted from any sum payable under clause 13.1 the value of any Apparatus removed under the provisions of this Agreement, that value being calculated after removal

13.3 If in pursuance of the provisions of this Agreement:-

13.3.1 Alternative Apparatus of better type, or greater capacity or of greater dimensions is placed in substitution for existing Apparatus of worse type, of smaller capacity or of smaller dimensions, except where this has been solely due to using the nearest currently available type or where this is required in order to comply with any current Code of Practice or health and safety requirement; or

13.3.2 Apparatus (whether existing Apparatus or Alternative Apparatus) is placed at a depth greater than the depth at which the existing Apparatus was situated except where this is required in order to comply with any current Code of Practice or health and safety requirement or for the benefit or protection of the Authorised Works or Existing Apparatus, or apparatus of any other statutory undertaker;

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 between the Council and NGG or, in default of agreement, is not determined by arbitration to be necessary having regard, inter alia, to the nature of the Authorised Works, then, if such placing involves cost in the construction of the works under clauses 7.2 to 7.5 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 clause would be payable to NGG by virtue of clause 13.1 shall be reduced by the amount of that excess

13.4 For the purposes of clause 13.3:-

13.4.1 an extension of Apparatus to a length greater than the length of existing Apparatus shall not be treated as a placing of Apparatus of greater dimensions than those of the existing Apparatus except in a case where the Apparatus as so extended serves a purpose (either additional to or instead of that served by the existing Apparatus) which was not served by the existing Apparatus; and

13.4.2 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 shall be treated as if it also had been agreed or had been so determined

13.5 An amount which apart from this clause would be payable to NGG in respect of works by virtue of clauses 13.1 to 13.4 shall, 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 NGG any financial benefit by deferment of the time for renewal of the Apparatus or of the system of which it forms part in the ordinary course, be reduced by the amount which represents that benefit as calculated in accordance with the Code of Practice entitled 'Measures Necessary where Apparatus is Affected by Major Works (Diversionary Works)' and dated June 1992 and approved by the Secretary of State on 30th June 1992, as revised and re-issued from time to time

- 13.6 In any case where work is carried out by the Council pursuant to clauses 8.2 to 8.6 and, if such work had been carried out by NGG, the repayment made to NGG under clause 13.1 would fall to be reduced pursuant to clauses 13.3 to 13.5, NGG shall pay to the Council such sum as represents the amount of that reduction

14 Indemnity

- 14.1 If, by reason or in consequence of the construction, maintenance or failure of any of the Authorised Works by or on behalf of the Council, including without limitation any works carried out by the Council pursuant to clause 8.2 or protective works required under clause 10.2.2, or any subsidence resulting from any of those works, any damage shall be caused to any Apparatus (other than Apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or other property of NGG, or there is any interruption in any service provided by NGG, the Council shall repay the cost reasonably incurred by NGG in making good such damage, or restoring the supply, and shall:-

14.1.1 make reasonable compensation to NGG for any loss sustained by it; and

14.1.2 indemnify NGG against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from, or incurred by, NGG by reason or in consequence of any such damage or interruption;

and the fact that any act or thing may have been done by NGG on behalf of the Council or in accordance with plans approved by NGG or in accordance with any requirement of NGG or under its supervision shall not, subject to clause 14.2, excuse the Council from any liability under the provisions of this clause

- 14.2 Nothing in clause 14.1 shall impose any liability on the Council with respect to any damage or interruption to the extent that such damage or interruption is attributable to the neglect or default of NGG, its officers, servants, contractors or other agents
- 14.3 NGG shall give to the Council notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the Council which shall not be unreasonably withheld

15 Exercise of safeguarding and survey powers

The Council shall not, in the exercise of the powers of section 11(3) of the Compulsory Purchase Act 1965, make any trial holes within 500 millimetres

(measured in any direction) of the Apparatus where the Apparatus is operating or only capable of operating at below 7 bar pressure or within 3000 millimetres of the Apparatus where the Apparatus is operating or is capable of operating at or in excess of 7 bar pressure without the consent of NGG (which shall not be unreasonably withheld or delayed)

16 Arbitration

Any difference arising between the Council and NGG under this Agreement (other than a difference as to its meaning or construction or a difference which falls to be determined by the Lands Tribunal) shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after notice in writing to the other) by the President of the Institution of Civil Engineers and in determining any difference under this Agreement the arbitrator may, if he thinks fit, require the Council to execute any temporary or other works so as to avoid, so far as may be reasonably possible, interference with the use of any Apparatus

17 Third Parties

The Council shall be entitled:

- 17.1 to confer on any other person or persons the right to enjoy or exercise any or all of the Council's rights under this Agreement; and/or
- 17.2 to procure that any other person or persons perform or discharge any or all of the Council's obligations under this Agreement on the Council's behalf

Provided That:

- 17.3 The Council shall procure that in enjoying or exercising any such right and in performing or discharging any such obligation, such person or persons shall comply with the terms of this Agreement insofar as it relates or applies to such right or obligation; and
- 17.4 The Council shall remain liable to NGG for any breach of this Agreement by any such other person or persons as if such breach had been committed by the Council itself

18 Dealings

- 18.1 Without prejudice to clause 17 of this Agreement the Council will not assign or otherwise part with the benefit of this Agreement in whole or in part except to any person who is appointed by the Council to construct and/or maintain the Authorised Works
- 18.2 If any of the powers of the Order or the obligations imposed on the Council by this Agreement are transferred to another person (**the transferee**) the Council shall prior to such transfer procure a direct covenant from the transferee in favour of NGG to observe and perform such obligations of the Council under this Agreement as relate to the powers or obligations which have been transferred

- 18.3 NGG shall not assign or otherwise part with the benefit of this Agreement in whole or in part except to a person who has first entered into a deed of covenant with the Council to observe and perform the terms of this Agreement as relate to any powers or obligations which have been transferred (including this clause 18)

19 Good Faith and Co-operation

The Council and NGG shall act towards each other at all times in good faith and shall co-operate and fully consult with each other regarding their respective obligations under the terms of this Agreement

20 Variation of Agreement

No amendment or modification of this Agreement shall be valid or binding on the Council or NGG unless the same:

- 20.1 is made in writing
- 20.2 refers expressly to this Agreement and
- 20.3 is signed on behalf of the Council and NGG

21 Value Added Tax

- 21.1 Where under this Agreement either party covenants to pay the other an amount of money such amount shall be regarded as being exclusive of value added tax (if applicable)
- 21.2 Each party's agreement under this Agreement shall be construed as requiring payment to the other party of value added tax chargeable in respect of any taxable supply received by the paying party under the terms of or in connection with this Agreement
- 21.3 Where under this Agreement either party has agreed to reimburse the other in respect of any payment made by the other party under the terms of or in connection with this Agreement and the subject matter of the payment does not constitute a taxable supply to which clause 21.2 above applies then the reimbursing party shall also reimburse any value added tax paid by the other party on such payment to the extent that it is not recovered by the other party
- 21.4 Where under this Agreement either party furnishes the other with any consideration in respect of a taxable supply then the receiving party shall invoice the other party for and the other party shall pay value added tax on such consideration (if applicable)

22 No Representations

This Agreement incorporates the entire agreement between the parties and the Council and NGG acknowledge that they have not entered into this Agreement in reliance on any advertisement or other matter issued by the other or in reliance on any statements or representations made to them save those written statements of either

party's solicitors made before the date of this Agreement in reply to any written enquiries raised by the other party's solicitors

23 Contracts (Rights of Third Parties) Act 1999

This Agreement gives no rights under the Contracts (Rights of Third Parties) Act 1999 but this does not affect any rights which are available apart from that Act

24 Partial Invalidity

24.1 If any provision of this Agreement is or becomes or is declared invalid unlawful illegal or unenforceable it shall not affect the validity of the remainder of this Agreement

24.2 If any part of a provision of this Agreement is or becomes or is declared invalid unlawful illegal or unenforceable but the rest of such provision would remain valid lawful or enforceable if part of the wording were deleted the provision shall apply with such modifications as may be necessary to make it valid lawful enforceable and effective but without affecting the meaning or legality validity or enforceability of any other provision of this Agreement

25 Notices

25.1 Any notice in writing that under the terms of this Agreement is to be given to the Council shall be deemed effectively served if and only if addressed to the Council and delivered by hand or sent by recorded delivery or registered post to [] or such other person at such address as the Council may from time to time appoint instead for that purpose and notify to NGG

25.2 Any notice in writing that under the terms of this Agreement is to be given to NGG shall be deemed effectively served if and only if addressed to NGG and delivered by hand or sent by recorded delivery or registered post to NGG's registered office or such other person at such address as NGG may from time to time appoint instead for that purpose and notify to the Council

26 No Partnership

Nothing in this Agreement shall create or imply a partnership between the parties

27 Governing Law

This Agreement shall be governed by and construed in accordance with English Law

28 Costs

The Council will reimburse NGG's reasonable and proper costs, including professional fees, incurred in the negotiation of this Agreement

IN WITNESS of which the Council and NGG have executed and delivered this document as a Deed as first dated above

THE COMMON SEAL of)
DEVON COUNTY COUNCIL)
was hereunto affixed)
in the presence of:)

THE COMMON SEAL of)
NATIONAL GRID GAS PLC)
was hereunto affixed)
in the presence of:)

Authorised Signatory